



Planning Act 2008  
Infrastructure Planning  
(Applications: Prescribed  
Forms and Procedure)  
Regulations 2009

Regulation 5(2)(c)

# North Lincolnshire Green Energy Park

Volume 2

2.2 Explanatory Memorandum

PINS reference: EN010116

May/February 2023

Revision number: 31





**THE PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND  
PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)**

**NORTH LINCOLNSHIRE GREEN ENERGY PARK ORDER 202\***

---

**EXPLANATORY MEMORANDUM**

---

## CONTENTS

<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Purpose of the draft Order .....</b>	<b>4</b>
<b>3</b>	<b>The Project.....</b>	<b>6</b>
<b>4</b>	<b>Project areas.....</b>	<b>10</b>
<b>5</b>	<b>Optionality of northern district heating network .....</b>	<b>11</b>
<b>6</b>	<b>Preliminary Provisions.....</b>	<b>13</b>
<b>7</b>	<b>Operative Provisions.....</b>	<b>14</b>
<b>8</b>	<b>Schedules .....</b>	<b>32</b>

### **Appendix A 41**

### **Appendix B 44**

### **Appendix C 46**

<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Purpose of the draft Order .....</b>	<b>4</b>
<b>3</b>	<b>The Project.....</b>	<b>6</b>
<b>4</b>	<b>Project areas.....</b>	<b>10</b>
<b>5</b>	<b>Optionality of northern district heating network .....</b>	<b>11</b>
<b>6</b>	<b>Preliminary Provisions.....</b>	<b>13</b>
<b>7</b>	<b>Operative Provisions.....</b>	<b>14</b>
<b>8</b>	<b>Schedules .....</b>	<b>31</b>

### **Appendix A 39**

### **Appendix B 42**

### **Appendix C 44**

## 1 Introduction

- 1.1 This memorandum accompanies an application for development consent (**Application**) by North Lincolnshire Green Energy Park Limited (**Applicant**) for a multi-technology integrated energy park.
- 1.2 The North Lincolnshire Green Energy Park (**NLGEP**) (**Project**), located at Flixborough, North Lincolnshire, is a Nationally Significant Infrastructure Project (**NSIP**) with an Energy Recovery Facility (**ERF**) capable of converting up to 760,000 tonnes of non-recyclable waste into 95 MW of electricity at its heart and a carbon capture, utilisation and storage (**CCUS**) facility which will treat a proportion of the excess gasses released from the ERF to remove and store carbon dioxide (**CO<sub>2</sub>**) prior to emission into the atmosphere. The design of the ERF and CCUS will also enable future connection to the Zero Carbon Humber pipeline, when this is consented and operational, to enable the possibility of full carbon capture in the future.
- 1.3 In December 2019 the Applicant submitted a request for a direction under section 35 of the Planning Act 2008 (**2008 Act**) in relation to an earlier iteration of a scheme for the ERF, which also included an Energy Recovery Centre of Excellence, Business Enterprise Park and Commercial Glasshouse Development. A response was received from the Department for Business, Energy and Industrial Strategy and from the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in February 2020. As the submitted Application for the Project differs significantly from this earlier iteration, then no further detail is intended to be provided in relation to the section 35 direction.
- 1.4 The NSIP part of the Project incorporates a switch yard and substation, to ensure that the power created can be exported to the National Grid or to local businesses, and a water treatment facility, to take water from the mains supply or recycled process water and condensate to remove impurities and make it suitable for use in the boilers, the CCUS facility, concrete block manufacture, hydrogen production and the maintenance of the water levels in the wetland area.
- 1.5 The Project will include the following associated development to support the operation of the NSIP:
- a bottom ash and flue gas residue handling and treatment facility;
  - a concrete block manufacturing facility;
  - a plastic recycling facility;
  - a hydrogen production and storage facility;
  - an electric vehicle and hydrogen re-fuelling station;
  - battery storage;
  - a hydrogen and natural gas above ground installation;
  - a new access road and parking;
  - a gate house and visitor centre with elevated walkway;
  - railway reinstatement works including, sidings at Dragonby, two footbridges, three user elevated crossings, re-instatement and safety improvements to the 6km private railway spur, and the construction of a new railhead with sidings south of Flixborough Wharf (**Railway Reinstatement Works**);
  - a northern and southern district heating and private wire network (**DHPWN**);
  - habitat creation, landscaping and ecological mitigation, including green infrastructure and 65 acre wetland area;
  - new public rights of way and cycle ways including footbridges;

- Sustainable Drainage Systems and flood defence; and
  - utility connections and diversions.
- 1.6 The Project will also include development in connection with the above works such as security gates, fencing, boundary treatment, hard and soft landscaping, surface and foul water treatment and drainage systems and CCTV.
- 1.7 The Project also includes temporary facilities required during the course of construction, including site establishment and preparation works, temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking facilities, offices, staff welfare facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage.
- 1.8 The overarching aim of the Project is to support the UK's transition to a low carbon economy as outlined in the Sixth Carbon Budget (December 2020), the national Ten Point Plan for a Green Industrial Revolution (November 2020) and the North Lincolnshire prospectus for a Green Future. It will do this by enabling circular resource strategies and low-carbon infrastructure to be deployed as an integral part of the design (for example by re-processing ash, wastewater and carbon dioxide to manufacture concrete blocks and capturing and utilising waste-heat to supply local homes and businesses with heat via a district heating network).
- 1.9 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft North Lincolnshire Green Energy Park Order 202\* (**draft Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

## **2 Purpose of the draft Order**

- 2.1 In overview, the purpose of the draft Order is to grant the Applicant development consent for a NSIP.
- 2.2 The Applicant is applying for a development consent order for an ERF, which is an electricity generating station with a capacity of over 50 megawatts (MWe). This qualifies as a NSIP pursuant to section 15(2) of the 2008 Act.
- 2.3 Details of the Project are set out in section 3 of this Explanatory Memorandum and a more detailed explanation of the Project is set out in the chapter 3 of the Environmental Statement (Project Description and Alternatives) (Document Reference 6.2.3) which accompanies the Application.
- 2.4 The Applicant has had regard to the National Policy Statement for Energy (EN-1), National Policy Statement for Renewable Energy Infrastructure (EN-3) and National Policy Statement for Electricity Networks Infrastructure (EN-5) in preparing this Application.
- 2.5 Part 1 (Preliminary) of the draft Order includes articles 1 to 3. Article 1 sets out what the draft Order will be cited as if it comes into force. Article 2 sets out the meaning of various terms used in the draft Order. Article 3 sets out the position on electronic communications for the purposes of the Order.
- 2.6 Part 2 (Principal Powers) is the key operational part of the draft Order, particularly articles 4 and 5, which will grant development consent for the Project, by reference to the Works numbered 1, 1A, 1B, 1C, 1D, 2 to 12, 12A, 13-14, 15A and 15B as set out in Schedule 1 and shown on the Works Plans, and the limits of deviation. It also includes the powers to maintain and operate the Project (articles 6 and 7). Article 8 provides for how the draft Order and any planning permissions will interact. Articles 9 and 10 set out who will have the benefit of the powers of the draft Order and how those powers can be transferred. [Article 11 relates to the application and modification of legislative provisions through the Order.](#)

2.7 Part 3 (Streets) is required as the Project requires stopping up and replacement of an existing highway and includes temporary suspension of some existing public rights of way and creation of new public rights of way. Articles ~~142~~ to ~~176~~ provide for the undertaker to be able to carry out works to and within streets, to alter the layout of streets, to permanently stop up streets and temporarily stop up streets, to be able to create, divert and temporarily stop up public rights of way, and to be able to create and improve accesses. Article ~~178~~ (clearways, prohibitions and restrictions), by reference to Schedule 7, provides for waiting restrictions. Article ~~198~~ (classification of highways), by reference to Schedule 8, and article ~~2049~~ (speed limits), by reference to Schedule 9, provide for classification of, and the speed limit for, the new replacement highway to be created as part of the Project. Article ~~210~~ (Traffic regulation) makes provision for new permanent and temporary Traffic Regulation Orders and article ~~224~~ (Agreements with street authorities) authorises the undertaker to enter into agreements with street authorities relating to the construction of or works in a street, and the alteration and diversion of a street.

2.8 In accordance with sections 120(3) and 122 of, and Schedule 5 to, the 2008 Act, Part 4 (Compulsory Acquisition) of the draft Order would authorise the acquisition of land and rights over land, and the extinguishment or suspension of, or interference with, interests in or rights over land. This is a key part of the draft Order, which would allow the acquisition of the land and rights required for the Project. The Book of Reference (Document Reference 3.1) sets out what land is to be acquired and what other rights and interests will be affected. The draft Order and the Book of Reference should be read together with the Statement of Reasons (Document Reference 3.2) which accompanies the Application and which sets out the justification for the acquisition or interference with each relevant plot of land. Article ~~254~~ (time limit for exercise of authority to acquire land compulsorily) imposes a ~~75~~ year time limit applied for these powers to be exercised, due to the complexity and scale of the Project and the fact that it is to be delivered in six phases. The plots of land are shown on the Land Plans (Document Reference 4.2) and divide into three categories:

- Land shown shaded pink, which may be acquired permanently;
- Land shown shaded blue, in which new rights may be acquired permanently and which may be used temporarily; and
- Land shown shaded green, which may be used temporarily.

Land in which only new rights may be acquired or restrictive covenants imposed is listed in Schedule 10, along with the purpose for which they may be acquired or imposed and the Works to which the new rights or restrictive covenants relate. Schedule 10 is divided into two parts – Part 1 which relates to Option A and Part 2 which relates to Option B. This reflects that fact that there are two possible options in relation to the route of the northern district heating and private wire network (see section 4 below).

Land over which only temporary possession can be taken is listed in Schedule 12 (again split into two parts, in relation to Option A (Part 1) and Option B (Part 2)), along with the purpose for which temporary possession may be taken and the Works to which the possession relates.

2.9 Part 5 (Supplemental Powers) sets out the standard powers included in a development consent order (**DCO**) and the two articles included are both model provisions. These relate to powers governing discharge of water into watercourses, sewers and drains and authority to survey and investigate land (with the addition of reference to boreholes).

2.10 Part 6 (Operations) provides a power to fell or lop trees and shrubs and to remove the hedgerows set out in Schedule 13 and shown on the Hedgerows Plan or, with the consent of the local authority, any other hedgerow within the Order Limits.

2.11 Part 7 (Miscellaneous and General) sets out a number of standard articles in relation to matters such as:

- removal of human remains;
- the non-application of landlord and tenant law;
- operational land;
- defence to proceedings for statutory nuisance;
- service of notices for the purposes of the Order; and
- arbitration.

It also gives effect to the Protective Provisions in Schedule 14 and deals with the certification of documents, which are listed in ~~article 465~~[Schedule 15](#).

- 2.12 Schedules: there are ~~154~~ Schedules to the draft Order providing for the description of the Project (Schedule 1); the requirements (a form of control similar to planning conditions) which apply to the Project (Schedule 2); matters in relation to streets and access (Schedules 3 to 9); details of land affected by compulsory purchase powers (Schedules 10 to 12); details of removal of hedgerows (Schedule 13), ~~and~~ provisions protecting statutory undertakers and their apparatus (Schedule 14) and documents and plans to be certified (Schedule 15).

### 3 The Project

- 3.1 Under Section 15 of the 2008 Act the construction of a generating station qualifies as a NSIP under section 14(1)(a) only if the generating station falls within sub-section (2), (3), (3A) or (3B).

- 3.2 This ERF falls within sub-section (2) because it is a generating station, which:

- is in England;
- is not generating electricity from wind;
- is not an offshore generating station; and
- has a capacity of over 50 MW.

- 3.3 The NSIP element of the Project (**Principal Development**) is within Work Nos. 1, 1A, 1B, 1D and includes:

- An electricity generating station located on land at Flixborough Wharf, Lincolnshire, fuelled by refuse derived fuels with a gross generation capacity of up to 95 megawatts at ISO conditions comprising the following works—
  - fuel reception and storage facilities, consisting of vehicle ramps, a tipping hall, shredder, bunker hall and cranes;
  - a combustion system housed within a boiler hall, consisting of three combustion lines and associated boilers;
  - a steam turbine and generator housed within a turbine hall with a cooling system;
  - a bottom ash handling system, including an ash conveyor housed within a bottom ash hall connecting to Work No. 2;
  - a flue gas treatment system, including residue and reagent silos housed within a flue gas treatment hall;
  - a silo or tank for the storage of ammonia reagents;
  - district heating equipment
  - a tank for the storage of fuel oil;
  - a compressed air system;
  - a process effluent storage tank;
  - a switchyard including a sub-station and battery storage;



- a transformer compound containing the generator transformer;
  - utility connections within the works limits;
  - pipe racks, pipe runs and cabling;
  - fire water pump house and fire water tank;
  - internal vehicle access roads, crossings and pedestrian and cycle facilities and routes;
  - administration offices and control room, security gatehouse, barriers and enclosures;
  - elevated walkway connected to Work Nos. 1C,2 and 6;
  - weighbridges;
  - car parking;
  - a demineralised water treatment plant and demineralised water storage tanks;
  - indoor storage tanks for boiler water treatment chemicals;
  - a back-up generator;
  - trade effluent treatment plant;
  - two visual barriers;
  - three emissions stacks, consisting of an ERF stack windshield containing three flues, a back-up boilers stack windshield containing up to three flues and a back-up generator stack, and associated emissions monitoring system (1A);
  - a carbon capture and utilisation and storage facility capable of capturing at least 54,387 tonnes of carbon dioxide per annum including carbon dioxide storage tanks (1B); and
  - a cooling system consisting of air-cooled condensers or air blast chillers (1D).
- 3.4 Pursuant to section 115 of the 2008 Act, development consent can be granted for both the NSIP and associated development.
- 3.5 The Secretary of State for Communities and Local Government (now Levelling Up, Housing and Communities) issued guidance entitled "Guidance on associated development applications for major infrastructure projects" April 2013 (**Guidance**), which sets out the defining characteristics of, and illustrates the types of development that may qualify as, associated development.
- 3.6 In summary, associated development must not be an aim in itself; it must be subordinate to and necessary for the effective operation of the NSIP, and may include measures that support construction or operation of the NSIP, or measures that are necessary to mitigate the effects of the Principal Development. Associated development should generally be proportionate to the nature and scale of the NSIP. The Guidance clarified that it is for an applicant to decide whether to include something that could be considered as associated development in an application for development consent or whether to apply for consent for it by other means.
- 3.7 Associated development forming part of the Project is included as Work Nos. 1C and 2 to 12, 12A, 13-14, 15A and 15B and is proposed to include:
- a bottom ash and flue gas residue handling and treatment facility (**RHTF**). The ash produced following combustion within the ERF will be treated onsite in a facility that will adjoin the ERF. The residues derived from the combustion of the feedstock are classed in two categories: incinerator bottom ash and flue gas treatment residue. Ash processing plants are included under the category of associated development for 'onshore generating stations' in Annex B of the Guidance. The RHTF will allow the ash created as a by-product of the Principal Development to be stored and treated on-site so that it can be

repurposed in a facility that will adjoin the ERF, helping reduce the impact of the Principal Development;

- a concrete block manufacturing facility (**CBMF**). Once treated, the ash residues will be transferred from the RHTF to the CBMF (located south of the RHTF) and will immediately become feedstock for the production of concrete blocks. In this way, the CBMF will divert the ash away from landfill, thereby reducing its potential environmental impact and help reduce the impact of the Principal Development. The flue gas treatment residue will be mixed with some of the captured carbon dioxide to produce a cementitious product used in the CBMF utilising some of the carbon dioxide produced in combustion. This will prevent flue gas treatment residue being landfilled. Whilst the profits generated by the CBMF will help subsidise the Principal Development, the scale of the facility, its reliance on the Principal Development for its raw materials and the fact that it serves an important recycling function all demonstrate that it is subordinate to the Principal Development and is to be considered associated development;
- a plastic recycling facility (**PRF**) and associated infrastructure. This facility will ensure that any plastic materials forming part of the refuse derived fuel (**RDF**) waste stream that can be recycled will be.

The RDF will be purchased by the Applicant in bulk and will include an element of plastic materials which are capable of being recycled, but which nevertheless usually end up being recovered through the ERF. By delivering a PRF as part of the Project, the Applicant will be able to ask for the waste stream to be source segregated (avoiding the need for an additional permit for sorting waste on site) and can then divert the recyclable plastics into the PRF, thereby supporting the operation of the ERF, whilst seeking to maximise recycling of waste. The PRF will not receive plastic from any other sources, it will only accept plastic from the RDF waste stream purchased for the ERF, making it subordinate to the Principal Development.

The PRF will also use an electricity supply from the ERF to operate the machinery, and the heat produced by the ERF to reform thermoplastic polymers that have been previously separated from the rest of the waste stream entering the site. This reformed thermoplastic material can then be recycled into new products.

There is currently a limited supply of plastic recycling facilities in the UK and there are multiple benefits in co-locating such a facility alongside the ERF. The provision of the PRF alongside the ERF will address impacts on climate change, by ensuring that source-segregated plastic material is recycled rather than recovered. This aligns with the Government waste strategy, ensuring the Project meets the requirements of the waste hierarchy and that recycling targets can be met and in this regard also ensures that the PRF is helping to address the impacts of the Principal Development, through further improving its overall consistency with national policy. The PRF has been assessed in the Environmental Impact Assessment (EIA) with maximum dimensions of 130m by 80m for the purposes of a worst-case assessment as the specific dimensions of the technology to be used are still to be determined, although the maximum scale of the building itself will be 100m by 50m. The flexibility in the dimensions is required to ensure that the PRF can either be designed to be a U shaped or linear facility, the latter may be required to allow sufficient space for storage of material between process steps. This flexibility also ensures the Applicant can incorporate the latest technology available as well as any further advances in technology. However, the maximum throughput of 25,000 tpa will ensure it remains appropriately subordinate to the ERF.

- a hydrogen production and storage facility, associated infrastructure and hydrogen and natural gas above ground installations (AGIs). The gas AGIs will facilitate the supply of natural gas to the ERF for the purpose of auxiliary firing, as well as the export of hydrogen to the gas grid at a point in the future when the concept has been validated. As the ERF will operate 24 hours a day all year round, excepting outage periods, to facilitate the fluctuations in daily and seasonal demand for electricity by the national grid, this element allows the capture and storage of energy as hydrogen which can be re-used when there is a demand. The hydrogen production and storage facility will have a production capacity of 150kg/h hydrogen (1,300 tpa – capable of heating 17,600 homes), equivalent to an electrical demand of 10MW, which will either be: stored; delivered to the gas grid or to

end users along the DHPWN; used to supply the hydrogen refuelling station; or used to supply the planned East Coast Cluster dedicated hydrogen network. All of these uses will contribute further with the decarbonisation of gas supplies to achieve Net Zero by 2050. This component supports the operation of the ERF and is necessary to maximise energy recovery by increasing self-consumption of electricity during periods of low grid demand. Given its size, it is clearly subordinate to the main ERF, but its co-location alongside the ERF is beneficial in terms of maximising energy recovery and improving the environmental benefits;

- an electric vehicle and hydrogen refuelling station, with hydrogen production and a gas grid injection AGI. This station will use energy generated from the ERF to provide low carbon hydrogen fuel for buses and cars, or to be injected into the gas grid to support the decarbonisation gas supplies furthering the net zero aim of the Project. The hydrogen electrolyser in this area has a capacity of up to 150 kg/h. Around 50 kg/h of hydrogen production will be used for the hydrogen bus network. Based on the number of parking spaces in the electric vehicle charging area (5 HGVs and 13 conventional EVs), the estimated electrical capacity is up to 2.5 Mwe;
- a battery storage facility with a storage capacity of 45MWh and a peak discharge of 30MWe, with associated infrastructure. As the Principal Development will operate 24 hours a day all year round, to allow for the fluctuations in demand for electricity by the national grid and the PWN throughout the day and for seasonal variations, this element allows capture and storage of energy and re-use when there is a demand. This component supports the operation of the Principal Development by facilitating the storage of the energy produced by it when the local and network demand are low and energy generation exceeds demand, for release at times when demand is high. This stored energy will also provide power for the electric vehicle charging using power stored at low demand to deliver charging at peak times;
- district heating and private wire networks to provide heat, steam, hydrogen and electricity generated by the ERF to end users in the vicinity of the Project. The use of waste heat from the ERF to replace the use of fossil fuels improves the efficiency of the energy recovery process in the ERF and contributes to the decarbonisation of the network supply for local businesses and homes. The hydrogen produced by the hydrogen production and storage facility can be supplied via pipes to the end users if there is a demand. The private wire network will deliver power from a renewable source to decarbonise the supply of electricity for local industrial, commercial and community utilities such as the proposed new hospital;
- new railway works including, sidings at Dragonby, re-instatement and safety improvements to the existing private railway spur, provision of a new railhead with sidings south of Flixborough Wharf and associated equipment to allow loading and unloading, which would fall within Annex A of the Guidance (examples of general types of associated development). The line will be brought back into operation to facilitate the transportation of waste feedstock to the ERF and PRF to reduce road transport and facilitate the containerised handling of refuse derived fuel. Aggregate and concrete products will also be transported by rail and there is potential to transport carbon dioxide;
- a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive, improvements to footpaths and the junction between the B1216 and A1077, upgrades to the combined foot and cycleway along the A1077 between Luneburg Way and Phoenix Avenue, which would fall within Annex A of the Guidance. The B1216 is currently used by traffic accessing the Flixborough Industrial Estate and Flixborough Wharf. These road improvements are to alleviate the road constraint at Neap House Farm to the south of the Project and will facilitate the flow of traffic approaching from the south. The access road will also carry the infrastructure to deliver the district heat network and private wire network to the A1077. In a previous planning consent secured by the landowner, the new access road was a pre-condition of the consent for the Glanford Business Park;
- an elevated walkway that interconnects all areas of the Project providing safe access between operational activities;

- a gatehouse and Visitor Centre. Business and visitor centres have previously been included as associated development in a DCO application – for example, Hinkley Point C New Nuclear Power Station. The gate house and Visitor Centre are fully integrated to provide safe access to all areas of the Project via the elevated walkway providing disabled access for workers, visitors and school groups;
- diversions of existing utilities, which would fall within Annex A of the Guidance;
- new public rights of way and cycle ways that will facilitate pedestrian and cycling access for operational and support personnel, which would fall within Annex A of the Guidance; and
- flood defences and sustainable drainage systems, which would fall within Annex A of the Guidance; and
- habitat creation measures that will establish a biodiversity net gain ahead of any regulatory requirements proposed in the new Environment Act 2021, hard and soft landscaping and construction of landscaping features (including a wetland area and ecological mitigation works) that will provide mitigation against any potential visual impact, which would fall within Annex A of the Guidance.

3.8 The Applicant has considered Work Nos. 1C and 2 to 12, 12A, 13-14, 15A and 15B against the policy and criteria in the Guidance and has determined that all of these works meet the Guidance tests for associated development.

3.9 In particular, these works are all:

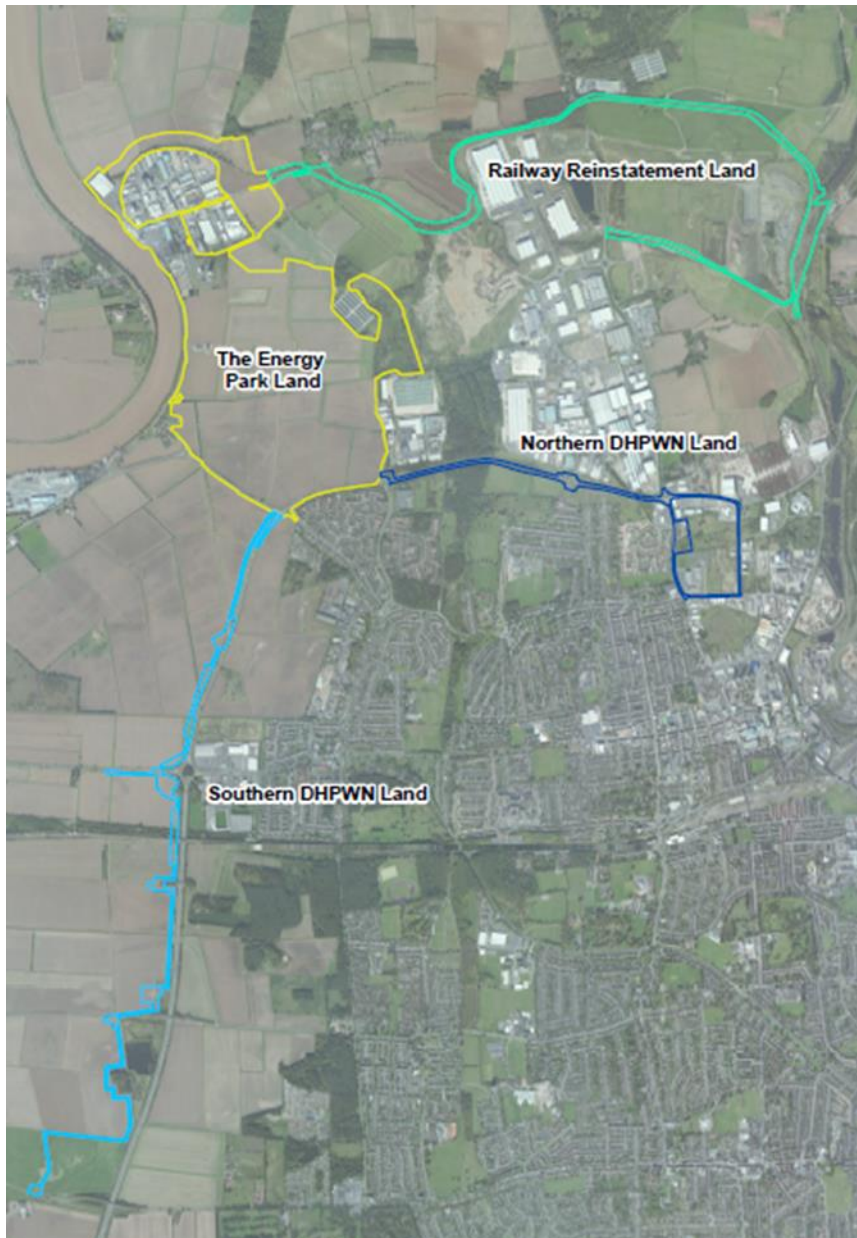
- directly associated with the NSIP, as they are all required for the construction, maintenance or operation of the ERF, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- subordinate to the NSIP – none of them are an aim in themselves (paragraph 5(ii));
- not necessary only as a source of additional revenue in order to cross-subsidise the cost of the principal development; and/or
- proportionate to the nature and scale of the NSIP (paragraph 5(iv)).

And are therefore capable of being granted development consent by the Secretary of State pursuant to section 115 of the 2008 Act.

#### **4 Project areas**

4.1 There are four key areas of the Project that will be referred to throughout this document. These are as follows and are shown on the figure below:

##### **Figure 1 – Project areas**



## 5 Optionality of northern district heating network

- 5.1 The Project includes a northern district heating and private wire network (**NDHPWN**) and southern district heating and private wire network (**SDHPWN**), both of which are being applied for and are proposed to be delivered.
- 5.2 The route of the NDHPWN introduces an element of optionality in its final stage. This optionality has been included within the Application due to concerns in relation to noise and traffic impacts on local residents during construction in relation to Option A, the route preferred by the local highway authority, North Lincolnshire Council. The noise impacts of Option B are lesser, albeit this option may cause more disruption to the local highway network.
- 5.3 The Application therefore includes two alternative options for the NDHPWN for consideration by the Examining Authority as follows:
- Option A (shown on Works Plan B7 and Land Plan Sheet 10A) – at the roundabout junction with the A1430 (Normanby Road) the route passes south towards the urban

centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas; and

- Option B (as shown on Works Plan B8 and Land Plan Sheet 10B) – at the roundabout junction with the A1430, the route continues on the A1077 until the junction with Bessemer Way to the south. The route will follow Bessemer Way until the junction with Warrant Road, turning due west to meet Normanby Road.

The compulsory acquisition Schedules (Schedules 10 and 12) to the draft Order reflect the fact that there are two options for the NDHPWN and consequently two options for the compulsory acquisition of rights and temporary possession of land. Part 1 of Schedule 10 and Schedule 12 set out the plots for which new permanent rights and temporary powers are required if Option A is pursued. Part 2 of Schedules 10 and 12 set out the plots for which new permanent rights and temporary powers are required if Option B is pursued. The draft Order, at article 234(2) (compulsory acquisition of land), limits the Applicant to exercising compulsory acquisition powers in relation to either Option A or Option B, but not both.

## 6 Preliminary Provisions

- 6.1 The preamble to the draft Order sets out some key legislative provisions and if made, will explain that an application under section 37 of the 2008 Act has been made to the Secretary of State for an order granting development consent and that the application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010. If made, the Order will go on to explain that the Secretary of State has had regard to the relevant national policy statements and those matters which he thinks are both important and relevant to his decision, has considered the representations made and not withdrawn and the application and accompanying documents in deciding to make the Order.

Articles 1 to 3 of the draft Order contain preliminary provisions.

*Article 1* (*Citation and commencement*) provides for the commencement and citation of the draft Order. It includes the date on which the draft Order comes into force, which may or may not be the date on which the draft Order is made.

*Article 2* (*Interpretation*) provides for the interpretation of the draft Order and sets out specific definitions relating to the Principal Development and its associated development, for example "authorised development" which is defined as the development and the associated development, the components of which are listed in Schedule 1 of the draft Order. Article 2 makes alterations to the model provisions to add required definitions, including:

- Definitions of documents submitted as part of the Application and which are referred to in the Order (such as the Environmental Statement (Document References 6.1, 6.2.1-6.2.19 and 6.3.1-6.3.8)) and various plans and strategies have been added;
- A definition of "preliminary works" which has been added to allow certain works to be excluded from triggering the need to discharge certain requirements where appropriate. Requirement 4 provides that the preliminary works may not commence until a permitted preliminary development works construction environmental management plan (as described in section 5.3 of the CoCP (**Document Reference 6.3.7**)) has been submitted to and approved by the relevant planning authority. This is to ensure that any required mitigation will be complied with prior to commencement of these preliminary works;
- 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, see further below in relation to article 5;
- A definition of "maintain" has been added to make clear what is authorised under article 6 (see below). It allows the undertaker to inspect, repair, adjust, alter or refurbish the whole of the authorised development, and to remove, reconstruct or replace part of the authorised development provided it does not give rise to materially new or materially

- different environmental effects;
- The "undertaker" which is defined as The North Lincolnshire Green Energy Park Limited, who has the benefit of the provisions of the Order (or a person who has the benefit of the Order in accordance with articles 9 and 10).

It should be noted that Schedule 2 also contains some further definitions of certain terms that relate specifically to the requirements.

Article 2(2) provides that all distances, directions, measurements and lengths referred to in the draft Order are approximate (except the parameters referred to in Article 5 and Schedule 1 Part 3), which allows for some flexibility in the event that it transpires there will be marginal differences in any of the dimensions and ensures they are permitted under the terms of the draft Order. This approach has been adopted in the Wheelabrator Kemsley K3 Generating Station Order 2021.

Article 2(3) provides that areas given in the Book of Reference are approximate, since these are not covered by article 2(2). This is intended to clarify the position of the areas in the Book of Reference, and the purpose and effect is the same as set out in the previous paragraph.

Article 2(4) clarifies that any reference to a work number in the draft Order is to be construed by reference to that work number as set out in Schedule 1.

Article 2(5) provides that the term "includes" is non-limiting.

*Article 3*                      *Electronic Communications* sets out the position on electronic communications for the purposes of the Order.

This article allows for documents and communications under the draft Order to be provided in electronic form and sets out the conditions relating to this. This approach has been adopted in the South Humber Bank Energy Centre Order 2021.

## 7                      **Operative Provisions**

Articles 4 to 497 of the draft Order contain provisions for and relating to the Project, and miscellaneous and general provisions.

### **Part 2**                      **Principal Powers**

*Article 4*                      *(Development consent etc. granted by the Order)* will grant development consent for the authorised development within the draft Order limits, thereby authorising the construction of the Principal Development, associated development and ancillary works. The authorised development means the development described in Schedule 1 (*Authorised development*). This includes further works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement.



Article 4 is based on the model provisions. Article 4(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans and within the limits of deviation. This is in order to provide certainty as to what has been consented by the Order. Article 4, Schedules 1 and 2 (requirements) operate together to provide the parameters under which the undertaker must construct (etc) the authorised development.

#### Article 5

*(Limits of deviation)* sets out the limits of deviation incorporated into the Project.

Article 5(a) allows for lateral deviation within the limits shown on the Works plans for each separate Work.

In relation to Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6-9 and 12-15B, article 5(1)(b) allows for vertical deviation upwards to the extent shown on the vertical parameters plans and listed in the parameters table (Schedule 1 Part 3), and article 5(1)(c) allows for vertical deviation to any extent downwards as required to construct the Project.

In relation to Work Nos. 3 and 4, article 5(1)(d) allows for vertical deviation ~~from the levels shown on the indicative railway plans~~ by a maximum of 1 metre upwards or downwards from the AOD levels shown on the indicative railway plans and listed in the parameters table in Part 3 of Schedule 1.-

For Work Nos. 10 and 11 (DHPWN), article 5(1) include limits vertical deviation downwards to 3 metres, on the basis that these particular works do not require the same level of flexibility as the works referred to in article 5(1)(c). There is no upwards limit of deviation because this is an underground trench for cables and pipes.

Article 5(2) provides that Work No. 5 must be constructed within vertical limits of deviation ranging between 2.1 metres AOD and 5.2 metres AOD.

The extent of flexibility in downwards deviation in article 5(1)(c) is required so that any construction can respond to ground conditions when the works are carried out. In relation to the extent of deviation downwards, it is proposed that the pilings to be constructed for the Project will be laid on the bedrock. As such the wording proposed is required to take into account differing geological depths and conditions, and consequently the differing engineering processes that may be required as a result of the same within the Application Land. The flexibility is sought to provide the necessary (but proportionate degree of) flexibility when constructing that part of the authorised development, reducing the risk that the Project as approved cannot later be implemented for unforeseen engineering or geological reasons. It is standard practice to include some degree of flexibility to allow for any ground conditions or other engineering challenges that may be encountered during construction, to ensure that a slight shift in specific location will still be permitted. The Environmental Statement has assessed the worst-case scenario for the vertical downward deviation for the extent of the Project (ie to bedrock). A similar approach has been

used in similar orders, including the Wrexham Gas Fired Generating Station Order 2017.

Article 5 is based on the approach taken for the Tees Combined Cycle Power Plant Order 2019 (article 6) but has been adapted for this Project in that it provides for upward limits of deviation by reference to a parameters table in Schedule 1 Part 3.

*Article 6* (*Maintenance of authorised development*) provides for the maintenance of the authorised development. Article 6 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 and the requirements, and that it may only take place within the Order limits. A definition of "maintain" has also been included so that it is clear what the term involves and to limit the scope of powers of the undertaker under this article. This approach has been adopted in the South Humber Bank Energy Centre Order 2021.

*Article 7* (*Operation of authorised development*) permits the operation and use of the authorised development and is included under section 140 of the 2008 Act. Article 7(2) clarifies that undertaker is not relieved of the need to obtain any other operational consent that may be needed for the authorised development, in addition to the Order. This is not a model provision, but is intended to clarify that the undertaker is authorised to operate, as well as construct, the authorised development. It has become common wording in development consent orders, and was most recently used in the South Humber Bank Energy Centre Order 2021. The article has been updated here to apply to the whole of the authorised development, not just the generating station, as the Project incorporates more elements than the South Humber Bank Centre DCO.

*Article 8* (*Planning permission*) permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision is not a model provision, but ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development. This article is based on article 7 of The A30 Chiverton to Carland Cross Development Consent Order 2020.

This article has been included to allow the undertaker to apply for future consents pursuant to the Town and Country Planning Act 1990 for other material operations within the Order limits but outwith the Order without breaching the Order.

*Article 9* (*Benefit of the Order*) overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the draft Order to the undertaker rather than anyone with an interest in the land. The undertaker is defined in article 2 as North Lincolnshire Green Energy

Park Limited, as promoter of the authorised development, and anyone to whom the benefit of the Order is transferred under article 10.

This article is included as it would be impracticable for a variety of landowners to implement parts of the Project in an uncoordinated manner, which might be the case if section 156(1) were to remain. Overriding section 156(1) is common in development consent orders that have been made including the Hinkley Point C (Nuclear Generating Station) Order 2013 and Thorpe Marsh Gas Pipeline Order 2016.

Article 9 is based on the approach taken for the South Humber Bank Energy Centre Order 2021 (article 8).

#### *Article 10*

*(Consent to transfer benefit of the Order)* provides for the transfer or lease of the whole or part of the benefit of the draft Order. The exercise of any transferred benefit or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. This article is based on article 5 of the model provisions, although the below provisions have been added.

The consent of the Secretary of State is required for a transfer or lease, except where it is made to (i) the holder of an electricity generating licence; (ii) the relevant statutory undertaker or licence holder in relation to utility or other infrastructure connection works; or (iii) a highway authority responsible for the highways within the Order limits where the transfer relates to highway works. Utility diversions are required as part of the Project.

The justification for these provisions is that in such cases, the transferee or lessee will be of a similar regulatory standing to the undertaker, or is of a regulatory standing which makes a transfer of the relevant part of the Project appropriate. The carve out has precedent in orders such as the Eggborough Gas Fired Generating Station Order 2018 and the South Humber Bank Energy Centre Order 2021.

Article 10(5) provides that where the consent of the Secretary of State is not required, 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 10(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 9 of the South Humber Bank Energy Centre Order 2021.

The "undertaker" is narrowly defined in the draft Order, so this article is required to ensure the undertaker is able to transfer the benefit of the draft Order to another company in future if there was a desire to sell the whole or part of the Project.

#### Article 11

*(Application and modification of legislative provisions)* provides for the modification of regulation 6 of the Hedgerow Regulations 1997 and the disapplication of ~~for~~ provisions in the Neighbourhood Planning Act 2017 (NPA 2017).

Article 11(1) provides for the modification of Regulation 6(1)(j) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Regulations apply is permitted for carrying out or

[maintenance of development which has been authorised by a development consent order made pursuant to the 2008 Act. This approach was taken on The East Anglia THREE Offshore Wind Farm Order 2017 in relation to the carrying out of development. However, Article 7\(1\) has been further amended to clarify that removal of hedgerows is also permitted for maintenance activities. This approach was taken in the The Norfolk Boreas Offshore Wind Farm Order 2021.](#)

[Article 11\(2\) dis-applies provisions of the NPA 2017. This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The provisions relating to temporary possession in the NPA 2017 have not yet come into force and regulations required to provide more detail on the operation of the regime have not yet been made.](#)

[Because of the uncertainty in relation to the detail around that regime, the Applicant has consulted on the long-standing process available under the Planning Act 2008. The Applicant additionally considers that if Parliament wished to apply the NPA 2017 temporary possession regime to DCO projects it could have done so by effecting amendments to Part VII of the Planning Act 2008. It has not done so, and in the absence of the clarity this would provide, the Applicant proposes to proceed under the existing Planning Act 2008 procedure. Similar provisions have been included in the Silvertown Tunnel Order 2018, the Northampton Gateway Rail Freight Interchange Order 2019, the Norfolk Vanguard Offshore Wind Farm Order 2020, and The Norfolk Boreas Offshore Wind Farm Order 2021.](#)

[~~Article 11 is based on The Norfolk Boreas Offshore Wind Farm Order 2021 \(article 7\).~~](#)

### **Part 3**

#### **Streets**

##### **Article 124**

*(Street works)* allows the undertaker to carry out street works for the purposes of the authorised development in accordance with the statutory rights under the New Roads and Street Works Act 1991.

It makes provision for the undertaker to carry out the works described in article 124 (a) – (k) for the purposes of the authorised development. Ordinarily the undertaker would require a street works licence to carry out such works, however, the inclusion of this article in the Order will provide a statutory right to undertake street works within the specified streets without the need for the undertaker to obtain a separate licence from the street authority.

Schedule 3 sets out the streets that are to be subject to street works, and the nature of those works. The article is required in order to deliver the road improvements as part of the Project. It is based on article 10 of the South Humber Bank Energy Centre Order 2021, but the works

permitted in sub-paragraph 11(1) have been adapted to accommodate the works required as part of this Project.

Sub-paragraphs (2) and (3) have been included to provide a level of flexibility in relation to additional street works which may be required to facilitate the Project. The undertaker may also carry out those works described within article 124(a)-(k) in any street (not just those specified in Schedule 3), although this power is subject to obtaining the consent of the street authority (which cannot be unreasonably withheld) and provides for deemed consent after 28 days beginning with the date on which the application is submitted with all relevant information.

Sub-paragraph (4) has been included to ensure the undertaker is to restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

#### Article 132

*(Power to alter layout, etc., of streets)* allows for the alteration of the layout of any street within the Order limits, and any street at its junction with such a street, for the purposes of construction or maintenance of the authorised development, subject to obtaining the consent of the street authority (not to be unreasonably withheld). The alterations which can be made are set out in article 132(1)(a)-(d).

Article 132 is not in the model provisions but is based on one which has precedent in the Northampton Gateway Rail Freight Interchange Order 2019. As the detailed design has not yet been developed, it is not yet known with sufficient certainty which streets may need to be altered. Therefore, the power allows the alteration of any street within the Order Limits, subject to the consent of the street authority.

A deemed consent provision has been included to ensure there is a timely route to a decision. This deemed consent approach was incorporated in the National Grid (Hinkley Point C Connection Project) Order 2016.

#### Article 143

*(Permanent stopping up of streets)* provides for the stopping up of streets permanently where a substitute is to be provided. The drafting of this article largely reflects that of article 9 in the model provisions and Schedule 4 of the Order has been completed to identify the length of street that is to be permanently stopped up subject to this article and the alternative street to be provided. The street to which this article applies which is to be permanently stopped up is a highway and is shown on the Rights of Way and Access Plans.

This article also makes provision for all rights of way (both public and private) in the stopped up street to be extinguished, with provision made for the payment of compensation by the undertaker for any loss as a result.

The article is similar to the article contained in East Midlands Gateway Rail Freight Interchange and Highway Order save that that also deals with streets for which no substitute is to be provided, which is not applicable in relation to the Project.

In addition to section 120(3) (ie by virtue of the stopping up being related to the authorised development), the inclusion in the DCO of the

power to stop up this street is specifically authorised by section 120(4) and paragraph 17 of Part 1 of Schedule 5 to the 2008 Act.

*Article 154*

*(Temporary stopping up of streets)* provides for the temporary stopping up of streets for the purposes of carrying out and maintaining the authorised development. It is included in the Order as it may be necessary for the undertaker to stop up streets temporarily to facilitate the delivery and operation of the Project.

In respect of the streets, the article largely follows the approach in the model provision, in so far as it applies generally, but it has been extended to include stopping up for the purposes of maintaining the authorised development. Compensation by the undertaker is provided for in respect of the loss or suspension of any private rights of way.

This is similar in approach to the South Humber Bank Energy Centre Order 2021, although it has been adapted in that it does not deal with public rights of way (which are dealt with separately in article 165).

*Article 165*

*(Public rights of way – creation and temporary stopping up)* allows for the creation and temporary stopping up of rights of way (for any reasonable time) affecting land within the Order limits and is necessary because certain public rights of way need to be temporarily stopped up in order for the authorised development to be constructed. This power is limited as diversions or stopping up can only be for a reasonable time and 28 days written notice must be given to the highway authority prior to exercising the power.

Schedule 5 of the Order identifies the public rights of way that are affected by this article. Part 1 specifies the rights of way to be temporarily stopped and the extent of the temporary stopping up. It also provides that substitute temporary public rights of way must be provided where specified in column (4) of Part 1 of Schedule 5 on an alignment to be agreed with the relevant highway authority and that such substitute temporary public right of way must remain in place until the temporary suspended public right of way for which it is a substitute is open again.

This article also provides for the creation of new public rights of way as part of the authorised development. These are as set out in Part 2 of Schedule 5. The creation of the public rights of way is permitted by section 120(3) of the 2008 Act. The purpose for which the provisions relating to the creation of the public rights of way are included in the DCO is to facilitate the development consented by the DCO, and therefore their creation is clearly related to the authorised development.

This article is based on article 12 of The East Midlands Gateway Rail Freight Interchange and Highway Order but with some modification to make it clearer, and to reflect the fact that the Project does not include any permanent stopping up of public rights of way.

*Article 176*

*(Accesses)* the new means of access required for the Project are identified in Part 2 of Schedule 6. This article has been included to ensure the undertaker has the appropriate powers to construct the project.

As the scheme has some linear elements, to allow some flexibility this article is included to allow for modification of the access, or other means of access to be provided. This is subject to prior agreement with the relevant highway authority or, in the case of private streets, the street authority, and is therefore proportionate and reasonable.

Paragraph 4 provides the power to close private means of access where no substitute is to be provided. These are listed in Part 1 of Schedule 6.

Paragraph 5 provides the power to create new private means of access.

The creation of the private accesses is permitted by section 120(3) of the 2008 Act because the purpose for which the provisions relating to the creation of the private accesses are included in the DCO is to facilitate the development consented by the DCO, and therefore their creation is clearly related to the authorised development.

The article is similar to article 14 of The East Midlands Gateway Rail Freight Interchange and Highway Order although a deemed approval provision has been included at article ~~176~~(3).

Article ~~187~~

*(Clearways, prohibitions and restrictions)* provides for the creation of new clearways and waiting restrictions as part of the Project, as shown on the Traffic Regulation Plans (Document Reference 4.19). The lengths of road affected are identified in Schedule 7. This article is related to the authorised development and is therefore permitted by section 120(3) of the 2008 Act.

This Article is based on the Article contained in the Northampton Gateway Rail Freight Interchange Order 2019, but the trigger has been altered so that the clearway or restriction comes into force on the day on which the undertaker notifies the relevant highway authority. This is because the timings for the implementation of the clearways are not yet known.

Article ~~198~~

*(Classification of highways)* provides for the classification of new highways within the Order limits. The provision to classify the highways is specifically permitted by section 120(4) and paragraph 19 of Part 1 to Schedule 5 of the 2008 Act. The power is required in order to be able to classify the new access road which is to be provided as part of the authorised development, which is described in Schedule 8.

The drafting of this article is based on articles found in the Heysham to M6 Link Road Order 2013 and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016. The trigger has been altered so that it is when the undertaker and relevant highway authority agree that the new highways have been completed. The article also allows the local highway authority to amend the classification at a later date.

Article ~~2049~~

*(Speed limits)* makes provision for the length of road identified in Schedule 9 to be subject to new speed limits as set out in that schedule upon completion of the relevant part of the authorised development, as if such restrictions were imposed by an order under the Road Traffic Regulation Act 1984.

The power is required in order to be able to set a speed limit for the new access road which is to be provided as part of the authorised development.

The article also enables temporary speed limits during construction by agreement with the relevant highway authority.

This article is based upon the article in the Northampton Gateway Rail Freight Interchange Order 2019, although deletes the traffic regulation provisions as they are not relevant to the scheme. The inclusion of the article is permitted by section 120(3) of the 2008 Act, since the regulation of the speed limit on the new highway is related to the provision of these highway works as part of the authorised development. The requirement for the speed limit is also necessarily related to the classification of the new highway, and is therefore permitted by section 120(4) and paragraph 19 of Part 1 of Schedule 5 of the 2008 Act.

Paragraph 4 of this article makes it clear that the new speed limit set by the Order may be varied in the future by the relevant traffic authority, as they could have been had they been imposed by an order under the Road Traffic Regulation Act 1984.

*Article 2~~19~~*

*(Traffic Regulation)* makes provision for new permanent and temporary Traffic Regulation Orders to give the ability, with the consent from the relevant traffic authority, to impose such orders as may be necessary for the construction, operation or maintenance of the authorised development. The Article gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated.

This article is not in the model provisions however has precedent in The Northampton Gateway Rail Freight Interchange Order 2019.

*Article 2~~24~~*

*(Agreements with street authorities)* 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. The article is required in relation to utilities diversions and works for provision of a private wire network and district heating network, as part of the authorised development, which will be within streets.

In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets. This approach is based on the South Humber Bank Energy Centre Order 2021.

**Part 4**

***Compulsory acquisition***

*Article 2~~32~~*

*(Funding)* restricts the use of the compulsory acquisition powers set out in Part 4 of the Order. The undertaker must first put in place a guarantee or alternative form of security approved by the Secretary of State to ensure funding for the liability of the undertaker to pay compensation under the Order is adequately secured before the powers are exercised.



The relevant powers are article 243 (compulsory acquisition of land), article 265 (compulsory acquisition of rights), article 267 (private rights), article 29-30 (acquisition of subsoil or airspace only), article 319 (rights under or over streets), article 324 (temporary use of land for carrying out the authorised project), article 332 (temporary use of land for maintaining the authorised project) and article 343 (statutory undertakers).

The drafting has been taken from the Hornsea Project Three Offshore Wind Farm Order 2020, but was also included in the Riverside Energy Park Order 2020 and the Cleve Hill Solar Park Order 2020.

Article 243

*(Compulsory acquisition of land)* confers on the undertaker powers of compulsory acquisition of so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it. The article provides broad powers. It is considered necessary to make it clear in this provision that the whole of the Order land is potentially subject to powers of compulsory acquisition. In practice, however, pursuant to the other articles, the powers of compulsory acquisition are limited, and for the majority of the Order land, will be restricted to combination of the acquisition of specified new rights (article 265), and specified powers of temporary possession. The article follows the approach taken in the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

Sub-paragraph (2) has been included to address the optionality for the northern DHPWN and confirm that the undertaker may only acquire rights for option A or option B, not both.

Article 254

*(Time limit for exercise of authority to acquire land compulsorily)* imposes a time limit of ~~seven~~ five years from the coming into force of the Order for the exercise of powers relating to the compulsory acquisition of land.

[This follows the standard approach taken in Orders granting compulsory acquisition powers including the Norfolk Vanguard Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021 and the A47 North Tuddenham to Easton Order 2022.](#)

~~The Applicant's justification for the inclusion of a seven-year period for exercising compulsory acquisition rights is that the construction phasing for the Project is intended to take place over a period of six years. This approach has been taken on the basis of the complexity and scale of the Project, as a result of which it is intended that the Project be delivered in six phases over those six years. As the Project is proposed to be carried out in phases, the Applicant needs to ensure that it has sufficient rights and interests in the land required for each deliverable phase of the Project. If the seven-year period were not included in the Order then the Applicant may need to acquire land or rights over a greater area than may be ultimately needed in order to ensure that there is sufficient land for the later phases to be delivered.~~

~~This is especially the case in relation to the DHPWN, which save for the section that is to be constructed within the Energy Park Land, is not intended to be constructed until the later phases of the Project, because~~

~~end users need to be identified in advance of its construction. The Applicant does not wish to be in a position where it is forced to acquire rights in the land required for the DHPWN without having commitments from end users for the DHPWN.~~

~~This approach has precedent in the Hornsea Three Offshore Wind Farm Order 2020, where the seven year timescale also related to the length of the construction period for that project.~~

*Article ~~265~~*

*(Compulsory acquisition of rights)* enables the undertaker to acquire rights over land, including new rights and existing rights if applicable. It also provides for the extinguishment or overriding of existing rights in land subject to the provisions of the article in combination with article ~~276~~ (Private rights). The article is drafted so as to allow the undertaker flexibility to acquire new rights in the Order land if appropriate rather than outright acquisition under article ~~23-24~~ (Compulsory acquisition of land). This flexibility allows the undertaker, if it is possible, to reduce the areas required for freehold acquisition and rely on new, permanent rights instead where appropriate. This flexibility is appropriate to allow for continued negotiations with owners of Order lands. It is a provision that is usual in Transport and Works Act Orders and hybrid bills. An example can be found in Article 19 of the Network Rail (Nuneaton North Chord Order) 2010 and Part 3 of Schedule 6 to the Crossrail Act 2008. It was also accepted in the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

The article is subject to Schedule 10 Part 1 in relation to Option A, and Schedule 10 Part 2 in relation to Option B, and states that in the case of land scheduled in Column 1 of those Parts of this Schedule, the new rights that may be acquired are limited to the new rights (and restrictive covenants where relevant) set out in corresponding Column 2 of those Parts of the Schedule. This limits the powers of acquisition to only the rights which are necessary to deliver the authorised development.

Reference is also made to Schedule 11 (Modification of compensation and compulsory purchase enactments for creation of new rights) in the modifications of compulsory purchase legislation to apply appropriate provisions regarding material detriment etc. to the acquisition of new rights.

*Article ~~267~~*

*(Private rights)* applies to all private rights over land subject to compulsory acquisition under article ~~23-24~~ (Compulsory acquisition of land) and article ~~25-26~~ (Compulsory acquisition of rights). It provides that where land is compulsorily acquired, such private rights or restrictive covenants are suspended and unenforceable or (where the beneficiaries are notified by the undertaker), extinguished as far as their continuance would be inconsistent with the acquisition of the land; where new rights or restrictive covenants are acquired over land, private rights cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant; and where temporary possession of land is taken, private rights are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which

temporary possession is taken for as long as the undertaker remains in lawful possession of the land.

Reference to section 152 of the 2008 Act is included in paragraph (4) to confirm that compensation payable under this article is in accordance with the principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the Compulsory Purchase Act 1965 arises. Such claims instead arise under section 152 of the 2008 Act rather than section 10 of the Compulsory Purchase Act 1965 as a result of the contents of section 152 of the 2008 Act. Paragraphs 6 and 7 allow the undertaker to provide notice to the contrary to the provisions of the article, allowing the undertaker to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this article be suspended and unenforceable are not so suspended or unenforceable. Similar provisions have been included in other orders including the National Grid (Richborough Connection Project) 2017 and the Northampton Gateway Rail Freight Interchange Order 2019. This provision follows the approach in the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

Article ~~27~~28

*(Application of the 1981 Act)* provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. It follows the approach taken on the Norfolk Boreas Offshore Wind Farm Order 2021.

It reflects amendments to the Compulsory Purchase (Vesting Declarations) Act 1981 as inserted by the Housing and Planning Act 2016 to, for example, extend the time limit for general vesting declarations where the making of the Order is subject to a statutory challenge. Precedents can also be found in the Northampton Gateway Rail Freight Interchange Order 2019 and the Millbrook Gas Fired Generating Station Order 2019 as well as the Norfolk Vanguard Offshore Wind Farm Order 2020.

Article ~~28~~29

*(Application of Part 1 of the 1965 Act)* applies Part 1 of the Compulsory Purchase Act 1965 to the Order with certain modifications in relation to section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so that they are consistent with the terms of the Order and paragraph (4) 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 ~~31-32~~ (Temporary use of land for carrying out the authorised project) or ~~32-33~~ (Temporary use of land for maintaining authorised project) of the Order.

In addition, the article also reflects amendments to the Compulsory Purchase Act 1965 providing that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of

compulsory acquisition powers under the Compulsory Purchase Act 1965 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).

This article also clarifies, by applying an amendment for the purposes of the Order to Schedule 2A of the Compulsory Purchase Act 1965, that the counter-notice provisions in that schedule that are available to landowners where part only of land is acquired compulsorily do not apply where the land has only been taken possession of under the temporary possession powers set out in article ~~31~~32 (Temporary use of land for carrying out the authorised project) or article ~~32~~33 (Temporary use of land for maintaining authorised project).

There is precedent for this in the Eggborough Gas Fired Generating Station Order 2018, the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

Article ~~29~~30

*(Acquisition of subsoil or airspace only)* authorises the undertaker to acquire the subsoil in any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the land. This is based on model provision 24 (excluding paragraph 3 on the basis it is not relevant).

This article also authorises the undertaker to acquire interests in or rights over airspace a certain height above ground. There is precedent for this in the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

This flexibility is required in order to minimise the extent of the interests that are to be acquired from owners, as the acquisition of these rights could minimise the need to acquire the whole of the land. The undertaker considers that this is appropriate in the context of subsoil for cables and pipes to be laid underground.

Article ~~30~~31

*(Rights under or over streets)* provides that the undertaker may use the subsoil or air-space over a street within the Order limits for the authorised project without being required to acquire any part of the street or any easement or right in the street.

Provision is made for the payment of compensation to an owner or occupier of land where their interest in land is not acquired and who suffers loss as a result. The article is based on the model provision and follows the approach taken in the Eggborough Gas Fired Generating Station Order 2018, the Millbrook Gas Fired Generating Station Order 2019, the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

Article ~~31~~32

*(Temporary use of land for carrying out the authorised project)* clarifies that unless permanent interests have been acquired in any land that the undertaker has taken temporary possession of, the undertaker must remove any temporary works and restore the land to the reasonable

satisfaction of the owners of the land, but is not required to remove certain works such as drainage works or road surfacing.

In all cases where powers of temporary possession are exercised, validly evidenced compensation must be paid to the landowner and any occupiers for loss or damage arising from their exercise where claimed.

This article is based on article 26 of the Norfolk Boreas Offshore Wind Farm Order 2021.

*Article ~~32~~33*

*(Temporary use of land for maintaining authorised project)* provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised project, and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Provision is also made at article ~~32~~33(4) for taking temporary possession without notice, or at a shorter notice than is usually permitted, in an emergency - at which point the undertaker must provide notice as soon as reasonably practicable. This follows the approach taken on the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021. This provision would only be relied upon in exceptional circumstances, but the undertaker considers that it is of paramount importance to access and use the land on a shorter notice period in an emergency.

*Article ~~33~~34*

*(Statutory undertakers)* subject to the provisions of Schedule 14 (protective provisions), this article authorises the undertaker to acquire land and new rights in land belonging to statutory undertakers as shown on the land plans within the limits of the land to be acquired or used and described in the book of reference.

This follows the approach taken on other development consent orders including the Millbrook Gas Fired Generating Station Order 2019, the Norfolk Vanguard Offshore Wind Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

*Article ~~34~~35*

*(Apparatus and rights of statutory undertakers in stopped up streets)* makes provision in respect of the apparatus and rights of statutory undertakers in streets which are temporarily altered or diverted under article ~~13-14~~ (permanent stopping up of streets), including provision as to the relocation of apparatus. It is based on the model provision and is included in most made orders which include permanent stopping up.

*Article ~~35~~36*

*(Recovery of costs of new connections)* provides for compensation to owners or occupiers of property to which the apparatus of a public utility undertaker was connected, where that apparatus is removed in accordance with article ~~33-34~~ (Statutory undertakers). This has been included in various development consent orders including the Silvertown Tunnel Order 2019, the Norfolk Vanguard Offshore Wind

Farm Order 2020 and the Norfolk Boreas Offshore Wind Farm Order 2021.

## **Part 5 Supplemental Powers**

**Article ~~36~~37** (*Discharge of water*) enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, operation or maintenance of the authorised project subject to the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. This element of the article follows the model provisions although the reference in the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. This article has precedent in the South Humber Bank Energy Centre Order 2021.

This article is required to ensure the undertaker has the necessary consent to discharge water in connection with the Project and that there is no impediment to the delivery of the Project.

**Article ~~37~~38** (*Authority to survey and investigate the land*) is a model provision which allows the undertaker to survey and investigate land within the Order limits or land which may be affected by the authorised development, including bringing equipment onto the land and making trial holes. It has been amended to include boreholes as well as trial holes.

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. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.

This article has been included to provide the undertaker with all the necessary powers to carry out surveys on any land affected by the authorised development which are required by law. This in turn ensures the Project is deliverable.

## **Part 6 Operations**

**Article ~~38~~39** (*Felling or lopping of trees*) enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. Provision is included for the payment of compensation for loss and damage. This article is based on article 17 of the South Humber Bank Energy Centre 2021 and other recent orders such as the M20 Junction 10a Order 2017 (article 38), the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order (article 35) and the A14 Cambridge to Huntingdon Improvement Scheme Order (article 36).

This article has been included to ensure the Project can be constructed and operated without interference from trees and shrubs in the vicinity of the authorised development. The ability to fell and lop trees is limited

to specific circumstances where the undertaker reasonably believes it is necessary to do so, and therefore the power is proportionate.

**Article ~~39~~40**

*(Removal of hedgerows)* enables the undertaker to remove any hedgerows as defined in the Hedgerows Regulations 1997 listed in Schedule 13 Part 1 (removal of hedgerows) and Part 2 (removal of important hedgerows). Provision is included for the payment of compensation for loss and damage.

This article is based on the drafting in recent orders such as the M20 Junction 10a Order 2017 (article 38) and the A1 to Birtley to Coal House Development Consent Order 2021 (article 37), although the hedgerow element has been split out into a separate article to the felling or lopping of trees element. The article distinguishes between removal of hedgerows (set out in Part 1 of Schedule 13) and removal of important hedgerows (set out in Part 2 of Schedule 13).

The article differs from these articles as provision is made for local authority approval to remove or translocate any hedgerow within the Order limits. This approval is deemed to have been given if no decision is notified within 28 days of such application.

This article has been included to ensure the Project can be constructed. It provides the necessary consent to remove the hedgerows listed in Schedule 13, for which the undertaker would otherwise need consent pursuant to the Hedgerows Regulations 1997 and the ability to seek consent to remove additional hedgerows if this becomes apparent during the detailed design stage.

**Part 7**

***Miscellaneous and General***

**Article ~~41~~0**

*(Removal of Human Remains)* provides that before carrying out any development or works which will or may disturb any human remains, human remains must be removed in accordance with this article. Notice must be published in a local newspaper and displayed in a conspicuous area before removing any human remains and a copy of the notice must be sent to the planning authority.

A relative or personal representative of the deceased person can give notice to remove the remains within 56 days of the published notice and the reasonable expenses of removal and re-interring or cremating the remains of such deceased person are to be borne by the undertaker.

This is not a model provision but there is precedent for this use of this article in the A47/A11 Thickthorn Junction Development Consent Order 2022

**Article ~~41~~42**

*(Protective provisions)* gives effect to the protective provisions in Schedule 14 (Protective provisions), which protect the interests of certain statutory undertakers.

It is required because it is not sufficient to include a schedule of protective provisions, there must be an operative article which gives these provisions effect.

This is not a model provision but there is precedent for this article in The Millbrook Gas Fired Generating Station Order 2019, The Northampton Gateway Rail Freight Interchange Order 2019 and the South Humber Bank Energy Centre Order 2021.

Article [4243](#)

*(Application of landlord and tenant law)* which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole or part 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 or any part of it. This is a model provision and is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.

This article has been included in case a lease of the Project is granted in the future. It ensures the operation of the Project will not be prejudiced by the terms of a separate legislative regime which regulates landlords and tenants.

This article is based on article 22 of the South Humber Bank Energy Centre Order 2021.

Article [4344](#)

*(Operational land for purposes of the 1990 Act)* is a model provision which provides that, for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order is to be treated as a specific planning permission [in relation to the land in respect of which Work Nos. 1, 1A, 1B, 1D, 10, 11 and 14 are authorised](#). The effect of the provision is that the Order land [in respect of Work Nos. 1, 1A, 1B, 1D, 10, 11 and 14](#) is treated as “operational land” within the meaning of section 263 of the 1990 Act. As a result, permitted development rights for operational land under the Town and Country Planning (General Permitted Development) Order 2015 will apply in relation to the Authorised Development.

This article is based on article 23 of the South Humber Bank Energy Centre Order 2021 and similar provisions have been included in other made Orders including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

Article [4445](#)

*(Defence to proceedings in respect of statutory nuisance)* provides that no one shall be able to bring statutory nuisance proceedings in relation to a nuisance falling within paragraphs (b), (c), (d), (fb) and (g) of section 79(1) of the Environmental Protection Act 1990, if the nuisance is created in the course of carrying out construction, maintenance or operation of the authorised development and for which notice has been given under section 60, or consent obtained under section 61 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the authorised development. Article 44 is a model provision.

Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings brought in a magistrates'



court under section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in section 79(1) of that Act.

This article provides a defence to those nuisances which may be of relevance to the authorised development, as set out in the Statutory Nuisance Statement (Document Reference 5.6) accompanying the Application.

This article is based on article 24 of the South Humber Bank Energy Centre Order 2021.

**Article 4546**

*(Certification of plans, etc.)* requires the undertaker to submit copies of the documents, plans and sections referred to in the draft Order to the decision maker, for certification as true copies following the making of the draft Order. The documents and plans to be certified are also included in Schedule 15.

-The effect of certification is that the document is admissible in any proceedings as evidence of its contents. This is a model provision and has been included in development consent orders such as the South Humber Bank Energy Centre Order 2021 (article 25), Norfolk Vanguard Development Consent Order 2020 (article 37) and The Wheelabrator Kemsley K3 Generating Station Order 2021.

**Article 4647**

*(Service of notices)* governs the proper service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This article was not included in the model provisions but is a sensible addition that has been included in multiple previous orders, including the South Humber Bank Energy Centre Order 2021 (article 26) and the Southampton to London Pipeline Development Consent Order 2020 (article 46).

This article provides certainty to all parties on the rules that apply to the service of any notices pursuant to the Order.

**Article 4748**

*(Procedure in relation to certain approvals, etc.)* provides procedures in relation to consents and approvals required pursuant to the Order. Article 4748(1) applies to all consents or approvals, such as those that may be sought from a street authority (such as pursuant to article 124(3)). Article 4748(2), relating to deemed approval, does not however apply to approvals pursuant to the requirements (in Schedule 2).

Article 47-48 has precedent in various Orders, including article 27 of the South Humber Bank Energy Centre Order 2021 and article 38 of the Millbrook Gas Fired Generating Station Order 2019, and is considered appropriate and justified in order to ensure that the Project can proceed in a reasonable timescale, and so that there is a consistent approach to consents etc that must be sought by the undertaker pursuant to the Order.

**Article 4849**

*(Arbitration)* is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is

a model provision, although makes clear that it does not apply where any difference is between any person and the Secretary of State.

This article is based on article 29 of the South Humber Bank Energy Centre Order 2021.

## 8 Schedules

### *Schedule 1*

*(Authorised Development)* Schedule 1 specifies the authorised development in detail, split into 'work numbers' (Part 1), each of which represents different elements of the Project. This split of the Project between different work numbers enables the Order to refer to different parts of the Project by citing the relevant work number.

The Work numbers are shown on the Works Plans. As the Project can generally be split into three key elements – the Energy Park, the District Heat and Private Wire Network routes and the Railway Reinstatement Works. Due to the overlap of the Works in certain areas the Applicant has split the Works Plans into three sets (Works Plans A, Works Plans B and Works Plans C) to make sure they are clear and easy to interpret.

Part 2 sets out other associated development.

Part 3 sets out the maximum parameters for certain elements of the Project. The maximum heights included in the table are included for both finished floor levels and above ordnance datum level (**AOD**). Chapter 3 of the Environmental Statement (Document Reference 6.2.3) also sets out the maximum heights in relation to both finished floor levels and AOD. It should be noted that other documents forming part of the Application may only refer to heights in relation to finished floor levels or AOD, but not both.

To assist the reader, **Appendix A** sets out each work number and the relevant Works Plans on which they can be found.

### *Schedule 2*

#### *(Requirements)*

Schedule 2 (Requirements) sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant. To assist the reader, **Appendix B** sets out which part of the Project each requirement relates to and **Appendix C** contains a diagram of the plan hierarchy.

The following is a summary of the requirements:

1. *Requirement 1: Interpretation* – this provides definitions for certain terms used in the requirements, including "energy park works" (Work Nos. 1, 1A, 1B, 1D, 2, 6, 7, 8, 9 and 12), "railway reinstatement works" (Work Nos. 3 and 4), "coming into operation" and "PPDW CEMP" which is a preliminary development works construction environmental management plan as described in section 5.3 of the CoCP.
2. *Requirement 2: Commencement and phasing of the authorised development and notices* – this requirement is based upon the model provisions and requires that the

authorised development can only be commenced within 5 years of the date of the Order coming into force. It also provides that the authorised development must not be commenced until a written scheme setting out the proposed phasing has been submitted to and approved by the relevant planning authority. The approved phasing plan must be complied with thereafter. Notice must be given to the relevant planning authority within seven days of the start of commissioning or the coming into operation of any part of the authorised development.

3. *Requirement 3: Detailed design* - this requires that the preliminary works may not commence until certain details of all buildings and structures comprising the authorised development which are to be retained and the permanent circulation roads, vehicle parking and hardstanding have been submitted to and approved by the relevant planning authority. It then goes on to provide that not part of the authorised development may commence (save for preliminary works) until the specified design details have been submitted to and approved by the planning authority. The details submitted must be in accordance with the design process and codes set out in the design principles and codes and flood risk assessment and must take into account any results of preliminary ground investigations including ongoing archaeological investigations, topographical surveys and ground gas monitoring. The authorised development must be carried out in accordance with the approved details.
4. *Requirement 4: Environmental management* - this requires that the authorised development is not commenced (save for preliminary works) until a construction environmental management plan, in accordance with the code of construction practice and including all of the details set out in sub-paragraph (3), has been submitted to and approved by the planning authority (following consultation with the Environment Agency and Natural England). Preliminary works and all construction works must be in accordance with the approved construction environmental management plan, unless otherwise agreed with the planning authority.

It also requires no part of the energy park works or railway reinstatement works may come into operation until an operational environmental management plan for that part has been submitted to and approved by the planning authority (to the extent necessary to supplement the environmental management system required under the Environment Permit). The operational environmental management plan in respect of the energy park works must be in accordance with the environmental permit and incorporate the details set out in sub-paragraphs 7(a)-(c) (to the extent that it is not covered in the environmental management system). The maintenance and operation of the authorised development must be in accordance with the approved operational environmental management plan(s) unless otherwise agreed with the planning authority.

5. *Requirement 5: Lighting scheme* – this provides that no part of the energy park works or railway reinstatement works may come into operation until a scheme for all permanent external

lighting has been submitted to and approved by the planning authority. The scheme submitted must be in accordance with the indicative lighting strategy, include measures to minimise/mitigate artificial light emissions and must be implemented as approved throughout the operation of the authorised development.

6. *Requirement 6: Landscape design* – this provides that no part of the energy park works or railway reinstatement works may commence until a landscaping scheme has been submitted to and approved by the planning authority [following consultation with Natural England \(to the extent that the landscaping scheme relates to matters relevant to Natural England's functions.\)](#) The scheme must be in accordance with the indicative landscape and biodiversity plans, [the plans in appendix I \(biodiversity net gain report\) of the ecology and nature conservation chapter of the environmental statement in order to deliver the biodiversity net gain and](#)-design process and codes set out in the design principles and codes and include details of all hard and soft landscaping works and the details set out at sub-paragraph (2), and must be implemented within 12 months of the coming into operation of the authorised development. The scheme must be maintained as approved during the operation of the authorised development, unless otherwise agreed with the planning authority.
7. *Requirement 7: Landscape and ecology management* – this provides that no part of the energy park works or railway reinstatement works may come into operation until a landscape and biodiversity management and monitoring plan for that part has been submitted to and approved by the planning authority [following consultation with Natural England \(to the extent that the landscaping scheme relates to matters relevant to Natural England's functions\)](#) and which must be implemented and delivered as approved and in accordance with the approved timetable. The scheme submitted must be in accordance with the outline landscape and biodiversity management and monitoring plan, and must include an implementation timetable, including monitoring and maintenance activities.
8. *Requirement 8: Surface water drainage* – this provides that no part of the energy park works may commence (save for preliminary works) until details of the permanent surface water drainage systems, including a future maintenance plan, have been submitted to and approved by the planning authority (following consultation with the lead local flood authority, Scunthorpe and Gainsborough Water Management Board and the Environment Agency.) The details must be in accordance with the principles set out in indicative drainage strategy and the design process and codes set out in the design principles and codes. The scheme must be implemented in accordance with the approved details prior to the development coming into operation and maintained throughout the operation of the authorised development unless otherwise agreed with the planning authority.
9. *Requirement 9: Foul water drainage* – this requirement provides that no part of the energy park works may

commence (save for preliminary works) until details of the permanent foul water drainage systems, including a future maintenance plan, have been submitted to and approved by the planning authority following consultation with the Environment Agency. The details must be in accordance with the principles set out in the indicative drainage strategy. The scheme must be implemented in accordance with the approved details prior to the development coming into operation and maintained throughout the operation of the development unless otherwise agreed with the planning authority.

10. *Requirement 10: Construction traffic management and travel planning* – this provides that no part of the authorised development may commence (save for preliminary works) until a construction traffic management plan for that part, which is in accordance with the outline construction logistics plan, and a construction workers travel plan for that part has been submitted to and approved by the planning authority. The construction traffic management plan and construction workers travel plan must be implemented as approved throughout construction unless otherwise agreed with the planning authority.

11. *Requirement 11: Archaeology* – this requires no part of the authorised development is to be commenced until a programme of further exploratory investigation (to identify areas which should be excavated and archaeological remains recorded) has been commissioned; and the following have been submitted to the planning authority for approval - a written scheme of investigation ; final reports following completion of evaluation investigations; an updated archaeological impact assessment a survey and assessment update report regarding potential heritage assets; and an updated overarching archaeological mitigation strategy.

No part of the authorised development is to commence until a programme for such archaeological mitigation measures, informed by the evaluation investigations and earlier phases of investigation, has been implemented in accordance with the overarching archaeological mitigation strategy and further written schemes of investigation for archaeological fieldwork which have been approved in writing by the planning authority. The overarching archaeological mitigation strategy and written schemes of investigation must include the elements set out in sub-paragraph (2).

Sub-paragraph (3) requires the approved mitigation measures to be carried out in accordance with the written scheme of mitigation measures.

11.12. *Requirement 12: Flood risk* – sub-paragraph (1) provides that no part of the authorised development may commence (save for the preliminary works) until a detailed flood mitigation strategy, including the flood defences forming part of Work No. 13, an implementation timetable and long-term maintenance arrangements, has for that part been submitted and approved by the relevant planning authority in consultation with the Environment Agency.

Sub paragraph (2) provides that no part of the energy park works may be commissioned until a flood management plan has, for that part, been submitted to and approved by the planning authority. The scheme submitted must include an evacuation route plan and flood resilience implementation plan. It must be in accordance with the principles in the flood risk assessment which forms part of the environmental statement unless otherwise agreed by the planning authority, in consultation with the Environment Agency and the lead local flood authority. The schemes submitted under sub-paragraphs (1) and (2) must be implemented as approved and maintained throughout the operation of the energy park works unless otherwise agreed with the planning authority.

~~12.~~13. *Requirement 13: Operational travel plan* – this provides that no part of the energy park works must come into operation until a travel plan has been submitted to and approved by the planning authority. The plan must be in accordance with the framework travel plan. The plan must be implemented and maintained as approved throughout the operation of the energy park works unless otherwise agreed with the planning authority.

14. *Requirement 14: New highway access* – this provides that no part of the energy park works or railway reinstatement works (excluding preliminary works) may commence until the new access road (Work No. 5) has been constructed to base course level and connected to public highway.

Sub-paragraph (2) requires that such parts of Work Nos. 10 and 11 as fall within the land in respect of which Work No. 5 is authorised must also be carried out as part of constructing the new access road to base course level.

Sub-paragraph (3) requires the completion of the new access road (Work No 5) to the reasonable satisfaction of the relevant planning authority prior to the energy recovery facility (Work No.1) coming into operation.

~~13.~~15. *Requirement 15: ~~waste hierarchy scheme~~* – ~~this requires the submission of a waste hierarchy scheme to the relevant planning authority for approval prior to the commissioning of any part of the energy park works. This scheme sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise the quantities of recyclable and reusable waste contained within the residual waste received at the authorised development. It provides details of what must be included in the waste hierarchy scheme.~~ *Fuel type* – provides that only refuse derived fuel comprising of processed waste from municipal, household, commercial and industrial sources may be used in the combustion system in Work No. 1 (b). Gas or fuel oil may only be used for the purposes of start-up or support firing

14.~~16.~~ *Requirement 16: Decommissioning* – this requires the undertaker to submit a decommissioning plan (including a timetable for implementation and a decommissioning environmental management plan which shall include matters related to flood risk) to the planning authority within two years of deciding to end operation of the energy park works. The

plan must be implemented as approved unless otherwise agreed with the planning authority.

15.17. *Requirement 17: Combined heat and power* – this provides that no part of the energy park works may be commissioned until a scheme for the provision of steam or hot water pass-outs has been submitted to and approved by the planning authority. The scheme submitted must comply with conditions relating to steam and hot water pass-outs within any environmental permit granted. The scheme must be implemented as approved prior to operation of the authorised development and maintained throughout the operation of the authorised development.

16.18. *Requirement 18: Commissioning* – this provides that notice of the intended completion of commissioning of Work Nos. 1 (ERF), 1B (CCUS) and 2(b) (CBMF) must be given to the relevant planning authority where practicable before such completion. It also provides for phased commissioning of these so that the CCUS must be commissioned within 6 months of the commissioning of the ERF and the CBMF must be commissioned within 12 months of the commissioning of the CCUS. This requirement secures the delivery of the CCUS and CBMF to ensure the assumptions in the relevant chapters of the Environmental Statement (**Document Reference 6.2**) are secured.

As CCUS technology is still new and constantly evolving, the ability to agree different timescales with the relevant planning authority, provided this does not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement, has been included to provide a level of flexibility for the developer and contractor post consent.

17.19. *Requirement 19: Carbon Capture* – this requires that, once Work No. 1B (CCUS) is commissioned, it must capture a minimum quantity of CO<sub>2</sub> which equates to the lesser of 54,387 tonnes per annum and-or 8.37% of the weight of the ERF waste throughout per annum from the date that the CCUS is commissioned until the energy park works are decommissioned, to ensure a minimum level of carbon is captured from the ERF. It also requires the submission of a report to the relevant planning authority, within 28 days of the one year anniversary of the date Works No. 1B comes into operation, confirming the amount of CO<sub>2</sub> captured during the previous year of operation and to continue to submit such reports annually until the energy park works are decommissioned.

18.20. *Requirement 20: Rail* – this provides that all necessary works forming part of Work No.3 necessary to facilitate the use of the railway by rail freight must be completed within 12 months of construction of the new access road (Work No. 5) to base course level. It also provides that Work No. 3 must be completed prior to commissioning of Work No. 1. After completion of Work No. 3, the railway must be retained, managed and available for use.

21. Requirement 21: Local employment and skills – provides that no part of the authorised development (except preliminary works) may commence until a detailed employment and skills plan (which must be in accordance with the outline employment and skills policy) has been approved by the relevant planning authority. The employment and skills plan must be implemented as approved.

22. Requirement 22: Noise – provides that the rating level of noise from the operation of the authorised development shall not exceed 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 55 dB LAr for any one-hour period between 07:00 and 23:00 and 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door at any other existing permanent residential premises considered in the noise chapter of the environmental statement using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.

23. Requirement 23: PRF – this provides that the plastic recycling facility (Work No. 6) shall only treat plastic waste received from suppliers who are also supplying the undertaker with refuse derived fuel used to fuel the combustion system in Work No. 1 (b).

19-24. Requirement 24: Approved details and amendments to them – this provides that where a requirement requires the authorised development to be constructed in accordance with details approved by the planning authority, these approved details are taken to include any amendments subsequently approved by the planning authority.

20-25. Requirement 25: Amendments agreed by the relevant planning authority – this clarifies that where the phrase "unless otherwise agreed by the relevant planning authority" appears in requirements, it does not permit changes which would or could take the authorised development outside the scope of the ES (ie which would give rise to any materially new or materially different environmental effects). It also makes clear that where the requirement requires the planning authority to consult with another body, then any approval or agreement to any amendments must not be given without the planning authority having first consulted with that body.

24-26. Requirement 26: Requirement for written approval – this provides that where approval or agreement of the planning authority is required under any of the requirements, that the approval or agreement must be provided in writing.

22-27. Requirement 27: Anticipatory steps towards compliance with any requirement - allows steps to be taken prior to grant of the Order in relation to requirements and for those steps to 'count' as a formal step towards satisfaction of the relevant requirement. Paragraph 21(2) requires that any documents submitted with a view to constituting such 'steps'



towards satisfaction of a requirement must include a statement saying so.

*Part 2 Procedure for discharge of requirements*

Part 2 of Schedule 2 (Requirements ~~285-2932~~) provides a procedure for the discharge of requirements by the discharging authority and appeals to the Secretary of State in relation to this procedure. It sets out time limits for decisions to be made and makes provision for circumstances where the discharging authority requires further information to be provided in relation to an application for the discharge of a requirement. This also provides for the ability for the discharging authority to charge a ~~few-fee of £116~~ for reviewing an application for consent, agreement or approval to be paid by the undertaker. The drafting is not in the exact form as set out in Appendix 1 of PINS' "Advice Note Fifteen: Drafting Development Consent Orders", although includes similar provisions in relation to applications made, further information, appeals and interpretation.

*Schedule 3* (Streets subject to street works) This Schedule lists the streets where works will be needed to facilitate the Project. The descriptions correspond to the lengths of Streets shown by a blue, broken line on the rights of way and access plans.

*Schedule 4* (Streets to be permanently stopped up for which a substitute is to be provided) This Schedule describes the stopping up of part of an existing road and provision of a new access road as a replacement. The highway to be stopped up is shown by red shading and the new highway to be created is shown by a thick, orange, broken line on the rights of way and access plans.

*Schedule 5* (Public rights of way) This Schedule mainly deals with creation of new public rights of way as part of the Project, although also includes temporary stopping up of some public rights of way during construction.

Part 1 is the public rights of way being temporarily stopped up. These are shown by a light green, broken line on the rights of way and access plans.

Part 2 is the new public rights of way being created. These are shown on the rights of way and access plans by a thin, orange, broken line for strategic pedestrian cycle routes, a thick, green, broken line for pedestrian-cycle paths and a thin, green, broken line for pedestrian paths.

In relation to the proposed strategic pedestrian-cycle routes shown on sheets 4 and 5 of the rights of way and access plans between points CCF3 to CCF5 and CCF8 to CCF9, the routes continue past points CCF5 and CCF8 however these labels mark the end of the part of the route which is publicly accessible, (ie the new routes are open to the public between points CCF3 and CCF5 and CCF8 to CCF9).

*Schedule 6* (Private means of access) This Schedule sets out the private means of access which are to be closed (Part 1), and private means of access which are to be created, as a result of the Project (Part 2). Those to

be closed are shown by way of a red circle, and those to be created are shown by a yellow circle, on the rights of way and access plans.

- Schedule 7* (Clearways) This Schedule sets out the new clearways and restrictions to be imposed as part of the Project. These are shown on the traffic regulation plans by a pink broken line.
- Schedule 8* (Classification of highways) This Schedule deals with classification of the new highway, shown by a thick, orange, broken line between points B1 and B2 on the rights of way and access plans, as a classified C road.
- Schedule 9* (Speed limits) This Schedule sets the speed limit for the new highway, shown hatched green on the traffic regulation order plans, as being 50 miles per hour
- Schedule 10* (Land in which only new rights etc., may be acquired) This Schedule sets out details of such land over which new rights may be acquired. It sets out the purposes for acquisition of new rights over specified plots. In accordance with the guidance issued by the Secretary of State it specifies the rights that apply to relevant plots set out in the Book of Reference. Part 1 sets out those plots required for Option A and Part 2 sets out those plots required for Option B.
- Schedule 11* (Modification of compensation and compulsory purchase enactments for creation of new rights) This Schedule sets out the changes to the operation of the legislation relating to compulsory purchase, principally the material detriment provisions contained in the Compulsory Purchase Act 1965.
- Schedule 12* (Land of which temporary possession may be taken) This Schedule sets out details of such land that may be occupied under temporary powers. Part 1 sets out those plots required for Option A and Part 2 sets out those plots required for Option B.
- Schedule 13* (Removal of hedgerows) sets out those hedgerows (Part 1) and important hedgerows (Part 2) as shown on the Hedgerows Plan (**Document Reference 4.8**) to be removed as part of the authorised development.
- Schedule 14* (Protective provisions) sets out protective provisions for statutory undertakers affected by the authorised development. These are based on the protective provisions in the South Humber Bank Energy Centre Order 2021. The protective provisions are for the benefit of Anglian Water, Northern Powergrid, [Network Rail](#), [Cadent Gas](#), BT Openreach and Severn Trent.
- Schedule 145* (*Certification of plans, etc*) sets out the documents and plans along with the revision number of these documents which are referred to in the draft Order and are certified as true copies following the making of the Order.

## Appendix A

Work Number	Description	Works Plan
1	an electricity generating station located on land at Flixborough Port, Lincolnshire, fuelled by refuse derived fuels, with a capacity to process up to 760,000 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions (see Work No. 1 for full detail)	A1
1A	three emissions stacks, consisting of ERF stack windshield, back up boilers stack windshield and back-up generator stack, and associated emissions monitoring system	A1
1B	carbon capture and utilisation and storage facility capable of capturing at least 54,387 tonnes of CO <sup>2</sup> per annum including carbon dioxide storage tanks	A1
1C	associated development being a visitors centre containing offices, exhibition space and visitor accommodation with elevated walkway connected to Works Nos. 1, 2 and 6	A1
1D	a cooling system consisting of air-cooled condensers or air blast chillers	A1
2	comprising associated development —  <ul style="list-style-type: none"> <li>(a) a bottom ash and flue gas residue handling and treatment facility;</li> <li>(b) a concrete block manufacturing facility; and</li> <li>(c) offices and elevated walkway connected to Works Nos. 1, 1C and 6</li> </ul>	A1
3	associated development being reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings including new sidings, two footbridges across the railway line and three user worked crossings.	C2-C5
4	associated development being a railhead, sidings and associated equipment to allow loading and unloading	C1-C2
5	associated development being a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive and improvements to footpaths and the junction between the B1216 and A1077 and section of	A3-A4

	elevated walkway that connects to Works Nos. 1, 1C, 2 and 6	
6	associated development being a plastic recycling facility and associated infrastructure including gatehouses, weighbridges, electrical equipment, heat exchange equipment, office and welfare facilities, pre-processed material storage and post processed material storage and section of elevated walkway connected to Works Nos. 1, 1C and 2	A1
7	associated development being a hydrogen electrolyser, associated infrastructure and equipment required to inject hydrogen into the gas grid	A1
8	associated development being an electric and hydrogen vehicle refuelling station, with hydrogen production equipment required to inject hydrogen into the gas grid and offices	A2
9	associated development being a battery storage facility capable of peak discharge of 30MWe, with associated infrastructure including site roads, offices, control equipment, transformers and rectifiers	A2
10	associated development being a private wire network linking Work No. 1 with Work No. 2, Work No. 6, Work No. 7, Work No. 8, Work No. 9 to end users outside the order limits	A5-A6, B2-B8
11	associated development being a district heating network providing heating and/or cooling and pipes carrying hydrogen, <del>and carbon dioxide linking Work No 1 with Work No 6, and</del> to end users outside the order limits	A5-A6, B1-B8
12	associated development being hard and soft landscaping and the construction of landscape features including a wetland area and ecological mitigation works	A7-A9, C6-C9
12A	associated development being habitat creation measures incorporating biodiversity enhancements	A8-A9, A10, C7
13	associated development comprising flood defences and sustainable drainage systems, including swales, attenuation ponds and below ground tanks and the diversion of ditches	A11-A13
14	associated development comprising new cables, <u>including the grid connection and</u> diversions of existing utilities which conflict with the construction of	A14-A15, B4-B6

	Work No. 1, Work No. 2, Work No. 5, Work No. 6, Work No.10 and Work No. 11	
15A	associated development being temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas, generators, concrete batching facilities, vehicle and cycle parking facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage in connection with Work Nos 1-14.	A16-A17, B1-B3 and B5-B6
15B	associated development being construction access, temporary laydown areas to allow for storage of materials and working areas in connection with Work Nos. 1-14	A16-A17, B1-B3 and B5-B6

## Appendix B

No	Requirement	Applies
2	Commencement of the authorised development and notices	Project wide
3	Detailed design	Project wide
4	Environmental management	Project wide
5	Lighting scheme	Energy park works and railway reinstatement works
6	Landscape design	Energy park works and railway reinstatement works
7	Landscape and ecology management	Energy park works and railway reinstatement works
8	Surface water drainage	Energy park works
9	Foul water drainage	Energy park works
10	Construction traffic management and travel planning	Project wide
11	Archaeology	Project wide
12	Flood risk	Energy park works
13	Operational travel plan	Energy park works
14	New highway access	Energy park works and railway reinstatement works
15	<del>Waste hierarchy</del> Fuel type	Energy park works
16	Decommissioning	Energy park works
17	Combined heat and power	Energy park works
18	Commissioning	Part of the Energy park works: ERF, CCUS and CBMF
19	Carbon Capture	Part of the Energy park works: CCUS
20	Rail	Railway reinstatement works
<u>21</u>	<u>Local employment and skills</u>	<u>Project wide</u>
<u>22</u>	<u>Noise</u>	<u>Project wide</u>

<u>23</u>	<u>PRF</u>	<u>Energy park works</u>
<del>241</del>	Approved details and amendments to them	Project wide
<del>252</del>	Amendments agreed by the relevant planning authority	Project wide
<del>263</del>	Requirement for written approval	Project wide
<del>274</del>	Anticipatory steps towards compliance with any requirement	Project wide

## Appendix C



Mitigation plans secured by Draft Development Consent Order (dDCO)

Construction

