

Rampion 2 Wind Farm

Category 3:

Development Consent Order

Explanatory Memorandum (tracked)

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1. Introduction

- 1.1 This Explanatory Memorandum has been prepared on behalf of Rampion Extension Development Limited (the **Applicant**) as part of its application for a Development Consent Order (**DCO**), that has been submitted to the Secretary of State (the **SoS**) for Energy Security and Net Zero under section 37 of the Planning Act 2008 (the **2008 Act**) as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 The Applicant is seeking development consent for an offshore generating station adjacent to and forming an extension to the existing Rampion Offshore Wind Farm, and all infrastructure required to transmit the power generated, to the Bolney National Grid substation, which will require to be extended (the **Proposed Development**). A description of the Proposed Development is given below, with more detail set out in the Environmental Statement submitted with the Application (Application document reference 6).
- 1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (an **NSIP**) under sections 14 and 15(3) of the 2008 Act. The DCO, if made by the SoS, would be known as the Rampion 2 Offshore Wind Farm Order (the **Order**).
- 1.4 This Explanatory Memorandum explains the purpose and effect of each article of and Schedule to the draft Order.
- 1.5 Notwithstanding its repeal, the wording used in the draft Order has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the Model Provisions). In some cases, the draft Order draws from the drafting used in DCOs for similar developments made under the Planning Act 2008 (the **2008 Act**), and from orders made pursuant to the Transport and Works Act 1992 and other legislation authorising development. As the Order seeks to apply and modify statutory provisions, including concerning the compulsory acquisition of land and the treatment of certain requirements as planning conditions, in accordance with sections 117(4) and 120(5) of the 2008 Act, it has been drafted as a statutory instrument.

2. The Applicant

- 2.1 The Applicant, incorporated under company number 12091939, and whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB, is a joint venture between RWE Renewables UK Ltd ("RWE"), and a consortium consisting of Macquarie and Enbridge. RWE is an international

company with power generation, trading, and supply. Key markets include the UK, Europe, North America, Asia, and Oceania. In 2019, RWE acquired the original development company and major shareholder in the wind farm to which the Authorised Project would form an extension, being Rampion Offshore Wind Farm (referred to hereinafter as Rampion 1). RWE currently owns interests in nine operational offshore wind farms in the UK in English, Welsh, and Scottish Waters and is currently constructing a further two offshore wind farms in the North Sea.

- 2.2 The company specialises in onshore and offshore wind, utility-scale photovoltaic (PV) solar power and energy storage projects. RWE ranks among the largest global players in renewable power generation with a total installed generation capacity of nine gigawatts and an additional 2.6 gigawatts under construction. As such RWE can demonstrate a strong track record in delivery of projects such as the Proposed Development.
- 2.3 RWE employs approximately 3,600 renewables professionals who develop, build, and operate large renewable energy assets in 15 countries across Europe, the Americas and Asia-Pacific. Further details on the corporate structure between RWE and the Applicant is included in the funding statement which is submitted in support of the Application.
- 2.4 The Macquarie consortium, an investor in many other UK renewable energy assets, includes Macquarie European Infrastructure Fund 5, the Green Investment Group and USS pension fund.
- 2.5 Enbridge, which is also a shareholder in Rampion 1, is a Canadian energy infrastructure company with core businesses including oil and gas transmission distribution and storage in North America, as well as investments in the renewable energy sector in North America and Europe.
- 2.6 The Order defines the Applicant as the person authorised to exercise the powers in the Order, as 'the undertaker'. This is subject to the operation of article 5 of the draft Order which allows the benefit of the Order to be transferred to, or powers to be exercised by, another party in specific circumstances.

3. **The Purpose of the Order**

- 3.1 The purpose of the Order will be to grant the Applicant development consent for a Nationally Significant Infrastructure Project ("NSIP").
- 3.2 In summary the Proposed Development includes

- 3.2.1 an offshore generating station with an electrical export capacity of in excess of 100MW comprising up to 90 wind turbines and array cables, in an area approximately 196km², located approximately 13km south of the Sussex coast located to the west of the existing Rampion Offshore Windfarm
 - 3.2.2 up to three offshore substations
 - 3.2.3 cables between the wind turbine generators ("WTG"), between the WTGs and the offshore substations, and between the offshore substations themselves and the landfall location at Climping, West Sussex
 - 3.2.4 an underground cable connection between the landfall, and a satellite substation known as Oakendene, and then onwards to connect into the existing National Grid substation at Bolney, together with an extension to that existing substation
- 3.3 The Proposed Development comprises an NSIP pursuant to sections 14(1)(a) and 15(3) of the 2008 Act as an offshore generating station having a capacity of more than 100MW. Pursuant to section 31 of the 2008 Act a DCO is required to authorise an NSIP.
- 3.4 The Proposed Development also includes associated development linked to the NSIP which can be authorised by a DCO pursuant to section 115 of the 2008 Act.
- 3.5 Section 115(1) of the 2008 Act provides that development consent may be granted for "*(a) development for which development consent is required, or (b) associated development*". The SoS must therefore be satisfied that all the elements included within the 'Authorised Development'¹ are either part of the NSIP or are associated development, to include them in the Order pursuant to section 115 of the 2008 Act.
- 3.6 Guidance on associated development has been issued by the SoS¹. In this guidance associated development is described as being "typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project" (paragraph 6) and requiring "a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development

¹ 'Guidance on associated development applications for major infrastructure projects' (Department for Communities and Local Government) (April 2013)

should not be an aim in itself but should be subordinate to the principal development" (paragraph 5).

- 3.7 In some cases there may be some overlap between associated development and works which form part of the NSIP.
- 3.8 The generating station and related development within Work Nos. 1 and 2 as described in Part 1 of Schedule 1 of the Order (the Authorised Development) constitute "*development for which development consent is required*" and thus comprises an NSIP, as set out above.
- 3.9 The Order also includes other development which is associated development comprising Work No. 3 to Work No 20, and further works as described in Part 1 of Schedule 1.
- 3.10 The works specified in Work Nos. 3 to 20 are not an aim in themselves but are required to facilitate the delivery of the energy generated by the generating station to the national grid. The Order requires that this associated development must be carried out within the Order limits, but the detailed design will be finalised post consent either through conditions of the deemed marine licence for offshore works, or pursuant to the discharge of requirements in relation to onshore works.
- 3.11 It should be noted that the laying of cables for the Proposed Development (comprising Work Nos. 9 and 196) is aimed to cause as little disruption as possible and includes the ability to install cables by horizontal directional drilling or other trenchless technologies to avoid major crossings, obstacles, or protected or other ecologically sensitive sites.
- 3.12 Areas of land required permanently comprise the locations for the onshore substation at Oakendene, near Cowfold (Work No. 16), and the extension to the existing National Grid substation at Bolney (Work No. 20). Land to be used temporarily and requiring restoration comprise, broadly, the land required for the installation of the transmission cable circuits underground, haul road, soil storage areas, cable stringing out areas along the onshore cable corridor, the five construction compounds and temporary vehicular access tracks.
- 3.13 Landscaping is also required specifically in and around the Oakendene substation location and may be required at the extension to the existing Bolney substation. This is secured-described through the design and access statement submitted with the application (Application document reference 5.8) and with which the detailed design for each substation must accord (requirements 8 and 9), and the landscape and ecological management plan (requirement 12)

imposed through the Order. An outline landscape and ecology~~ical~~ management plan, with which the stage specific landscape and ecology management plans must accord, is also provided with the application (Application document reference 7.10).

- 3.14 The Applicant has considered these works against the statutory definition of associated development and the criteria in DCLG *'Planning Act 2008: Guidance on associated development applications for major infrastructure projects'* (April 2013) and is satisfied that all these works are capable of being granted development consent by the SoS pursuant to section 115 of the 2008 Act.
- 3.15 The approach taken by the Applicant between those parts of the Authorised Project which form the NSIP and those parts that form Associated Development follows the approach taken by all DCO applications for offshore windfarms to date.
- 3.16 Pursuant to section 120(3) of the 2008 Act, the Order also includes the deemed grant of marine licences pursuant to section 66 of the Marine and Coastal Access Act 2009. Two deemed marine licences are included in the draft Order, one in relation to the generation assets and the second in relation to the transmission assets. The Order also disapplies statutory provisions including for the Marine and Coastal Access Act 2009 as described further below.

4. **The Order limits**

- 4.1 The Proposed Development will be constructed, operated and maintained within the Order limits, which comprises the following areas:
- 4.1.1 Array area: in which the wind turbine generators, the offshore substations, array cable circuits, interconnector cable circuits and some export cable circuits will be located. This area is approximately 160km² and will be located between approximately 13 kilometres and 26 kilometres from the Sussex Coast.
- 4.1.2 An additional area offshore of approximately 36km² where no wind turbine generators or offshore substations will be located but where subsea cables can be located comprising two wind farm separation areas (referred to as windfarm separation zones) and a marine aggregates buffer area.
- 4.1.3 Export cable corridor comprising approximately 59km² between the edge of the array area and the landfall location, where up to 4 transmission cable circuits will be

installed to bring electricity from the generating station onshore.

- 4.1.4 An intertidal area and onshore Order limits, in which the export cable circuits will be linked to the onshore cable circuits and the latter carry power to a new onshore substation, and a connection onward to where the extended National Grid substation will be located. The onshore Order limits also include for construction compounds, soil storage and cable stringing out areas, and both construction and operational accesses.

5. The Proposed Development

If the Order is granted the Proposed Development will comprise the **Authorised Project**. The main components of the Proposed Development are summarised below.

The Authorised Development

The Generating Station: the NSIP

- 5.1 **Work No.1** consists of up to 90 wind turbine generators (**WTGs**). **Work No.2** comprises the network of cables connecting the WTGs to each other and into the offshore substations to transmit the generated power, and communications, between WTGs and between the WTGs and the offshore substations. **Work No.3** comprises up to 3 offshore substations which will collect power from the WTGs, may be connected to each other via interconnector cables and connect into the export cables within the Export Cable Corridor
- 5.2 The WTGs comprising Work No. 1 have a generating capacity of in excess of 100 megawatts and therefore satisfy the criteria for the Proposed Development to comprise an NSIP.

The 'Associated Development'

- 5.3 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos. 3 to 20 of the Proposed Development. They are summarised below.
 - 5.3.1 **Work No. 4** consists of up to four export cable circuits to be laid on or beneath the seabed, from the offshore substations to a location proximate to the termination of the cable ducts bringing the export cables from the landfall location;

- 5.3.2 **Work No. 5** consists of the transition from the export cables circuits comprising Work No. 4 to the intertidal works comprising Work No. 6. It comprises up to four export cable circuits to be laid on or beneath the seabed as a continuation of the cables comprising Work No. 4 which will then be pulled through ducts which extend from the four temporary horizontal directional drilling exit pits;
- 5.3.3 **Work No. 6** consists of the installation of up to four cable circuits and associated ducts underground by means of horizontal directional drilling through the intertidal area between mean low water springs and mean high water springs;
- 5.3.4 **Work No. 7** consists of the installation of up to four cable circuits and associated ducts underground and below the beach at Climping laid by horizontal directional drilling. The exact location of the works comprising Work No. 7, and the depth of the cable circuit installation comprising Work Nos. 6 and 7 will be confirmed through the Construction Method Statement Code of Construction Practice to be submitted and approved pursuant to requirement 232 of the draft Order;
- 5.3.5 **Work No. 8** consists of works to connect the export cable circuits to the onshore cable circuits at landfall. This will include the construction of launch pits for the horizontal directional drills going under the Climping beach and the intertidal area (Work Nos. 6 and 7), transition joint bays and the installation of cable ducts and pulling through the cable circuits themselves;
- 5.3.6 **Work No. 9** comprises the installation of the onshore cable circuits underground from the landfall location to the onshore substation at Oakendene comprising Work No. 16. It is anticipated that most of the installation works will be undertaken by way of open cut trenching, but that trenchless technologies will be used to respond to major crossings and obstacles, and areas of environmental or engineering sensitivities. This will predominantly be by way of horizontal directional drilling, and it is this technology that has been assessed and reported in the Environmental Statement (**Application Document 6**), but other trenchless technologies may be used where the environmental impacts of doing so will result in no new or materially worse effects than those identified and reported in the Environmental Statement;

- 5.3.7 **Work No. 16** comprises the construction and operation of the onshore substation referred to as Oakendene. Work No. 16 includes civil works to allow the installation of electrical equipment, the installation and commissioning of high voltage electrical equipment, the construction of associated control buildings for the operation of the substation, works to mitigate the impact of the substation through surface water and drainage management measures, boundary treatment and landscaping within the substation compound area. Detailed design will be secured through a requirement imposed by the Order (requirement 8).
- 5.3.8 The Oakendene substation will be connected to the existing National Grid substation at Bolney: **Work No. 19** comprises the cable connection works between the Oakendene substation and the National Grid substation.
- 5.3.9 **Work No. 20** comprises the works to extend the existing Bolney substation to accommodate the required connection and includes mitigation measures to address surface water management, boundary treatment and landscaping. Detailed design will be secured through discharge of a requirement (requirement 9);
- 5.3.10 **Work Nos. 6, 7, 8, 9, 16, 19 and 20** comprise the connection works for the Proposed Development. These connection works will consist of cable circuits and associated cable ducts, open cut trenching and use of trenchless crossing technologies including horizontal directional drilling launch and exit pits and associated temporary compounds, transition joint bays, and the permanent above ground infrastructure at the substations;
- 5.3.11 **Work No. 10** comprises temporary construction compounds required to support the construction of the connection works comprising Work Nos. 6, 7, 8, 9, 16 and 19;
- 5.3.12 **Work No. 11** comprises temporarily soil storage areas required during the construction of the connection works comprising Work No. 7, 8 and 9;
- 5.3.13 **Work No. 12** comprises areas required temporarily for the stringing out of cables to be laid underground as part of Work No. 9. This comprises areas where no intrusive works will be carried out;
- 5.3.14 A number of temporary accesses will be required to facilitate the Proposed Development. Those required for

construction of the connection works only are included as **Work No.13.**

- 5.3.15 A number of accesses will be required during the construction phase and retained during the operational phase for maintenance of the Proposed Development. These are included as **Work No. 14.** A further set of accesses will be required during the operational phase only for maintenance and are included as **Work No. 15.**
 - 5.3.16 **Work No. 18** comprises a construction and permanent access to the onshore substation comprising Work No. 16. This will need to be wide enough to accommodate abnormal indivisible loads both during the construction and operational life of the Proposed Development;
 - 5.3.17 **Work No. 17** comprises areas where environmental mitigation works will be undertaken to mitigate impacts of the construction of the onshore substation comprising Work No. 16, and the extension to the extension to the existing National Grid substation at Bolney comprising Work No. 20. The works to be undertaken as part of Work No. 17 adjacent to the existing Bolney substation will need to be agreed with National Grid in connection with their continuing operation of, and any future proposals at, that substation.
- 5.4 The Associated Development described in Part 1 of Schedule 1 to the draft Order includes, in connection with such Work Nos. 1 to 6 in the offshore Order limits, such other 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. These are stated to include—
- 5.4.1 scour protection around the foundations of the offshore structures;
 - 5.4.2 cable protection measures such as the placement of concrete mattresses, rock placement, and/or bagged solutions;
 - 5.4.3 vessels carrying out intrusive activities;
 - 5.4.4 the removal of material from the seabed required for the construction of Work Nos. 1 to 5 and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as

sandwave clearance, boulder clearance, pre-trenching, horizontal directional drill arisings and excavation of exit pits;

5.4.5 removal of static fishing equipment; and

5.4.6 disposal of drill arisings in connection with foundation drilling within the offshore Order limits.

5.5 Further associated development is also included in Schedule 1 for the onshore works comprising Work Nos. 7 to 20, and Work No. 6 in the intertidal area. These works are expressed to include:

5.5.1 works to secure vehicular and/or pedestrian means of access including the creation of new tracks, footpaths, and/or widening, creation of passing places, upgrades, creation of bellmouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads, including provision of visibility splays;

5.5.2 temporary construction access tracks or haul road;

5.5.3 bunds, embankments, swales, landscaping, fencing and boundary treatments and other means of enclosure;

5.5.4 vegetation clearance;

5.5.5 habitat creation and restoration;

5.5.6 joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape and other works associated with cable laying;

5.5.7 works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting including drainage mitigation works;

5.5.8 works to alter the position of apparatus, including mains, sewers, drains and cables;

5.5.9 works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

5.5.10 landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;

- 5.5.11 works for the benefit or protection of land affected by the authorised project;
- 5.5.12 working sites in connection with the construction of the authorised development, construction lay down areas and compounds, storage compounds and their restoration;
- 5.5.13 car parking areas, welfare facilities, temporary offices and workshops;
- 5.5.14 spoil (including arisings from Work No. 6) and equipment storage;
- 5.5.15 works of restoration;
- 5.5.16 bowzers septic tanks generators and standby generators;
- 5.5.17 ramps and temporary bridges;
- 5.5.18 temporary lighting;
- 5.5.19 works for the provision of apparatus including cabling water and electricity supply networks; and
- 5.5.20 archaeological works.

Ancillary Works

- 5.6 In addition, the Order is proposed to grant consent for ancillary works, the environmental impact of which have been assessed and recorded in the Environmental Statement, and may be required to be carried out in connection with the Proposed Development. These comprise:
 - 5.6.1 temporary landing places, moorings, or other means of accommodating vessels in the construction and/or maintenance of the Proposed Development;
 - 5.6.2 marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
 - 5.6.3 temporary works for the benefit or protection of land or structures affected by the Proposed Development.
- 5.7 A more detailed description of the Authorised Project is provided at Schedule 1 'Authorised Project' of the draft Order and Chapter 4 of the ES Volume 1 (Application Document Ref. 6.2.4) and the areas within which each of the main components of the Authorised Project are to be built is shown by the coloured and hatched areas on the

Onshore Works Plans and Offshore Works Plans (Application Document Refs 2.2.1 and 2.2.2).

6. **Flexibility in the Order**

- 6.1 The description of Work No.1 refers to the wind generating station having a gross electrical output of over 100 megawatts. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that an offshore windfarm which exceeds an electrical capacity of 100 megawatts will be an NSIP and therefore development consent will be required for the generating station and the associated development.
- 6.2 It is not considered that imposing an upper limit to the generating capacity is desirable or necessary. There is no reason to limit the electrical output capacity of the Authorised Project provided the physical parameters of development are not exceeded. There are advantages in not imposing an upper limit so that the undertaker can take advantage of technical advancements that emerge in the coming years in terms of wind turbine efficiency which would enable it still to construct the Proposed Development within the existing parameters but to increase capacity beyond that currently anticipated based on existing technology. The maximum number of turbines is, however, specified at 90, which is less than the number of turbines constructed at the existing Rampion 1 offshore wind farm. The current estimated installed capacity is approximately 1200 megawatts.
- 6.3 The flexibility provided in relation to the generating station and its associated development allow the Applicant to take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment and as such helps to manage and drive down the cost of offshore wind developments. It also ensures the maintenance of competitive tension in the procurement process driving down costs, and the need to drive down the cost of energy for the purposes of tendering for Contracts for Difference.
- 6.4 The final design of a windfarm depends on a number of factors which include the size, height, and capacity of the chosen turbine type; electrical design; length of cables; areas where development is constrained; and the outcomes of site investigations. All these are considered post-consent at the stage of detailed design and optimisation when the final number and type of turbines and their location will be decided as a function of site constraints and viable layout. However, as provided in the Order, by paragraph 2(2) of Part 3 of Schedule 1, the authorised project will comprise turbines of a uniform height and rotor diameter

- 6.5 This approach has been accepted by the SoS in the Hornsea Three Offshore Wind Farm Order 2020 (**Hornsea Three Order**), the East Anglia One North Offshore Wind Farm Order 2022 (**East Anglia One North Order**), the East Anglia Two Offshore Wind Farm Order 2022 (**East Anglia Two Order**), the Hornsea Four Offshore Wind Farm Order 2023 (**Hornsea Four Order**), the Awel y Mor Offshore Wind Order 2023 (**Awel y Mor Order**) and the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (**Sheringham and Dudgeon Order**).

Offshore

- 6.6 The Proposed Development as described in Schedule 1 Part 1 of the Order, and the ancillary development described in Part 2 of the Schedule, together with the design parameters secured in requirements 2 to 5 of Part 3 of Schedule 1 provide flexibility in the delivery of the Proposed Development offshore as described above.
- 6.7 The final design of the offshore works will be approved under the provisions of the deemed marine licences.

Onshore

- 6.8 Works No. 6 to 20 describe the onshore associated development for the NSIP within the Order Limits landward of **MLWS**. Part 2 of Schedule 1 specifies ancillary works necessary to connect the generating station to the national grid. The final design of the onshore works will be approved through discharge of requirements set out in Part 3 of Schedule 1 to the Order.
- 6.9 Flexibility is also required for the onshore elements of the development.
- 6.10 With regard to the onshore Oakendene substation comprising Work No.16, the optimal design will be determined through the contracting process. Each tenderer will offer different technologies, designs, and layouts for the onshore substations within the parameters established through the DCO. The detailed design will also require to accord with the content, including the design principles, as established through the Design and Access Statement which is submitted with the application for certification (Application document reference 5.8). This will enable the optimal design solution to be chosen in order to respond to both the functional and technical requirements of the infrastructure and the site location and setting. Final detailed design of the onshore substation will not be settled until after the appointment of a contractor and will be approved through discharge of requirement 8, and the associated requirements for submission and approval of the landscape and ecological management plan for this part of the onshore works

(requirement 12) which will also secure the ecological mitigation works for the adjacent land comprising Work No.17.

- 6.11 A similar approach will be adopted for the extension to the National Grid substation at Bolney with the detailed design required to comply with the parameters established through the DCO and the Design and Access Statement as certified (requirement 9). The type of infrastructure to be delivered at the substation will be selected by National Grid to take account of its operational requirements with approval secured through discharge of requirements. National Grid will also input to the content of the landscape and ecological management plan for Work No.20 and the adjacent area identified for the provision of environmental mitigation works as part of Work 17, in order to take account of its operational requirements.
- 6.12 For Work Nos. 9 and 19, the location and width of the final cable corridor will be identified at the detailed design stage and will be secured through the approval of a code of construction practice and construction method statement for the connection works; this ~~may~~ will be approved on a stage specific basis with stages identified prior to the commencement of works onshore pursuant to requirement 10. The codes of construction practice must accord with the principles established in the Outline Code of Construction Practice submitted with the Application (Application document reference 7.2). The construction method statement must accord with the Outline Construction Method Statement (Application Document 7.23). The detailed design can therefore respond to local conditions and seek to take account of, and minimise impact on, sensitive areas. ~~The construction method statement must accord with the Outline Construction Method Statement (Application Document 7.23)~~.
- 6.13 This flexibility incorporated into the Application for the Order will allow the Applicant freedom to optimise Rampion 2 as technology advances and to take advantage of variability in the supply chain whilst ensuring that the detailed design of the Proposed Development post-consent is delivered in accordance with the parameters set through the Order which have been assessed through the Environmental Impact Assessment.

Policy Support for Flexibility

- 6.14 The use of flexibility in project details within an Order is expressly endorsed by National Policy Statements EN-1 (2011) (at paragraphs 4.2.7 to 4.2.10) and EN-3 (2011) (at paragraphs 2.6.42 to 2.6.45), provided that the variables are fully assessed in terms of worst-case effects. Paragraph 4.2.9 of EN-1 explains that where flexibility is sought, it will be necessary to include appropriate requirements

within the Order to ensure that the project "envelope" is limited to that which has been assessed in the Environmental Statement. This approach is reflected in the revised National Policy Statements EN-1 and EN-3 designated in January 2024.

- 6.15 This approach, known as the "Rochdale Envelope," has been followed numerous times in relation to offshore wind farms consented under section 36 of the Electricity Act 1989 and the 2008 Act, as well as NSIPs for diverse other types of infrastructure under the 2008 Act. It is an approach to consenting which is well established under the Town and Country Planning Act 1990, and as such is well known and understood by statutory consultees. It is also endorsed by PINS Advice Note 9² which recognises the need for flexibility to address inherent uncertainties for a proposed development, against which the need to ensure that the significant effects of a proposed development have been properly assessed must be balanced. It acknowledges at paragraph 5.5 of that advice note that an Applicant may choose to include parameters within the DCO as a practical way to address uncertainty and provide the required flexibility before setting out example parameters which include *'maximum/ minimum number of turbines, or maximum turbine blade tip height, associated with an offshore wind farm.'*
- 6.16 As the size of turbine has not yet been established for the Proposed Development the environmental impact assessment undertaken has considered the impacts of 65 *'larger'* sized turbines and 90 *'smaller'* sized turbines in order to establish parameters. Each chapter of the Environmental Statement has assessed the worst-case scenario in respect of the potential final design of the project for the aspect under consideration in that chapter, and has also considered whether these worst-case scenarios also apply to a size and number of turbines falling between these two assessed scenarios. Inclusion of a parameter to constrain the maximum rotor swept area for the turbines ensures that a higher number of larger sized turbines cannot be constructed. This means that whilst 65 larger turbines can be installed, installation of 66 would exceed the maximum rotor swept area permitted under the Order and could not therefore proceed.

7. Parameters

- 7.1 The maximum number of turbines and their rotor swept area are the key parameters for the project and represent the overarching project description to which all other parameters are subordinate. It is not considered that the inclusion of a minimum number of turbines or capacity would be appropriate; the minimum capacity for an NSIP is

² Advice Note Nine: Rochdale Envelope (republished July 2018 (version 3))

already specified by the 2008 Act at 100MW. Further, the economic viability of an offshore wind farm will require a certain scale of development to be delivered.

- 7.2 It is accepted that it is appropriate to impose a maximum hub height, tip height, rotor diameter and a minimum air gap for the wind turbines as these are all key criteria for the assessment of the environmental impact of the Proposed Development and have been presented in the Environmental Statement. These parameters (and the requirement for uniformity of turbine height and rotor swept area) are secured through requirement 2 in Part 3 of Schedule 1 to the draft Order.
- 7.3 Two different foundation types are provided for the WTGs: monopile and multi legged. The choice of foundations will be influenced by a variety of factors, as explained in Chapter 4 of the Environmental Statement. In terms of the Order, the Applicant has considered which design parameters for each type of foundation are important to ensure a complete and robust EIA, and these have been included in the Order through requirement 2 in Part 3 of Schedule 1.
- 7.4 There will be no more than three offshore substations. Their location, type and design are not capable of being fixed at this stage and will be determined post consent in the detailed design and optimisation process as informed by the ultimate final layout decision. Accordingly, parameters limiting their dimensions and foundation arrangements are included in the draft Order through requirement 3 in Part 3 of Schedule 1 with scour protection secured through requirement 4.
- 7.5 The precise number, layout and total length of the inter-array, export and interconnector cables cannot be fixed until post consent design optimisation. The key factor for assessment purposes is the total cable length, based on the maximum number of turbines and location of the offshore substations, and the maximum lengths have been included as parameters in the draft Order: this is categorised by array cables comprising Work No.2, interconnector cables comprising Work No. 3(b) and export cables (Work Nos. 4 and 5) in requirement 5 in Part 3 of Schedule 1.
- 7.6 It is important to bear in mind that under the deemed marine licences contained in Schedules 11 and 12 of the draft Order, the Undertaker must submit final construction details and secure approval by the Marine Management Organisation (**MMO**) to discharge conditions before construction commences. The MMO must ensure that final construction details conform with the description of Works Nos. 1 to 5 and compliance with the design parameters in Part 2, of the deemed marine licences. Those

submitted details will specify the number, dimensions, and layout of the WTGs (for the generation asset licence), offshore electrical substations (for the transmission asset licence), and the network of cables associated with each.

- 7.7 For works in the intertidal area comprising Work No. 6, detailed construction methodologies will need to be submitted for approval of both the relevant planning authority and the MMO pursuant to requirement 22 (code of construction practice) and requirement 23 (construction method statement) as set out in Part 3 of Schedule 1. There will, therefore, be a further stage of regulatory control of the final form of the development seaward of mean high water springs prior to construction.
- 7.8 The parameters for the Authorised Project within the onshore Order limits landwards of mean high water springs are necessary to allow the project to respond to ground conditions for the onshore works at landfall, ground conditions and sensitive receptors along the cable corridor, and detailed design and layout requirements for the Oakendene substation and Bolney substation extension as the project is undertaken. As noted above the precise footprint and design of the Oakendene substation is not capable of being fixed at this stage and will be determined post consent in the detailed design and optimisation process and secured by requirements. Similarly, the exact footprint and arrangements for the extension to the Bolney substation will require settlement with National Grid and through a post consent approval process. Accordingly, parameters limiting their dimensions are included in the draft Order.

8. Provisions of the Order

- 8.1 Part 1 of the Order confirms how the Order itself should be referred to, when it comes into force and defines terms used.
- 8.2 **Article 1** sets out what the Order may be cited as and when it comes into force.
- 8.3 **Article 2** sets out the meaning of various terms used in the Order. Provisions of particular note are set out below.

8.3.1 'Commence' is defined as follows:

(a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction surveys and monitoring approved under the deemed marine licences; and

(b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project

8.3.2 The effect of the definition is that certain 'carved out' works can be carried out offshore prior to certain of the conditions contained in Schedules 11 and 12 to the Order being discharged.

8.3.3 Whilst this definition does not 'carve out' onshore site preparation works, as has been adopted in numerous previously made development consent orders for offshore wind farms, the Order provides for the undertaker to submit and secure approval for a programme of stages of the authorised project pursuant to requirement 10. This provision allows a programme of stages to be identified for the onshore site preparation works, with further stages to be identified for the connection works themselves. This enables the embedded measures identified and assessed in the Environmental Statement to be secured, to the extent necessary, for the preparatory works, and for those works to progress and then inform the details to be submitted for approval in respect of the main onshore construction elements of the authorised project which will comprise different stages of the Proposed Development.

8.3.4 'Maintain' is defined to cover both the onshore works and the offshore works. In terms of the deemed marine licences, this term can only relate to the offshore works, but the definitions remain aligned to ensure consistency. In the Order, the term is defined to include inspect and survey, upkeep, repair, adjust, and alter, and further includes remove, reconstruct, and replace, but is limited to the extent assessed in the environmental statement

8.4 Part 2 provides the principal powers for the Proposed Development

8.5 **Article 3 - Development consent etc. granted by the Order**

8.5.1 This article provides the development consent for the 'authorised development' (which is defined to include the associated development) and separate consent for the ancillary works, provided that they are carried out within the Order limits. Together these works comprise the authorised project.

8.6 **Article 4 - Power to maintain the authorised project**

8.6.1 This article makes provision for the maintenance of the authorised project. It has been used in a number of recently approved development consent orders for offshore wind farms including the East Anglia Two Order and the East Anglia One North Order. Article 4 reflects the terms of the model provisions, but text has been added to make it clear that the powers conferred by the article do not negate the need for the Undertaker to obtain further marine licences for offshore works not covered by the deemed marine licences included in the Order. This approach is preceded in numerous recent DCOs including the Hornsea Three, East Anglia One North, East Anglia Two, Hornsea Four Orders the Awel y Mor Order and the Sheringham and Dudgeon Order.

8.7 **Article 5 – Benefit of the Order**

8.7.1 **Article 5(1)** (Benefit of Order) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the Undertaker, rather than anyone with an interest in the land, subject to the operation of the article.

8.7.2 It also provides for the transfer or grant of a lease of the whole or part of the benefit of the Order, with the consent of the Secretary of State (the SoS), subject to certain exceptions. It also provides for the transfer of the whole of the deemed marine licences with the consent of the SoS, also subject to exceptions, and for the Secretary of State to consult the MMO prior to granting consent. This article provides a degree of flexibility for the Undertaker, in terms of the ability to sell or lease the project, and the transmission and generation assets to be owned separately in the future, whilst ensuring the SoS has control over any such arrangements.

8.7.3 The requirement to obtain the SoS's consent is unnecessary in the circumstances referred to in sub paragraph (8) of the article. These circumstances include where the transferee or lessee is a holder of a transmission licence under the Electricity Act 1989, so allows the benefit of the Order to be transferred to National Grid insofar as it relates to the connection works at the Bolney Substation. It also allows transfer where the time limits for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order have elapsed.

- 8.7.4 The article also includes a procedure to be adopted when making an application to the Secretary of State for consent and follows the approach in the Hornsea Three Order and which has also been followed in The Norfolk Boreas Offshore Wind Farm Order 2021 (**Norfolk Boreas Order**), The Norfolk Vanguard Offshore Wind Farm Order 2022 (**Norfolk Vanguard Order**) as well as the East Anglia One North, East Anglia Two and Hornsea Four Orders and the Sheringham and Dudgeon Order. It is considered necessary to provide certainty in the absence of any other statutory procedure for obtaining consent. The essential elements of this procedure are as follows:
- 8.7.5 **Article 5(7)** provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:
- 8.7.5.1 the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - 8.7.5.2 the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the Undertaker;
 - 8.7.5.3 the benefits or rights conferred under sub paragraph (1) of the article is subject to the same restrictions, liabilities and obligations as applies to the Undertaker.
- 8.7.6 **Article 5(13)** disapplies sections 72(7) and (8) of the Marine and Coastal Access Act 2009 such that a separate application to the marine licensing authority is not required in connection with transfer of a marine licence pursuant to this article. This wording follows the approach in recent development consent orders for offshore wind farms.
- 8.8 **Article 6 (application and modification of legislative provisions)**
- 8.8.1 This article has the effect of dis-applying legislative provisions as they would apply but for this article.
 - 8.8.2 **Article 6(1)(a)** dis-applies the provisions of regulation 6 of the Hedgerows Regulations 1997 and allows those hedgerows specified in Schedule 13 of the Order to be removed so as to allow the Applicant to carry out the Authorised Project. The form of wording used in this article

is preceded and has been used in many made orders, including recently in Hornsea Four Order.

8.8.3 **Article 6(2)** dis-applies provisions of the Neighbourhood Planning Act 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 Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date and the form of wording in this article is has recently been used in the Hornsea Four Order.

8.8.4 **Article 6(3)** confirms that the Order does not constitute a planning permission for the purposed of the Community Infrastructure Levy Regulations 2010 (as amended) notwithstanding that the buildings proposed to be constructed as part of the authorised development are those into which people do not normally go, or buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery. Whilst it is intended that any structures provided pursuant to the Order will be buildings into which people go only intermittently for inspection or maintenance, this article is included for the avoidance of doubt.

8.8.5 The article also disapplies elements of Section 25 of the Burial Act 1857 and the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 in order that the mechanism set out in Article 19 will operate in the event that human remains are discovered during the works.

8.9 **Article 7**

8.9.1 This article modifies the Rampion Offshore Wind Farm Order 2014 (Rampion 1 Order). Notwithstanding the scope of the Rampion 1 Order, the operational wind farm (the Rampion 1 project) was not built out to its full permitted extent, either spatially or in terms of number of turbines: only 116 turbines and 1 offshore substation were ultimately

installed, and these were not located across the full extent of the consented offshore Order limits.

8.9.2 The Proposed Development is intended to make maximum use of the opportunity to develop a windfarm to generate as much renewable energy as possible taking account of the environmental impacts. Consequently the Applicant proposed the installation of up to 90 wind turbines generators in locations within an array area which includes parts of both the extension area to Rampion 1 identified by the Crown Estate in its extension leasing round, and other areas of seabed which comprise the balance of 'Zone 6' as identified during the previous Crown Estate leasing round which was not included in the consented area for Rampion 1, or was not built out either under, or in accordance with, the Rampion 1 Order.

8.9.3 Environmental impact assessment for the Proposed Development has taken account of the built extent of the Rampion 1 project (as opposed to its consented extent) in terms of its seascape and landscape visual impact assessment and effects on shipping and navigation, and mitigation is proposed as part of the project by reference to this assessment. As a consequence it is necessary to modify the Rampion 1 Order, pursuant to section 120(5) Planning Act 2008, to restrict the construction of any additional wind turbines pursuant to its terms so as to undermine the mitigation proposed and secured. This restriction will fall away in the event that, having been granted development consent, the Proposed Development is not implemented.

8.9.4 Rampion Offshore Wind Limited, which has the benefit of the Rampion 1 Order, in so far as it is relevant to undertake the construction of further turbines and offshore substations has consented to the terms of this article.³

8.10 **Article 8** (*Defence to proceedings in respect of statutory nuisance*)

8.10.1 This article provides that proceedings may not be brought in respect of statutory nuisance under the Environmental Protection Act 1990 if the alleged nuisance is created in the course of carrying out construction or maintenance or decommissioning of the Authorised Project, and for which notice has been given under section 60 of the Control of Pollution Act 1974, or is a nuisance which cannot be reasonably avoided as a consequence of

³ Please see letter dated 7 August 2023 at Appendix 1.

the construction, maintenance or decommissioning of the Proposed Development as the Authorised Project, or its use.

- 8.10.2 As stated in the Environmental Statement it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise and dust emissions. However, the Applicant considers that this article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This article is based a model provision and has been used in numerous DCOs for offshore wind farms.

Part 3 (Streets)

8.11 Article 9 (*Street works*)

- 8.11.1 This article authorises the Undertaker to carry out various works within the streets specified in Schedule 2 of the Order, which are within the Order limits. The right given by the article is a statutory right for the purposes of Section 48(3) (streets, street works and undertakers) and Section 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991. The Undertaker needs the power to remove or use earth and materials in or under the streets to lay the cables for authorised project under the streets.

8.12 Article 10 (*application of the 1991 Act*)

- 8.12.1 This article confirms that a number of the provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under Article 9 and the temporary closure, alteration or temporary diversion of a street under Article 11. The relevant provisions are referred to in sub-paragraph 2 of Article 9. This approach has been adopted in numerous DCOs for offshore wind farms including the Hornsea Four Order.

8.13 Article 11 (*Temporary closure of streets*)

- 8.13.1 This article provides for the temporary closure, alteration or diversion of streets for a reasonable time for the purposes of carrying out the authorised development. It follows the approach set out in previous DCOs for offshore wind farms and includes power to use any street temporarily closed as a temporary working site. The Undertaker may not use any street which is referenced in

Schedule 3 and shown on the streets plan without first consulting the street authority. For streets not identified in Schedule 3 the Undertaker must obtain the consent of the street authority who may attach reasonable conditions to their consent.

8.13.2 Consequently, for the temporary closure of any street not identified in Schedule 3 there would be a requirement to obtain the consent of the street authority.

8.13.3 Provision is made for compensation for loss as a consequence of the operation of the article. The inclusion of a deeming provision follows the approach taken in recently made orders including the Hornsea Four Order.

8.14 **Article 12** (*public rights of way*)

8.14.1 This article allows the Undertaker, where it is in connection with the carrying out of the Proposed Development, to temporarily close a public right of way specified in Schedule 4 of the Order to the extent stipulated in the same schedule and also requires substitute rights of way to be put in place prior to the temporary closure of specified rights of way. Where the exact location of the closure and substitute way has not yet been determined the article provides for this to be agreed with the highway authority.

8.14.2 The Proposed Development crosses the South Downs Way, and whilst it may be possible to carry out the Proposed Development using a short, defined diversion, in the event that works need to be undertaken requiring temporary closure of a wider stretch of this National Trail, a diversion will be agreed with the South Downs National Park Authority. The two restricted byways are therefore included in the table in Part 3 of Schedule 4 to allow for this flexibility.

8.14.3 Similarly the Proposed Development crosses part of the National Cycle Network. Whilst a diversion has been identified, once the detailed design for the project has progressed post-consent, it may be possible to identify an alternative means of closure and diversion that would have a lesser impact on users. This way is therefore included in the table at Part 3 of Schedule 4 to allow for an alternative diversion to be provided. This article follows the approach adopted in a number of development consent orders including those for offshore wind farms. The ability for the Undertaker to stop up temporarily any other public

right of way with the agreement of the relevant highway authority to allow flexibility in the delivery of the Proposed Development is included in the draft Order submitted in respect of infrastructure including the Hinckley National Rail Freight Interchange Development Consent Order.

8.15 **Article 13** (*Access to works*)

8.15.1 This was formerly a model provision and permits the Undertaker to form new or to improve existing means of access in the approximate locations specified in Schedule 5 of the Order. Other means of access or works can also be provided in other locations reasonably required for the Proposed Development with the approval of the relevant planning authority, in consultation with the highway authority. This is subject to a deemed approval in the absence of a notification from the relevant planning authority within 45 days, with a longer period allowed to account for the requirement to consult a consultee before discharge. This follows the approach adopted in recently made orders including the East Anglia One North and East Anglia Two Orders and the Norfolk Vanguard and Boreas Orders.

8.16 **Article 14** (*Agreements with street authorities*)

8.16.1 This article allows the Undertaker to enter into agreements with street authorities relating to any closure, alteration or diversion of a street and the carrying out of any works referred to in Article 9(1). This approach has been adopted in a number of DCOs for offshore wind farms including the recently made Hornsea Four Order.

8.17 **Article 15** (*Power to alter layout etc. of streets*)

8.17.1 This article allows for the alteration of the layout of any street for the purposes of construction, operation, or maintenance, subject to obtaining the consent of the street authority, and to the restoration of such streets to the reasonable satisfaction of the street authority. This follows the approach adopted in numerous DCOs including the recently made Hornsea Four Order and the Hornsea Three Order. A similar approach is adopted in the Drax Power (Generating Stations) Order 2019, the Great Yarmouth Third River Crossing Development Consent Order 2020 and the Longfield Solar Farm Order 2023 save that in those Orders the provision also refers to a schedule where alterations will be required. However,

each of these Orders also includes the general power which is included in article 15.

- 8.17.2 Article 15 also include provision for consent to be deemed granted in the absence of a notification of a decision from the street authority as is consistent with other provisions in Part 3 of the Order.

8.18 **Article 16** (*Temporary Speed Limits*)

- 8.18.1 This article enables temporary speed limits to be implemented during construction by agreement with the relevant highway authority. The inclusion of the Article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits is necessary to facilitate the construction of the authorised project the various highways is related to the provision of the highway works as part of the authorised development. The requirement for imposition of temporary speed limits is also related to the creation of accesses for construction works, and is therefore permitted by section 120(4) and paragraph 15 of Part 1 of Schedule 5 of the 2008 Act. The article enables the imposition of temporary speed limits over some stretches of highway which are not within the Order limits. This is because the operation of these powers does not require physical development.
- 8.18.2 This approach is consistent with The Northampton Gateway Rail Freight Interchange Order 2019/1358 and The West Midlands Rail Freight Interchange Order 2020/511 albeit the powers in these Orders also include provision for the imposition of permanent speed limits too.

Part 4 (Supplemental Powers)

8.19 **Article 17** (*Discharge of water*)

- 8.19.1 **This article** is based on a former model provision and enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Project with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. A deemed approval applies if notification is not received within 28 days. It follows the approach adopted in a

number of recent orders made for offshore wind farms in respect of main rivers and incorporates reference to work in other watercourses following the approach in the East Anglia Two and One North Orders and the Hornsea Four Order.

8.20 **Article 18** (*Protective work to buildings*)

- 8.20.1 This article is based on a former model provision that allows the Undertaker, at its own expense, to carry out protective works to any building which is affected by the Proposed Development. Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the relevant building works forming part of the Proposed Development. Protective works can also be undertaken after the carrying out the of works forming part of the Proposed Development for a period of 5 years from the day on which the relevant part of the Proposed Development first becomes operational.
- 8.20.2 In addition to the powers to undertake protective works the article includes powers to enter any building and land within its curtilage to survey to determine whether protective works are needed and there are powers to enter adjacent land to carry out any protective works. However, there is a requirement, before utilising the powers in the article, to serve notice on owners and occupiers with at least 14 days' notice of the said works. In respect of some of the powers included in the article there is an ability for a counter notice to be served by the landowner/occupier within a period of 10 days from the day on which the notice was served.
- 8.20.3 The article includes compensation provisions both in relation to the consequences of the protective works being undertaken, but also where protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date that part of the development is first operational).
- 8.20.4 The model provision has been modified to provide that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act. In this context the article follows the

approach adopted in recent DCOs including the Hornsea Four Order.

8.21 **Article 19** (*Authority to survey and investigate the land onshore*)

8.21.1 This article is based on a former model provision and allows the Undertaker to survey and investigate land, including bringing equipment onto the land and making trial pits and boreholes. It has been expanded to allow for the carrying out of surveys and investigation by drone. 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.

8.21.2 Sub paragraph (4) provides that no trial pits or boreholes may be made in land forming part of a railway or land, in Crown land, or in a street or highway without the consent of Network Rail, the Crown, the street authority or the highway authority, respectively. Consent may not unreasonably be withheld. The deeming provision does not extend to Network Rail or the Crown.

8.21.3 Section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 will apply in respect of entry onto, or possession of land under the article. This approach follows that adopted in a number of recent Development Consent Orders including the Hornsea Four Order.

8.22 **Article 20** (*Removal of human remains*)

~~8.21.4~~8.22.1 This article enables the Undertaker to remove human remains from the Order land and provides a process for notification and identification of the human remains as well as their re-internment or cremation. The Undertaker would be required to pay the reasonable expenses associated with this process.

~~8.21.5~~8.22.2 Whilst it is not anticipated that any human remains will be encountered during construction works, it is possible that human remains could be found within the Order land. This article follows the former model provisions, save that the article applies to the entire Order land rather than a defined area which approach was used in the Norfolk Vanguard and Norfolk Boreas Orders.

~~8.228~~8.23 **Article 21** (*Public rights of navigation*)

~~8.22.18.23.1~~ This article provides for the suspension of public rights of navigation where any of the permanent structures (WTGs or offshore substations) are located. Public rights of navigation apply in territorial waters, being the area 12 nautical miles from mean high water springs, so apply to part of the Proposed Development's offshore Order limits.

~~8.22.28.23.2~~ As there will be a physical obstruction in the marine environment within this area there will no practical ability to navigate through these specific locations and the approach to suspend public rights of navigation formalises this situation. The final locations of structures including WTG foundations and the offshore substations will be submitted for approval under condition 11 of each of the deemed Marine Licences in Schedules 11 and 12 for the generation assets and transmission assets respectively.

~~8.22.38.23.3~~ Implementation of the suspension to public rights of navigation fourteen days after giving notice to the SoS, Trinity House, the MMO and the Maritime and Coastguard Agency is appropriate to allow construction to commence as soon as reasonable following consultation and approval of the locations of structures under condition 11 of each deemed marine licence. The MMO, the MCA and Trinity House as the key marine stakeholders for public rights of navigation will have been involved in the process of finalising the design and layout of the wind farm infrastructure, and will therefore already be aware of the locations of the elements that will impact on public rights of navigation. In addition, this notice period is greater than that required for formal notices to mariners and the period required by the UKHO to make all necessary amendments to nautical charts as set out in condition 5 of each deemed marine licence (Notifications and inspections). This period has been accepted on other DCOs with infrastructure in territorial waters, including Kentish Flats Extension Offshore Wind Farm Order 2013 and Walney Extension Offshore Wind Farm Order 2014.

~~8.238.24~~ **Article 22** (temporary suspension of public access to access land)

~~8.23.18.24.1~~ This article provides for the suspension of public access to specified areas of access land during the construction and maintenance of the authorised project, subject to advance notice being provided and subject to the Undertaker keeping the area of land and the period of

closure to a minimum. This article follows the approach taken and accepted in the Rampion 1 Order.

Part 5 (Powers of Acquisition)

8.248.25 Article 23 (*Compulsory acquisition of land*)

8.24.18.25.1 This article provides for the compulsory acquisition of such land as is required for the Proposed Development (or to facilitate the Proposed Development or is incidental to the Proposed Development). Article 25 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the Proposed Development. The article broadly follows the former model provision and follows the approach adopted in the Norfolk Vanguard Order and other recently granted Orders. The power to acquire land compulsorily under Article 23 does not apply to the parts of the Order land shown numbered 34/29 and 34/30 on the land plans.

8.258.26 Article 24 (*Time limit for exercise of authority to acquire land compulsorily or to take land temporarily*)

8.25.18.26.1 This was formerly a model provision and imposes a time limit of 7 years for the exercise of powers of compulsory acquisition. There is one departure from the model provision and that is that the time limit has been extended from 5 years to 7 years. This extra time is due to the complexity and scale of the project, and at this stage, unknown contractor and supply chain availability and the need to enter into Contract for Difference bidding rounds. This change is preceded in the Hornsea Three Order and the Hornsea Four Order as well as the recently made Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. Equivalent issues relating to complexity, scale, contractor and supply chain availability as cited by those projects apply to Rampion 2.

8.268.27 Article 25 (*Compulsory acquisition of rights and imposition of restrictive covenants*)

8.26.18.27.1 This article entitles the Undertaker to acquire rights over land and impose restrictive covenants which may be compulsorily acquired, including rights already in existence, or to create new rights. The article provides that in respect of the Order land specified in Schedule 7 of the Order the Undertaker's powers of acquisition are limited to the purposes specified in that same schedule.

The ability to acquire new rights ensures that the Undertaker can seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the Authorised Project is implemented.

~~8.26.28.27.2~~ Sub paragraphs (5) and (6) provide, where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory undertaker, the Undertaker may, with the consent of the SoS transfer the powers to the statutory undertaker. The approach adopted in the article follows that of the East Anglia Two and East Anglia One Orders, the Norfolk Vanguard and Boreas Orders, and the Hornsea Four Order.

~~8.278.28~~ **Article 26** (*Private rights over land*)

~~8.27.18.28.1~~ This article is based on a former model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition under article 23 of the Order; or (2) land is subject to compulsory acquisition of rights or the imposition of restrictive covenants under article 25. The article also suspends private rights for as long as the Undertaker is in temporary possession of land under the Order.

~~8.27.28.28.2~~ In sub-paragraph (4) reference is made to section 152 of the 2008 Act to make it clear that compensation is payable and that such compensation would be payable under this section of the 2008 Act rather than the Compulsory Purchase Act 1965.

~~8.27.38.28.3~~ The reference to this article including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect follows the approach recently adopted in Portishead Branch Line (MetroWest Phase 1) Order 2022.

~~8.288.29~~ **Article 27** (*Power to override easements and other rights*),

~~8.28.18.29.1~~ This article provides that, by virtue of section 158 of the 2008 Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the Undertaker (or any person deriving title from the Undertaker or any contractor, servant or agent of the Undertaker) may interfere with any interest or right to which the article applies or breach any restriction as to the use of land arising by virtue of a contract. It also provides that, by virtue of section 152 of the 2008 Act,

compensation may be payable under section 10 of the 1965 Act for any such interference or breach.

~~8.28.28.29.2~~ This is not a model provision but is included to clarify the position regarding rights burdening land required for the authorised development. The article has precedent in article 20 of the Brechfa Forest Wind Farm Connection Order 2016 and is included in the draft development consent order submitted as part of the application for Cambridge Waste Water Treatment Plant Relocation Order.

~~8.298.30~~ **Article 28** (*Application of the 1981 Act*)

~~8.29.18.30.1~~ This article applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016.

~~8.29.28.30.2~~ The article has also been modified to allow the compulsory acquisition of rights and land in favour of a third party such as a statutory undertaker. These provisions are not contained in the Model Provisions but are intended to provide confirmation that the 1981 Act can be used to acquire rights and land on behalf of third parties, without the need to acquire the land in favour of the Undertaker and then transfer such land or rights to a third party, thereby causing a delay to any transfers of land or rights to those who are intended to benefit from such acquisition.

~~8.308.31~~ **Article 29** (*Modification of the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017*)

~~8.30.18.31.1~~ This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of the Undertaker, who would otherwise be the acquiring authority in respect of those interests and rights. The amendments to these regulations also confirm the position that notwithstanding references in the 1981 Act and 2017 Regulations to vesting land "in themselves"

(i.e., in the Acquiring Authority), land and rights can be acquired by the Undertaker in favour of any third party identified directly. This is a drafting change which confirms the ability for the Undertaker to acquire such rights and land (where such powers of acquisition are not transferred to another person to acquire rights/land directly) and is not a substantive change to the rights or land sought for permanent acquisition.

~~8.31~~8.32 **Article 30** (*Modification of Part 1 of the 1965 Act*)

~~8.31~~8.32.1 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (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 33 or 34 of this Order.

~~8.31~~8.32.2 The approach adopted follows that of the Hornsea Three Order in addition to previously granted orders for NSIPs, and which has been applied in a similar form in the East Anglia Two and East Anglia One North Orders, and the Norfolk Boreas and Vanguard Orders.

~~8.32~~8.33 **Article 31** (*Acquisition of subsoil or airspace only*)

~~8.32~~8.33.1 This article permits the Undertaker to acquire only the subsoil or airspace of land which is to be compulsorily acquired (either pursuant to Article 23 or 25) and gives the Undertaker the ability to minimise the extent of interests acquired from owners. This is based on a former model provision but extended to include the acquisition of airspace and has been used in a number of DCOs including the Norfolk Vanguard and Boreas Orders and the East Anglia Two and One North Orders.

~~8.33~~8.34 **Article 32** (*Rights under or over streets*)

~~8.33~~8.34.1 This is a former model provision which allows the Undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Project without being required to acquire that land.

Provision is made for the payment of compensation in certain circumstances.

8.34.8.35 Article 33 (*Temporary use of land for carrying out the authorised development*)

8.34.18.35.1 This article allows two categories of land to be temporarily used for the carrying out of the Authorised Project. These are:

8.34.1.18.35.1.1 The land specified in Schedule 9 of the Order for the purposes specified in that Schedule;

8.34.1.28.35.1.2 Any other land within the Order limits land where no notice of entry or general vesting declaration has been served.

8.34.28.35.2 In addition to the ability to enter on and take temporary possession of Order land Article 33(1)(b)-(h) stipulate various activities that can be undertaken pursuant to the article. This list has been modified from the former model provision to include project specific activities, the approach adopted in the Hornsea Three Order and tailored for the Proposed Development. The power to enter on and take temporary possession of Order land where no notice of entry or general vesting declaration has been served is subject to sub-paragraph 2, which provides that such powers do not apply to the parts of the Order land shown numbered 34/29 and 34/30 on the land plans.

8.34.38.35.3 Sub-paragraph 11 provides that the Undertaker may not compulsorily acquire any of the land specified in Schedule 9.

8.34.48.35.4 There is a limit on the length of time that the Undertaker can use land under this article, being a period of 1 year beginning on the day of completion of that part of the Authorised Project, unless the Undertaker has already served a notice to treat or general vesting declaration.

8.34.58.35.5 In addition, the article includes several other components, including:

8.34.5.18.35.5.1 the Undertaker must provide at least 28 days' notice to the relevant owner/occupiers' before entering the land;

8.34.5.28.35.5.2 before giving up occupation of land the Undertaker must remove the temporary works and restore the land to the reasonable satisfaction of the owner save that certain operations are not required to be removed; and

8.34.5.38.35.5.3 compensation provisions are included to compensate owner/occupiers affected by their land being temporarily used for carrying out the Authorised Project.

8.358.36 **Article 34** (*Temporary use of land for maintaining the authorised project*)

8.35.18.36.1 Similar provision is made in Article 34 (for the temporary use of land for maintenance of the Authorised Project (once consented). The maintenance period in which the power can be exercised is beginning with the date on which the Authorised Project first exports electricity to the national electricity transmission network. The article is a former model provision and allows an Undertaker to take temporary possession of land within the Order limits if it is reasonably required to maintain the Authorised Project and allows temporary works and buildings to be constructed if reasonably necessary. The power is limited and cannot be exercised in respect of a house, garden, or any other building where it is occupied.

8.35.28.36.2 The article requires the Undertaker to provide at least 28 days' notice to the relevant owner/occupiers' before taking temporary possession, and it may only retain possession for as long as is reasonably necessary to carry out the maintenance. When returning the land after the temporary possession the Undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners. Compensation provisions are included.

8.368.37 **Article 35** (*Compulsory acquisition of land - incorporation of the mineral code*)

8.36.18.37.1 This article provides for the incorporation of Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 to be incorporated into the Order to exclude its application to mines under the Order limits.

8.378.38 **Article 36** (*Statutory undertakers*)

~~8.37.18.38.1~~ This is based on the former model provision which has been used in numerous previous Orders for offshore wind farms and provides for the acquisition of land belonging to statutory undertakers that is identified in the Book of Reference (Application Document Ref. 4.3). This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see Article 52 below) included at Schedule 10 of the Order.

~~8.388.39~~ **Article 37** (*Apparatus and rights of statutory undertakers in stopped up streets*)

~~8.38.18.39.1~~ This provision governs what happens to statutory undertakers' apparatus (e.g., pipes, cables) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street. Under paragraph (2), the statutory undertaker may remove, relocate, or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by the Undertaker. Under paragraph (3), the statutory undertaker would receive compensation from the Undertaker for any relocation works and associated costs subject to any set off for enhancement works undertaken at the same time subject to clarification in paragraphs (4) and (5).

~~8.38.28.39.2~~ This article is a standard provision for DCOs (see, for example, Article 36 of the A30 Chiverton to Carland Cross Development Consent Order 2020) save that as the Proposed Development does not include major highways bridge or transport works these elements of the provision are not applied.

~~8.398.40~~ **Article 38** (*Recovery of costs of new connections*)

~~8.39.18.40.1~~ This article provides that persons who must create a new connection following the exercise of powers under Article 36 may recover the costs of new connections from the Undertaker and follows the wording of a former model provision used in numerous orders for offshore wind farms.

~~8.408.41~~ **Article 39** (*Special Category Land*)

~~8.40.18.41.1~~ This provision applies to land to which section 132 of the 2008 Act applies: an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of a right over land

comprising a common, open space or fuel or field garden allotment unless the Secretary of State is satisfied that certain tests under sections 132(3)-(5) are met. These tests include that the Secretary of State is satisfied that the use of the land when burdened by the new rights is no less advantageous than it was beforehand. The Applicant submits that this is the case, for the reasons set out in the Statement of Reasons (Application Document reference 4.1).

~~8.40.28.41.2~~ 8.41.2 The land specified in Article 39 is therefore proposed to be released from all rights, trusts and incidents to which that land was previously subject without the requirement to provide replacement land in accordance with section 132(4) of the 2008 Act.

Part 6 (Operations)

~~8.41.18.42~~ 8.42 **Article 40** (*Operation of generating station*)

~~8.41.18.42.1~~ 8.42.1 This article authorises the operation and use of the offshore wind turbine generating station comprised in the Authorised Project. Article 40(2) specifically preserves the need for the Undertaker to obtain any other operational consent that may be needed, in addition to the Order.

~~8.42.18.43~~ 8.43 **Article 41** (*deemed marine licences under the 2009 Act*)

~~8.42.18.43.1~~ 8.43.1 This article deems the grants of the marine licences included in schedule 11 (*deemed marine licence – generation assets*) and schedule 12 (*deemed marine licence – transmission assets*). The deemed consent is provided for under 149A of the 2008 Act and under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949.

Part 7 (Miscellaneous and general)

~~8.43.18.44~~ 8.44 **Article 42** (*Application of landlord and tenant law*)

~~8.43.18.44.1~~ 8.44.1 This article is based on a former model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Project 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 Project.

8.448.45 Article 43 (*Operational land for purposes of the 1990 Act*)

~~8.44.18.45.1~~ This article is based on a former model provision which has the effect of ensuring that the land on which the Authorised Project is constructed will be "operational land" under section 263 of the 1990 Act.

8.458.46 Article 44 (*Felling or lopping of trees and removal of hedgerows*)

~~8.45.18.46.1~~ This article provides that the Undertaker may fell or lop or cut back the roots of any tree or shrub which is within the Order limits or near any part of the authorised project to prevent it obstructing or interfering with the onshore site preparation works, construction, maintenance, or operation of the Authorised Project or its decommissioning. The article is consistent with the former model provision, except the Undertaker has further limited the power so that it does not apply to trees subject to a tree preservation order which are instead subject to article 45 (*Trees subject to a tree preservation order*). The article also authorises removal of hedgerows within the Order limits as identified in Schedule 13. The application of this article is controlled through requirements, notably requirement 22 securing stage specific codes of construction practice and requirement 12 securing stage specific landscape and ecology management plan, in both instance with the stage specific documents to accord with the outline documents to be certified under Article 51 (see below).

8.468.47 Article 45 (*trees subject to tree preservation orders*)

~~8.46.18.47.1~~ Similarly, this article provides that the Undertaker may fell or lop or cut back the roots of any tree, within the Order limits, which is subject to a tree preservation order to prevent it obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the Authorised Project or its decommissioning. This applies whenever the tree preservation order is made and so future proofs the scheme. The operation of this article is also controlled by the documents and details to be submitted and approved pursuant to the requirements.

~~8.46.28.47.2~~ In both Articles 44 and 45 no unnecessary damage must be caused, and compensation is payable if loss or damage is caused. The articles follow the approach adopted in numerous DCOs including the East Anglia Two and One

North Orders, the Norfolk Vanguard and Boreas Orders, the Hornsea Four Order and the recently made Sheringham and Dudgeon Order.

8.478.48 Article 46 (*Abatement of works abandoned or decayed*)

8.47.18.48.1 This article is intended to make sure that the Undertaker will not abandon or allow to fall into decay Work Nos 1 to 6. It provides a power which enables the SoS, following consultation with the Undertaker, to serve notice on the Undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the SoS being able to serve notice on the Undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it and follow the approach adopted in the East Anglia Two and One North Orders, the Norfolk Vanguard and Boreas Orders, and the Hornsea Four Order.

8.488.49 Article 47 (Procedure in relation to certain approvals)

8.48.18.49.1 This article introduces and gives effect to schedule 14, which provides a procedure for securing approvals under the terms of Part 3 of Schedule 1 to the Order. The schedule follows the approach recommended in Planning Inspectorate Advice Note fifteen: Drafting Development Consent Orders and its annex⁴.

8.498.50 Article 48 (Arbitration)

8.49.18.50.1 This article provides a procedure for arbitration in respect of any differences arising under the Order which follows the approach adopted in the East Anglia Two Order, the East Anglia One North Order and the Hornsea Four Order. The process provides certainty to all parties. It applies Schedule 15 of the Order and provides for the process set out therein to be applied to differences under the Order unless another means of resolving a dispute is provided for in the Order. It expressly excludes any matter that requires the approval of the SoS or the MMO.

8.508.51 Article 49 (Saving provisions for Trinity House)

8.50.18.51.1 This is a model provision for harbours and is commonly used in DCOs for offshore wind farm turbine

⁴ Republished July 2018 (version 2)

generating stations to provide protection to Trinity House in relation to its statutory functions.

8.51.18.52 Article 50 (Crown rights)

8.51.18.52.1 This article reflects the terms of section 135 of the 2008 Act and has been used in a number of previous orders for NSIPs including the Hornsea Three Order and the Hornsea Four Order. The intention is to protect the Crown in respect of its land and interests, both where it holds the land and where it is held by another person (such as a government department). It provides that nothing in the Order authorises the Undertaker (or licensee of the Undertaker) to interfere with any land or rights in that land as follows:

8.51.1.18.52.1.1 Where that interest belongs to His Majesty in right of the Crown and forms part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

8.51.1.28.52.1.2 Where it belongs to His Majesty in right of the Crown, but does not form part of the Crown Estate without the consent in writing of the government department that is managing that land; or

8.51.1.38.52.1.3 Where it belongs to a government department or is held in trust for His Majesty for the purposes of a government department without the consent of that government department.

8.51.28.52.2 Sub-paragraph (2) provides that the prohibition in sub-paragraph (1) of the article does not apply where it is proposed to compulsory acquire an interest in Crown land which is held by a person which is not His Majesty in right of the Crown or it is not being held on the Crown's behalf, provided consent is provided in writing by the appropriate Crown authority.

8.52.18.53 Article 51 (*Certification of plans and documents, etc.*)

8.52.18.53.1 This article is based on a former model provision which requires the submission of various documents referred to in the Order, which are set out in Schedule 16 to the Order, for certification as true copies.

8.53.18.54 Article 52 (*Protective provisions*)

~~8.53.18.54.1~~ This article introduces Schedule 10 to the Order which protects the interests of certain statutory undertakers, to have effect; this Schedule is also referred to in Article 36 above in relation to the apparatus of statutory undertakers. Further detail is given below.

~~8.548.55~~ **Article 53** (*Funding*)

~~8.54.18.55.1~~ This article provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions (such sum to be approved by the SoS) or an alternative form of security approved by the SoS for a period of 15 years.

~~8.558.56~~ **Article 54** (*No double recovery*)

~~8.55.18.56.1~~ This article prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law and is included for certainty.

~~8.568.57~~ **Article 55** (*Disregard of certain improvements, etc.*)

~~8.56.18.57.1~~ This article provides for the Lands Chamber of the Upper Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation. It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.

~~8.56.28.57.2~~ The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37), the River Humber Gas Pipeline Replacement Order 2016 (article 29) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 38). The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act").

~~8.56.38.57.3~~ It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and neither the 2008 Act, nor standard Order provisions,

apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

8.578.58 Article 56 (*Set off for enhancement in value of retained land*)

~~8.57.18.58.1~~ This article provides that, in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development. This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.

~~8.57.28.58.2~~ The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 38) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 39), and orders under the Transport and Works Act 1992 such as the London Underground (Northern Line Extension) Order 2014 (article 33) and the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (article 36).

8.588.59 Article 57 (*Service of notices*)

~~8.58.18.59.1~~ This article makes provision as to the service of notices or other documents for the purposes of the Order.

8.598.60 Article 58 (*Inconsistent planning permissions*)

~~8.59.18.60.1~~ Article 58(1) allows the development of the authorised project to take precedence over the conditions of any planning permissions which are inconsistent with the authorised development. The provision applies from the date on which the proposed development is commenced in order that the Proposed Development has certainty over the ability to proceed whilst not unnecessarily constraining

other consents granted under the Town and Country Planning Act 1990.

8.59.28.60.2 The article also provides that where planning permission is granted in respect of land within the Order limits for development which is consistent with the authorised development but the environmental impacts exceed those assessed in the environmental statement, or which is otherwise consistent with the authorised development, or for development which is unrelated to the authorised development, then the implementation of that consent will not render development pursuant to the Order incapable of further implementation. This wording is deemed necessary and considered prudent following the Supreme Court ruling in *Hillside Park v Snowdonia National Park Authority* [2020] EWCA Civ 1440 so as to allow for a discrete planning permission to be granted and implemented for part of the Proposed Development, for which a separate environmental impact assessment has been carried out, without the undertaker losing the ability to continue to construct the remainder of the Proposed Development. The term 'inconsistent planning permissions' is the term used in the *Hillside Park* case. A clarification has been included that the requirements set out Part 3 of Schedule 1 (requirements) shall not apply to development carried out pursuant to such a planning permission in response to the National Grid's response to the Examining Authority's First Written Questions [REP3-077].

8.59.38.60.3 The article also provides that development carried out pursuant to a planning permission following implementation of the draft DCO would not result in breach of the Order, removing the risk of criminal liability pursuant to sections 160 and 161 of the 2008 Act in circumstances where the development which has been appropriately assessed and consented can be carried out on land within the Order limits without impact on the Proposed Development. This includes any development authorised by a general development order as well as an express planning permission. The article has its basis on provisions included in the Northampton Gateway Rail Freight Interchange Order 2019 and West Midlands Rail Freight Interchange Order 2020. It also secures that the provisions of the DCO will not apply to development carried out pursuant to a separate planning permission.

9. Schedules

- 9.1 **Schedule 1** describes the Proposed Development in detail, split into
- 9.1.1 Part 1, which describes the works which will comprise the Authorised Development by reference to:
 - 9.1.1.1 a number of 'Work numbers', each of which represents different elements of the Authorised Development, and
 - 9.1.1.2 a description of the associated development related to the offshore and onshore works;
 - 9.1.2 Part 2 which describes ancillary development.
- 9.2 This split of the Authorised Project between different work numbers and associated development separately enables the Order to refer to distinct parts of the Authorised Project by citing the relevant work number and for the various works as authorised to be identified by reference to the Works plans.
- 9.3 The ancillary development does not form part of the Authorised Development for which development consent is needed, but the works listed in this section comprise works which are required to be carried out to facilitate the development of the Authorised Development.
- 9.4 The works set out in Parts 1 and 2 of Schedule 1 to the Order are explained in paragraph 5 above.
- 9.5 Part 3 of Schedule 1 sets out the requirements which apply to the construction and operation of the Authorised Project under the Order, its maintenance, and subsequent decommissioning. As noted above in section 6, requirements 2 to 9 specify the parameters which apply to the Authorised Project.
- 9.6 The remaining requirements are closely related to the mitigation set out in the ES (Application Document Ref. 6) and the Commitments Register (Application Document Ref. 7.2). Prior to describing the individual requirements it is appropriate to consider requirement 10. This requires the submission of a programme identifying the stages of works, in accordance with which the various stages of the onshore works will be constructed. The approved details then operate to enable the submission of details pursuant to a number of the requirements, and their approval, on a staged basis so as to allow onshore site preparation works and subsequent construction to proceed on a similarly staged basis. The requirement

draws a distinction between onshore site preparation works and other works comprising the onshore works to enable distinct programmes to be submitted so as to allow a proportionate level of detail to be submitted and approved in respect of preparatory works, the outcome of which will inform the detail to be submitted for the remaining works.

- 9.7 Submission of details is to be to the relevant planning authority or authorities, which includes the South Downs National Park Authority for the stages of the cable route in the South Downs National Park and in respect of closure or diversion of the National Trail, ~~or~~ the highway authority (following consultation with the South Downs National Park Authority where necessary) or lead local flood authority, and following consultation with other stakeholders where necessary depending on the substance and location of the matter requiring approval. A submission may cover more than one stage of the Authorised Project.
- 9.8 This approach permits an appropriately flexible approach to the discharge of requirements by the Undertaker and an appropriate balance between the details which are required to be provided in respect of solely onshore site preparation works, with more substantive development works not starting until further details are approved, and also allowing development in discrete parts of the Authorised Project (where details are already approved) to commence.
- 9.9 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme, or scheme) specifying how the Undertaker will construct, operate, or maintain the relevant part of the Authorised Project to be submitted for approval to the relevant discharging authority, on a staged basis. The model provisions have been adapted throughout to provide that it is for the specified discharging authority to approve the relevant document rather than the Planning Inspectorate (in place of the Infrastructure Planning Commission).
- 9.10 The Order has also been drafted to provide that where consultation is required under the draft Order it is, in each case, the relevant discharging authority's duty to carry out the consultation prior to approving a document submitted to it (rather than this being the Undertaker's duty before submitting the document). Where it is considered that it would be particularly relevant for the relevant discharging authority to consult a third party, that third party has been named within the relevant requirement.

- 9.11 In all cases where a scheme or plan is to be submitted for approval to an approving authority there is a requirement for the Undertaker to implement the approved scheme or plan.
- 9.12 A similar staged approach to discharge of Requirements has been followed in a number of orders for NSIPs including the Hornsea Three Order and subsequent orders including the Hornsea Four Order, East Anglia One North and Two Orders and the recent Sheringham and Dudgeon Order.
- 9.13 The requirements imposed in Part 3 of Schedule 1 to the Order can be summarised as follows:
- 9.13.1 Requirement 1: *Time limits*- This requirement is based upon the model provisions and required that the authorised project must be commenced within 7 years beginning with the date that the Order comes into force. As described above, this implementation period is considered appropriate for the circumstances of the Proposed Development;
 - 9.13.2 Requirements 2 to 4: *Detailed offshore design parameters* - These requirements set out the detailed design parameters within which the Authorised Project must be constructed. In summary the design parameters are as follows:
 - 9.13.2.1 Requirement 2 sets out the maximum design parameters for the WTGs including a minimum separation distance. Whilst this distance is less than the distance that would apply to either of the types of WTGs that have been assessed in the environmental statement, this is the absolute minimum distance that would be permitted even if smaller wind turbines were installed. It also secures that, notwithstanding the different scenarios assessed in the Environmental Statement, the project comprises turbines of uniform height and rotor diameter;
 - 9.13.2.2 Requirement 3 sets out the maximum design parameters for the offshore substations;
 - 9.13.2.3 Requirement 4 sets out the maximum scour protection for offshore substations by way of footprint and volume.
 - 9.13.3 Requirement 5 stipulates the maximum number of cable circuits and stipulates the maximum length of the cables

compromised in Work Nos. 2 to 5. Further it sets out the total area and volume of cable protection. The total number of cable crossings is limited to 4, unless agreed otherwise with the MMO.

- 9.13.4 Requirement 6 confirms that Works numbered 6 and 7 (the export cable installation under the intertidal area and beach at Climping) will be installed by horizontal directional drilling in accordance with the assessment in the environmental impact assessment and reported in the Environmental Statement. There may only be 4 completed drills. The requirement also confirms that in all other locations along the cable corridor the cable circuits will be installed underground: this is to reduce visual impact particular in, and from, the South Downs National Park. It secures the use of trenchless technology to pass certain obstacles and sensitive receptors as specified in the crossing schedule (Application Document Ref. 6.4.4.1). It also confirms the maximum number of joint bay locations and link boxes, which will be the only visible elements associated with the cable installation following construction and reinstatement of the land required temporarily for the construction works.
- 9.13.5 Requirement 7 confirms the parameters for onshore substations, including the maximum fenced area for the substation comprising Work No. 16 and the total area for the substation extension comprising Work No. 20.
- 9.13.6 Requirement 8 secures that works to construct the onshore substation comprising Work No. 16 (excluding any onshore site preparation works) cannot commence until the relevant planning authority has approved various design details (following consultation with the West Sussex Fire and Rescue Service). Any onshore site preparation works to be undertaken in the substation locations would need to be approved as part of a stage of works comprising the substation works identified pursuant to requirement 10.
- 9.13.7 The pre-commencement details required for submission go beyond those which comprise reserved matters following the grant of outline planning permission. In addition, the details submitted must be in accordance with the design principles set out in the Design and Access Statement submitted with the Application (Application Document Ref.

5.8). The parameters for the development footprint and built structures are provided in this requirement.

- 9.13.8 In addition, the detailed design for the onshore substation must include details for how the design will take account of climate change allowances, the relationship between the development and heritage assets, particularly the adjacent Oakendene Manor. They must also take account of, and be prepared in accordance with approved operational drainage arrangements, and the landscape and ecological management plan to be secured under requirement 12.
- 9.13.9 Importantly the design details will also be required to address the need for the onshore substation to be water neutral once operational to accord with the guidance issued by Natural England in relation to development in parts of Horsham District.
- 9.13.10 Requirement 9 takes a similar approach as requirement 8 but for the connection to the National Grid substation at Bolney. However, there is no requirement for this part of the scheme to demonstrate water neutrality as there will be no impact on water over and above the existing usage at the existing National Grid substation of which the extension works will form a part.
- 9.13.11 As noted above, requirement 10 secures a *programme identifying the stages of works* to allow the onshore elements of the authorised project to be constructed in stages, for site preparation works and subsequent construction works. Following approval of this programme, various of the requirements may be discharged in relation to the discrete stages as approved.
- 9.13.12 Requirement 11 prevents commencement of the offshore works until a decommissioning programme has been submitted to the Secretary of State pursuant to the Energy Act 2004.
- 9.13.13 Requirements 12 and 13 relate to landscaping: the Undertaker is required, before it commences any stage of the onshore works, to submit a written landscape and ecology management plan and associated works programme for the stage, which accords with the outline landscape and ecology management plan, for approval to the relevant planning authority following consultation with the statutory nature conservation body and Historic England where relevant. All landscaping works are required to be carried out in accordance with the

approved documents and the relevant recommendations of appropriate British Standard. If any tree or shrub which is planted is, within the period of ten years following completion of planting for the relevant stage, removed by the Undertaker, dies, or becomes damaged or diseased then it must be replaced in the first available planting season with a specimen of the same species and size.

- 9.13.14 In particular the landscape and ecology management plans for the substations comprising Work No. 16 or 20 must include the adjacent land comprising Work No. 17 where ecological mitigation works are to be carried out, and the plans for these stages must also accord with the relevant parts of the design and access statement.
- 9.13.15 Requirement 14 secures a strategy for biodiversity net gain on a staged basis. The strategy must accord with the information in an appendix 22.15 to the Environmental Statement; chapter 22 of the Environmental Statement reports the assessment of the proposed development's likely significant effects on terrestrial ecology and nature conservation.
- 9.13.16 Requirements 15 and 16 deal with highway accesses and require the submission and approval of the highway authority for an access plan for each new operational, new temporary or altered access. Where the access is in the South Downs National Park that body must specifically be consulted on the submitted plan.
- 9.13.17 Details must include siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the relevant access, and secure that all temporary and permanent accesses are provided to Department for Transport Design Manual for Roads and Bridges design standards or as otherwise agreed with the highway authority; the design standards in this document may not be appropriate for all highways within the onshore Order limits.
- 9.13.18 Requirements 17 and 18 secure operational drainage management. The Undertaker is required to obtain the written approval of the lead local flood authority in respect of an operational drainage plan, which accordance with the outline operational drainage plan submitted as part of the application (application document number 7.1), prior to the construction of each of the Oakendene substation (Work No. 16) and the extension to the National Grid substation

at Bolney (Work No, 20). The lead local flood authority will need to consult with the sewage and drainage authorities as well as the Environment Agency before providing approval.

- 9.13.19 Requirement 19 secures the submission and approval of a written scheme of archaeological investigation, which must accord with the outline written scheme of investigation submitted with the Application (Application Document Ref. 7.9), for each stage of the onshore works prior to their commencement. The requirement also secures that the investigations are carried out, in accordance with the written scheme, which must also securing a programme for post investigation assessment, with provision made for analysis, publication and dissemination. Specific provision is made for actions to be taken where remains of high archaeological significance are identified.
- 9.13.20 Requirement 20: *Public Rights of Way*, requires that prior to the commencement of any stage of the onshore works (which could comprise a site preparation stage) the Undertaker must secure the approval of the highway authority, following consultation with the relevant local planning authority, for a public rights of way management plan for the stage (excluding in relation to public rights of way within the National Trail in the South Downs National Park – see section 9.12.20 below). Each stage specific document must accord with the Outline Public Rights of Way Management Plan submitted with the Application (Application Document Ref. 7.8). The plan must be implemented as approved for the relevant stage.
- 9.13.21 Specific arrangements will be made for the National Trail in the South Downs National Park. No stage of the authorised project within the onshore Order limits which includes the National Trail is to commence until a public rights of way management plan has been submitted to and approved by the South Downs National Park. A Rights of Way and Access Land Communications Plan must also be provided to the highway authority and the South Downs National Park Authority) prior to commencement of any stage of the onshore works. The approved plan must then be implemented during the relevant stage of the Authorised Project.
- 9.13.22 Requirement 21: *Open Access Land*, requires submission of and approval for an open access land management plan prior to the commencement of a stage of onshore works

within which an area of open access land is located. The details are to be provided as part of the stage specific public rights of way management plan. It must be implemented as approved.

9.13.23 Requirement 22: *Code of construction practice*, requires the Undertaker to submit to the relevant planning authority (following consultation with the Environment Agency, the statutory nature conservation body, the highway authority and lead local flood authority) a code of construction practice for approval, for each stage of any works landward of MLWS, before that stage commences.

9.13.24 The code of construction practice must accord with the terms of the outline code of construction practice submitted with the Application (Application Document Ref. 7.2). Thereafter the construction works must be undertaken in accordance with the approved code. The requirement specifies what the Code of Construction must include as a minimum, and includes a number of documents that are submitted in outline ~~with as part of~~ the Application.

9.13.25 Requirement 23 secures submission of a construction method statement on a staged basis in respect of each stage of works landwards of Mean Low Water Springs. A statement may cover one or more stages of works. As such a construction method statement is required for the intertidal works and the requirement secures that for this stage the relevant planning authority must consult the MMO in addition to Natural England (who must be consulted on all stages). The onshore construction method statements must accord with the Outline Onshore Construction Method Statement submitted with the Application (Application Document Ref. 7.23)

9.13.26 The requirement specifies what the statements should include as a minimum, and requires that the relevant statement must secure that the cable circuits are installed through the intertidal and coastal area by horizontal directional drilling (**HDD**) and specify details for its location, depth, method and process, and restrict above ground working to pedestrian access only. Restricted access must also be secured to other sensitive locations.

9.13.27 The construction method statements must also secure other parameters for the Authorised Project, including the maximum compound areas at the landfall location and where HDD technologies are being deployed. The

statement must also confirm the details for the cable construction corridor width within the onshore Order limits, and burial depth along the cable corridor; this will confirm where departures from the standard width are required either to expand to accommodate specific installation methodologies or narrow to reduce effects on sensitive receptors. The construction method statement for each stage must be implemented as approved.

- 9.13.28 Requirement 24: *Construction traffic management plan*, requires the Undertaker to submit to and secure approval for a construction traffic management plan from the highway authority (in consultation with the relevant planning authority) before commencement of each stage of the authorised project landwards of Mean Low Water Springs. Each plan must accord with the Outline Construction Traffic Management Plan submitted with the Application (Application Document Ref. 7.6). The requirement specifies what the plan must include, particularly in order to minimise effects on air quality management areas.
- 9.13.29 An onshore construction workforce travel plan is also required to be submitted for approval in accordance with the Outline Construction Traffic Management Plan (Application Document Ref. 7.7).
- 9.13.30 Once approved each of the construction traffic management plans and construction workforce travel plans must be implemented as approved.
- 9.13.31 Requirement 25: *Contamination risk* - prevents commencement of the onshore works in a stage which includes land identified through an initial desk study as potentially affected by contamination, unless a risk-based land contamination assessment has been undertaken, and submitted to and approved by the relevant local planning authority. If unacceptable risks are identified, then a remediation scheme will be required. If previously unidentified contamination is discovered during construction, then works must cease and a report made to the relevant planning authority with appropriate remediation and verification plans put in place. Assessments are to be carried out in accordance with the Environment Agency's Risk Management manual.

- 9.13.32 Requirement 26 secures the preparation of an assessment of coastal erosion and future beach profile estimation, together with mitigation or adaptive management measures for the land within the Order limits in the areas identified for Work Nos. 6 and 7. The assessment must be approved by the Environment Agency. Any approved mitigation or management works must then be implemented.
- 9.13.33 Requirements 27 and 28: *Operational phase maintenance*, requires an operations and management plan (OMP) for each of the Oakendene substation and the extension to the National Grid substation at Bolney respectively to be provided to the relevant planning authority. The requirement specifies the details that must be so notified to the authority.
- 9.13.34 Requirement 29 seeks to control noise during operational phase of the Authorised Development. A scheme is to be submitted to and approved by the relevant planning authority, identifying noise attenuation and mitigation measures to minimise noise from the onshore substation comprising Work No. 16, and to monitor those measures. The scheme must secure the outcomes specified in the design principles, as set out in the Design and Access Statement (Application Document Ref. 5.8). The extension to the National Grid substation at Bolney will be operated in accordance with the arrangements for the existing substation. For the extension to the National Grid substation, no similar provision is required due to the fact that the current noise levels at the operational substation would not increase as a result of the authorised development.
- 9.13.35 Requirement 30: *Control of artificial light emissions during operational phase* prevents the onshore substation comprising Work No. 16 being commenced until an operational light emissions management plan has been submitted and approved for the operational phase of the project. Requirement 31 secures the same for the extension to the National Grid substation at Bolney comprising Work No. 20. Both schemes must be implemented as approved throughout the operational life of the Authorised Development.
- 9.13.36 Requirement 32 secures the submission and approval of an operation travel plan by the relevant planning authority

(following consultation with West Sussex County Council as highway authority) prior to the operation of the Authorised Development. This must accord with the Outline Operational Travel Plan submitted with the Application (Application Document Ref. 7.5). The travel plan must be implemented throughout the operational life to the Authorised Development as approved.

9.13.37 Requirement 33 requires that a skills and employment strategy must be approved by West Sussex County Council following consultation with the relevant planning authorities for all stages of the ~~onshore~~ works (onshore and offshore) prior to the commencement of the ~~onshore works of the~~ Authorised Development (excluding site preparation works). The strategy must accord with the Outline Skills and Employment Strategy submitted with the Application (Application Document Ref. 7.24), and be implemented in accordance with its terms.

9.13.38 Requirement 34 secures submission of a Construction Communication Plan to the relevant planning authorities for approval prior to the commencement of the authorised development. This will detail the communication methods to be used to inform local communities of details of the project's construction (including provision for targeted communication in respect of each discrete construction stage) and must be in accordance with the outline construction communications plan submitted as part of the Application (to be submitted at Deadline 5)(document 8.86).

9.13.39 Requirement 35 secures that notification is given to the relevant planning authority of the permanent cessation of commercial operation of the Authorised Development within 28 days thereof. The undertaker then has six months in which to submit and secure approval for an onshore decommissioning plan, which must then be implemented as approved.

9.13.40 Requirement 36: *Requirement for written approval* confirms that where the approval of a party is required under a requirement that it must be in writing.

9.13.41 Requirement 37: *Amendments to approved details* allows details which have been submitted and approved by the relevant planning authority, highway authority or another approving person to be amended/varied in writing by the relevant discharging authority. This allows for the

adaptation of the approved details and the measures they secure to reflect changes in circumstances. The amendment or variation must always be in accordance with the principles of and assessment undertaken in the environmental statement and must show that the change is not likely to give rise to any new or materially different environmental effects from those assessed in the original environmental statement.

9.13.42 Requirement 38: requires that appropriate mitigation against any adverse effects on the primary surveillance radar at Pease Pottage and NATS' associated air traffic (surveillance and control) services/operations is approved by the Secretary of State in consultation with NATS before the wind turbine generators can be installed. The arrangements must be implemented and maintained throughout the lifetime of the Proposed Development unless it is agreed with NATS that the mitigation is no longer required.

9.13.43 Requirement 39: requires that works landward of mean low water springs must not commence until the undertaker has provided details of the number, specification (including lightning protection) and dimensions of each wind turbine generator and its location to the Brighton City Airport Limited and to the Secretary of State. Within 21 days of the information being provided (unless otherwise agreed), the Applicant must, with any written confirmation received from Brighton City Airport Limited, must provide written confirmation to the undertaker Secretary of State as to whether an 'IFP Scheme' is required to mitigate the effects of the Proposed Development on the instrument flight procedures of Shoreham Airport.

9.13.44 In the event that an IFP Scheme is required: works landward of mean low water springs must not commence until the Secretary of State has confirmed in writing that they are satisfied that the undertaker has put in place a binding undertaking to pay Brighton City Airport Limited for producing and securing the implementation of the IFP Scheme. No wind turbine generator or turbine blade that has been identified as having an impact on instrument flight procedures may be erected or fitted until such time as the Secretary of State receives confirmation from the Brighton City Airport Limited Applicant in writing that an IFP Scheme has been approved by the Airport Operator it has approved an IFP Scheme and the Civil Aviation Authority has evidenced its approval to the same.

9.13.45 Requirement 40: *Vegetation Retention and Removal* requires that no stage of works landward of mean low water springs is to commence until a vegetation retention and removal plan for the stage has been submitted to and approved by the relevant planning authority, which must then be implemented as approved. The plan must accord with the outline vegetation and removal plan and mat cover one or more stages of the onshore works. The Vegetation Retention and Removal Plan is to be submitted at Deadline 5.

9.13.46 Requirements 41 and 42: *Landscape—Horsham District mitigation and enhancement and public right of way and landscape enhancement* respectively require that the authorised development cannot commence until a Horsham District mitigation and landscape enhancement scheme and a public right of way and landscape enhancement scheme have been submitted to and approved by ~~the South Downs National Park Authority and~~ Horsham District Council, and West Sussex County Council respectively. The schemes must accord with principles documents referred to in the requirements and which have been submitted to the Examination (documents 8.105 and 8.95 respectively). The local authorities have confirmed their agreement to this approach as evidenced through the submission of joint position statements with the Applicant to the Examination. The approved—schemes approved pursuant to these requirements must be implemented as approved-

9.13.469.13.47 Requirement 43: *National Park enhancement and furtherance* provides for a National Park enhancement and furtherance scheme in accordance with the National Park enhancement and furtherance principles document (submitted as part of the application – document 8.106) to be submitted to and approved by South Downs National Park Authority prior to the commencement of the Proposed Development (save for onshore site preparation works). The scheme will both compensate for effects within the South Downs Nation Park and seek to further the statutory purposes of the National Park. The South Downs National Park Authority has confirmed its agreement to this approach as evidenced through the submission of a joint position statement with the Applicant to the Examination.

9.13.479.13.48 Requirement 44: *European protected species licence* requires that no phase of the onshore works may commence until final pre-construction survey work has been carried out to establish whether a European protected

species is present on any of the land affected, or likely to be affected, by that phase of the onshore works or in any of the trees to be lopped or felled as part of that phase. Where a European protected species is shown to be present, the relevant phase of the onshore works must not commence until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority or a European protected species licence granted by Natural England. The works must be carried out in accordance with the approved scheme.

- 9.14 **Schedule 2** (*Streets subject to street works*) sets out the streets that would be subject to street works pursuant to Article 9. The streets are identified by reference to markings shown on specified sheets of the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5). The works are primarily required to allow the construction of accesses, but do also include streets where works are required to install the cable circuits across the road through open cut trenching.
- 9.15 **Schedule 3** (*Streets to be temporarily closed*) sets out the streets to be temporarily closed. It references the street and the extent of the street that may be closed by reference to marker points depicted on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5).
- 9.16 **Schedule 4** (*Public rights of way*) Part 1 identifies public rights of way that are to be closed temporarily and the extent of that closure by reference to marker points shown on specified sheets on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5), pursuant to Article 12.
- 9.17 Part 2 of the Schedule sets out the public rights of way to be temporarily closed and a substitute right of way provided during the period of closure in a specified location. The schedule identifies the extent of the way affected by the closure by reference to points shown on specified sheets of Access, Rights of Way and Streets Plan. The proposed diversion is shown indicatively between the same points and is identified by a marker.
- 9.18 Part 3 sets out the public rights of way which may be required to be temporarily closed between the points shown on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5), and a substitute right of way provided, but the location and alignment of the

substitute route has not yet been identified. It is recognised that the three ways in question are important rights of way, being part of the South Downs Way National Trail and the National Cycle Network. In these locations the undertaker will seek to minimise interference with the public right of way following the detailed design process, and will secure the approval of the highway authority for a substitute route and provide the same prior to the temporary closure of the public right of way.

- 9.19 **Schedule 5** (*Access to works*) sets out those accesses that will be created in order for the undertaker to carry out the Authorised Project pursuant to Article 13. These accesses are identified in the schedule by reference to markers shown on specified sheets of the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5).
- 9.20 **Schedule 6** (*Temporary suspension of public access to Access Land*) sets out the areas of land to which the public have rights of access that may require to be temporarily suspended whilst the construction works for the Authorised Project are carried out pursuant to Article 22. These areas are identified by reference to shaded areas shown on the Open Access Land Plan submitted with the Application (Application Document Ref. 2.7).
- 9.21 **Schedule 7** (*Acquisition of new rights and imposition of restrictive covenants only*) specifies both the areas of land in which only new rights may be acquired or restrictive covenants imposed by the Undertaker and the nature of the rights and covenants that may be acquired and imposed.
- 9.22 **Schedule 8** (*Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.
- 9.23 **Schedule 9** (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to Article 33.
- 9.24 **Schedule 10** (*Provisions relating to Statutory Undertakers*) provides protection for statutory undertakers whose assets may be affected by the Authorised Project. The schedule comprises general provisions for the protection of electricity undertakers, gas undertakers, water and sewerage undertakers and operators of the Electronic Communications Code Networks, and specific provisions for National Grid Electricity Transmission, Scottish and Southern

Electricity, Southern Gas Networks, Network Rail and National Highways.

- 9.25 The Protective Provisions remain the subject of ongoing negotiation and consultation with the relevant stakeholders and as such subject to refinement and the current position at Deadline 2 is set out in the table below.

Protective provisions for the benefit of **Status of discussion between the parties**

National Grid Electricity Transmission (NGET)	The Applicant is engaged in ongoing discussions and negotiations with NGET in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The <u>has updated</u> draft DCO submitted at Deadline 6 (document 3.1F) will be updated to reflect the <u>latest agreed</u> position as soon as this is reached. The remaining points which have not been agreed are set out in Appendix 2
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Scottish and Southern Electricity (SSE)	The Applicant is engaged in ongoing discussions and negotiations with SSE in respect of suitable protective provisions. Protective provisions have now been agreed and the draft DCO submitted at Deadline 5 (Application Document Ref. 3.1E) and the parties are currently in the process of negotiating a side agreement, with only the indemnity wording to be agreed.
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Southern Gas Networks (SGN)	The Applicant is <u>has been</u> engaged in ongoing discussions and negotiations with SGN in respect of suitable protective provisions. Protective provisions have now been agreed and the draft DCO submitted at Deadline 5 (Application Document Ref. 3.1E) and the parties are currently in the process of negotiating a side agreement, with only the indemnity wording to be agreed.
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Network Infrastructure Limited (Network Rail)	Rail Limited	<u>The Applicant has updated draft DCO submitted at Deadline 6 (document 3.1F) to reflect the latest position. The remaining points which have not been agreed are set out in Appendix 3.</u> Discussions are ongoing between the parties to deal with the overarching framework
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~~agreement which will govern the protective provisions as well as the asset protection arrangements. The Applicant envisages that the version of the provisions in the dDCO will be updated once that framework agreement has been finalised during the course of the Examination~~

National Highways

~~The Applicant is engaged in ongoing discussions and negotiations with National Highways (NH) in respect of suitable protective provisions. These discussions are reflected in the Statement of Common Ground [REP5-098] submitted to the Examining Authority, and the parties' Deadline 5 Responses [REP5-142 and REP5-122]. The Applicant does not agree with NH that the DCO should include protective provisions that are excessively onerous in the context of the Proposed Development. The Applicant's position is that the protective provisions should reflect the level of protection required to safeguard NH's statutory undertaking and as such the 'standard' protective provisions submitted by NH are not appropriate for inclusion in the DCO. and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The Applicant envisages that the version of the provisions in the dDCO will be updated once that framework agreement has been finalised during the course of the Examination~~

- 9.26 **Schedules 11 and 12** (*Deemed Marine Licence*) sets out the marine licences referred to in Article 39 which would be deemed to be granted for works comprised in the Authorised Project with separate licences for the generation assets and transmission assets. These are further explained below.
- 9.27 **Schedule 13** (*Hedgerows*) sets out the hedgerows that may be removed pursuant to Article 42. Hedgerows which are important, within the meaning given in the Hedgerow Regulations 1997, are identified separately in part 2 of the schedule. All hedgerows that might be removed as a consequence of the Authorised Project are identified by hedgerow numbers which are also depicted on the Tree

Preservation Order and Hedgerow Plan. The extent to which hedgerows will be removed is described in the Vegetation Retention Plan comprising part of the Outline Code of Construction Practice submitted with the Application (Application Document Ref. 7.2) with the aim being to minimise the loss as far as possible. Measures to reinstate hedgerows will be confirmed in the stage specific landscape and ecology plans approved pursuant to requirement 12.

9.28 **Schedule 14** (*Procedure for discharge of certain approvals*) sets out the procedure which is to apply to the discharge of approvals pursuant to the articles and specified requirements of the Order. The procedure follows that advised in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders⁵ and its appendix.

9.29 **Schedule 15** (*Arbitration*) provides a process pursuant to which arbitration shall be conducted. As explained in relation to Article 46 a process for arbitration is secured through the Order which is consistent with the approach followed in the Hornsea Three Order and is consistent with the recommendation in Planning Inspectorate Advice Note 15: Drafting development consent orders. The intention is to achieve a fair, impartial, and binding award on substantive differences between the parties (with the exception of costs) with a timely resolution.

9.30 **Schedule 16** (Documents to be certified) sets out all the documents required to be submitted for certification pursuant to Article 51.

10. **Marine Licences**

Schedule 11 includes the Deemed Marine Licence for generation assets. A standard structure has been developed by previous applications for development consent for offshore wind farms. The Applicant has adopted a similar approach for the Authorised Project.

Deemed marine licence – generation assets

10.1 Part 1 – Licenced activities

10.1.1 Paragraph 1 (Interpretation) – provides the definition and interpretation of key terms used in the licence. Many of the terms included in this paragraph are identical to the terms in Article 2 of the Order.

10.1.2 Paragraphs 2 to 4 (Details of licenced marine activities) - provides details of the licensable marine activities as they relate to the generation assets, both in terms of construction as well as operation. It replicates the

⁵ Republished July 2018 (version 2)

description of the Authorised Development in Schedule 1 of the Order, and it also describes the volumes of substances that may be disposed of as part of construction of the Authorised Development. In the array area a total disposal volume is given which comprises disposals arising from construction of Work Nos. 1 to 3, and part of Work No. 4 in the Array Area, however whilst Works 1 and 2 will be permitted by the licence for the generation assets in Schedule 11, Work Nos. 3 and 4 will be permitted by the licence for transmission assets in Schedule 12. Consequently it is necessary for the disposal budget to apply across both licences and the sum of each not exceed the overall total. A separate volume of material that may be disposed of in the export cable corridor is given solely in the transmission assets licence.

- 10.1.3 Paragraph 5 sets out the grid co-ordinates for the Authorised Development comprising Work No.1. and for Work No.2.
- 10.1.4 Paragraph 6 confirms that the deemed marine licence remains in force until the Authorised Project has been decommissioned.
- 10.1.5 Paragraph 7 confirms that the provisions of section 72(7) of the 2009 Act do not apply to any transfer of the deemed marine licence unless it is a transfer not falling within Article 6 of the Order. This is necessary to ensure that there is no conflict between the operation of Article 5 of the Order and Section 72(7) of the 2009 Act.
- 10.1.6 Paragraph 8 confirms that where the authorised scheme or any licenced activity is to be undertaken in accordance with a plan, protocol or statement approved under the licence, the approved details will include any amendments approved by the MMO.
- 10.1.7 Paragraph 9 confirms that any amendments made to any approved details made pursuant to paragraph 8 must be in accordance with the principles and assessments set out in the Environmental Statement submitted with the Application (Application Document Ref. 6).

10.2 Part 2 – Conditions

- 10.2.1 Conditions 1 and 2 (*Design parameters*) repeat the design parameters included in Schedule 1, Part 3 of this Order.

- 10.2.2 Condition 3 (*Maintenance of the authorised scheme*) confirms that the Undertaker may maintain the authorised scheme except where the terms of the licence provides otherwise. All maintenance works must be carried out in accordance with the operations and maintenance plan as approved by the MMO, and must have been assessed in the Environmental Statement.
- 10.2.3 Condition 4 (*Extension of time periods*) confirms that any time period for either the MMO or the Undertaker may be extended with the agreement of the other party.
- 10.2.4 Condition 5 (*Notifications and inspection*) provides for a procedure of supplying copies of the licence to agents, contractors, restricting the use of contractors and vessels notified to the MMO and publicising commencement of the authorised scheme.
- 10.2.5 Condition 6 (*Aids to navigation*) and 7 (*Colour of Structures*) provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids and a procedure to be followed where an aid to navigation fails. There is also a requirement to provide notice to mariners and notification of the progress of works to Trinity House, the MMO, MCA and UKHO.
- 10.2.6 Condition 8 (*Aviation safety*) requires the Undertaker to notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority, NATS (En Route) plc and the MMO regarding the construction and dimensions of the authorised scheme. An operational lighting scheme for all structures over 60 metres must be submitted to and approved by the Defence Infrastructure Organisation Safeguarding, and Civil Aviation Authority. Lighting must then exhibited as approved for aviation safety, but also a the lowest permissible lighting intensity level to seek to reduce landscape and seascape visual impacts.
- 10.2.7 Condition 9 (*Chemicals, drilling and debris*) sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used, ensuring that all materials are suitable for the marine environment. Provision is made for reporting misplaced or lost rock material and dropped objects, and their location and recovery if so directed by the MMO. Any spillages are also to be reported to the MMO. Disposals with the Order limits must also be reported to the MMO on a twice yearly basis.

- 10.2.8 Condition 10 (*Force majeure*) provides for deposits during an emergency and the requirement for the Undertaker, at its own cost, to recover that deposit unless written approval is otherwise received.
- 10.2.9 Condition 11 (*Pre-construction plans and documentation*) provides a requirement for the Undertaker to obtain the approval, before the commencement of the authorised scheme, of a range of documentation. The documentation includes a design plan showing the layout of the offshore works and in particular the location of the substations which must be located more than 500 metres from the array periphery, being the outermost part of the infrastructure (WTGs) constructed within the array area. In addition a construction programme, construction method statement, project environmental management plan, a monitoring plan, a vessel management plan, a fisheries liaison and co-existence plan, a diver communication plan, a scour protection and cable protection plan, a sensitive features mitigation plan, a piling marine mammal mitigation protocol, a UXO marine mammal mitigation protocol, a cable specification and installation plan, and an aid to navigation management plan, are required to be submitted. Numerous of these plans are to accord with documents submitted with the Application either as standalone documents or as part of an umbrella document: application document references outline project environment management plan including an outline marine pollution contingency plan – 7.11; in principle monitoring plan, which includes specific monitoring provisions for underwater noise - including the ~~outline vessel traffic monitoring strategy~~ – 7.18; outline fisheries and co-existence plan - 7.19; outline diver communication plan – 7.20; outline scour protection and cable protection plan – 7.12; in principle sensitive features mitigation plan – 7.17; draft piling marine mammal mitigation plan – 7.14; draft UXO marine mammal mitigation plan – 7.15; outline cable burial risk assessment – 8.85; and outline cable specification and installation plan – 8.88.
- 10.2.10 Paragraph (2) includes a requirement to submit a written scheme of investigation in accordance with the outline marine written scheme of investigation submitted with the Application (Application Document Ref. 7.13), and the condition sets out what it must cover as a minimum. Paragraph (3) requires Pre-construction archaeological investigations and pre-commencement material operations

which involve intrusive activities must only take place in accordance with a specific written scheme of investigation (which must accord with the details set out in the outline marine written scheme of investigation) which has been submitted to and approved by the MMO.

- 10.2.11 Timings for submission of the pre-commencement documents and surveys and their approval is set out in condition 12. The majority of documents are to be submitted to allow the MMO a four month review period but specific provision is made for the project environmental management plan, the sensitive features mitigation plan and the monitoring plan to be provided with a six month period for review.
- 10.2.12 Condition 13 (*Safety zones*) prevents the authorised scheme from taking place until an application has been made for a safety zone pursuant to the provisions of the Energy Act 2004 insofar as relevant for that part of the authorised scheme.
- 10.2.13 Condition 14 (*Offshore safety management*) requires that no part of the authorised scheme may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MGN654 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.
- 10.2.14 Condition 15 (*Reporting of engaged agents, contractors, and vessels*) requires the Undertaker to provide the MMO details of agents and contractors engaged in the authorised scheme. Only vessels and contractors so notified may undertake the authorised scheme.
- 10.2.15 Condition 16, 17 and 18 provides for the submission of details for the carrying out of monitoring pre-, during and post- construction. The provisions confirm that all survey proposals must be in accordance with the in principle monitoring plan, and require that the objectives of each survey are adequately identified. Condition 19 specifies that monitoring reports must be submitted to the MMO within 4 months following the monitoring to which it relates.
- 10.2.16 Conditions 20 (*Updating of cable monitoring plan*) requires a specific update to the cable monitoring plan following

post installation surveys and throughout the operational life of the authorised scheme.

10.2.17 Condition 21 (*piling*) provides that if piling is to be undertaken as part of the authorised scheme, then this must be done in accordance with the

10.2.17.1 Piling marine mammal mitigation plan; and

10.2.17.2 The sensitive features mitigation plan,

each approved pursuant to condition 11.

10.2.18 Condition 22 (*Reporting of cable protection*) requires the Undertaker to provide the MMO and the statutory nature conservation body with a report of the location and volume of all cable protection used for the authorised scheme not more than four months following completion of construction.

10.2.19 Condition 23 (*Decommissioning*) secures a decommissioning mammal protection protocol ("MMP") prior to decommissioning activities being undertaken. The decommissioning MMP must be implemented as approved.

10.2.20 Condition 24 (*Completion of construction*) secures the submission of a close out report to the MMO, MCA, UK Hydrographic Office and the statutory nature conservation body within three months of the date of completion of construction. No further construction activities may be undertaken under the licence following completion of construction.

10.2.21 Condition 25 (*Reporting of impact pile driving*) requires the submission of information to the Marine Noise Registry where driven or part-driven pile foundations are proposed to be used as part of the foundation installation of the authorised scheme. This includes details of:

10.2.21.1 the expected location and start/end dates of impact pile driving prior to the commencement of each part of construction of the authorised scheme; and

10.2.21.2 the locations and dates of impact pile driving within 12 weeks of completion of impact pile driving for the relevant part of the authorised scheme.

10.3 Schedule 12 includes the deemed marine licence for transmission assets. It largely duplicates the provisions of the deemed marine licence for the generation assets in Schedule 11 of the Order but tailored to reflect the transmission assets including specifying the grid co-ordinates where Work Nos. 3 – 6 may each be carried out.

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APPENDIX 1

Letter dated 7 August 2023 from Rampion Offshore Wind Limited



To:

The Rt Hon Grant Shapps, MP
Secretary of State, Department for Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

7th August 2023

Dear Secretary of State,

Application for development consent for Rampion 2 Offshore Wind Farm

As you are aware, Rampion Offshore Wind Limited ("ROWL") owns and operates the Rampion Offshore Wind Farm ("Rampion 1"). Rampion 1 was granted consent pursuant to the Rampion Offshore Wind Farm Order 2014 ("Rampion 1 Order"), which was made on 16 July 2014.

The development authorised pursuant to the Rampion 1 Order comprised up to 175 turbines with a generating capacity of up to 700 megawatts. However, the project was not built out to its full capacity. Rampion 1 as built comprises, inter alia:


- 116 wind turbine generators (as compared to up to 175 consented), and
- a single offshore substation (with up to two having been consented)

Rampion 1 became operational in 2018.

ROWL confirms its consent to the inclusion of a provision in the development consent order for Rampion 2 which has the effect of modifying the Rampion 1 Order from the date of the grant of development consent for Rampion 2 to secure that no more than 116 wind turbine generators and one offshore substation may be constructed pursuant to the Rampion 1 Order, unless the Rampion 2 Project has not been commenced by the date 7 years from the date of the order granting it development consent. This is the point at which the right to commence the authorised development will expire in accordance with the proposed requirements.

ROWL has agreed the terms of the proposed provision for the Rampion 2 development consent order with the applicant for the Rampion 2 project and would request to be consulted should any amendment to the provision be proposed by the Examining Authority or Secretary of State during the consenting process for the Rampion 2 project.

Yours faithfully


[Andrew Robbins \(Aug 7, 2023 17:16 GMT+1\)](#)
Director Andrew Robbins

Rampion Offshore Wind Limited

APPENDIX 2

Outstanding Points on the NGET Protective Provisions

**Commentary on the outstanding issues between the Applicant and National Grid Electricity Transmission Limited (“NGET”) in relation to the Protective Provisions
1 August 2024**

A mark up the version of the protective provisions submitted at Deadline 6 is appended to this submission, showing the amendments sought by NGET in tracked changes. A commentary of these changes is set out in the table below:

Provision	Applicant’s comment	NGET’s comment
<p>Inclusion of paragraph 5 (Acquisition of land) and associated definition of “deed of consent”.</p>	<p>The Applicant cannot accept restrictions on its ability to exercise its powers under the Order in the absence of a voluntary agreement being in place, since this would prevent the Applicant from being able to build out the Development. The parties are currently in discussions to agree a property agreement, and are seeking to agree suitable wording to address NGET’s concerns in relation to rights sought over its land.</p> <p>The approach adopted by the Applicant is in line with Paragraph 012 of the Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects guidance published by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities (Reference ID 04-012-20240430) which states:</p> <p><i><u>“Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land.”</u></i></p>	<p>The Applicant’s objection to the inclusion of this paragraph is based upon an incorrect premise. Paragraph 5 would not “prevent the Applicant from being able to build out the Development”, for the reasons set out below.</p> <p>Further, its suggestion that this approach is in line with Paragraph 012 of the Planning Act 2008: Content of a Development Consent Order is incorrect. Paragraph 012 is simply making the point that protective provisions must be bespoke to the development under consideration, as is clear from the sentence following the words quoted by the Applicant. In this case, there are very good reasons why NGET requires the protection it is seeking by the inclusion of paragraph 5. Again, these reasons are set out below.</p> <p>NGET is a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008. In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of NGET’s land or rights therein if this can be done without serious detriment to the carrying on of NGET’s undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good.</p> <p>As matters stand, serious detriment to NGET’s undertaking would result from the Project, for the reasons explained by NGET at CAH 1. In summary, this is because NGET needs to retain ownership and control of its land in order to</p>

**Commentary on the outstanding issues between the Applicant and National Grid Electricity Transmission Limited (“NGET”) in relation to the Protective Provisions
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		<p>facilitate customer connections at Bolney substation. The Applicant’s proposal to compulsorily acquire rights and impose restrictions over this land would make it more difficult to site other customers’ cables in this area and may have the effect of sterilising the land entirely for that purpose. NGET’s consent should be required to exercise powers of compulsory acquisition, so that NGET can control the extent of such rights and restrictions.</p> <p>Connections to the National Electricity Transmission System (“NETS”) are a highly valuable resource which NGET, as the relevant statutory undertaker, plays a vital role in coordinating. Such connections are essential if the Government’s ambition for the UK to accelerate its transition from fossil fuel generation to renewable energy is to be achieved. The existing customer connections process – in which NGET, as the relevant statutory undertaker, plays a vital role – coordinates connections to the NETS. The process takes a whole system view rather than considering this issue only in terms of the needs of individual applicants. Allowing the Applicant to compulsorily acquire the rights and restrictions it seeks would unnecessarily interfere with the process and in particular with NGET’s ability to carry out its part in co-ordinating connections. It may prevent others from connecting to the transmission system or make such connections unnecessarily complex. Further, OFGEM would likely be concerned if NGET undertook any steps which would prevent it from managing future connections to the electricity generation system for the benefit of a single customer. It would, therefore, cause serious detriment to NGET’s ability to carry on its undertaking. Requiring NGET’s consent before such compulsory</p>
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**Commentary on the outstanding issues between the Applicant and National Grid Electricity Transmission Limited (“NGET”) in relation to the Protective Provisions
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		<p>acquisition can take place would prevent serious detriment from arising.</p> <p>In any event, the inclusion of paragraph 4 will not prevent the Applicant from constructing the Development. First, as NGET has repeatedly noted during discussions with the Applicant and in its submissions to the Examination, the Applicant does not need the powers of compulsory acquisition it seeks as it will obtain the rights it requires through the existing customer connections process. This is explained in more detail in NGET's Position Statement submitted at Deadline 6. Second, paragraph 12(2) of the Protective Provisions provides that whenever NGET's consent, agreement or approval is required for the taking of any action by the Applicant, this must not be unreasonably withheld or delayed. To the extent that the Applicant considers a refusal by NGET to agree to the use of powers of compulsory acquisition to be unreasonable, it would be able to use the arbitration procedure in the DCO to resolve the dispute by virtue of paragraph 14 of the Protective Provisions. NGET submits that this represents a reasonable balance between the interest of the Applicant and the protection of the NGET's undertaking.</p>
<p>Replacement of “must” with “may in its sole discretion” in paragraph 6(2) (Removal of apparatus) so that National Grid’s has discretion as to whether to assist the undertaker with obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed (rather than must assist)</p>	<p>The Applicant will not have compulsory powers of acquisition outside of the Order limits and therefore requires an absolute obligation on NGET to do what is reasonable in the circumstances to assist it in obtaining these rights. Any costs incurred by NGET will be reimbursed. The wording does not place an unqualified obligation on NGET.</p> <p>The requested drafting was included in the recent The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024/564 and The A66</p>	<p>NGET does not accept the Applicant’s approach of citing other DCOs in which Protective Provisions contain different wording to that sought in this case. There are, equally, DCOs containing NGET’s preferred wording. Cherry-picking examples in this way is unlikely to assist the Examining Authority in relation to this DCO. There are likely to be reasons specific to the DCOs referred to by the Applicant that justify the approach taken in those cases and which may not apply in this case.</p>

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	<p>Northern Trans-Pennine Development Consent Order 2024/360. The remainder of the paragraph makes clear that NGET is not obliged to use its compulsory powers of acquisition to satisfy this obligation.</p>	<p>This paragraph of the Protective Provisions deals with the removal and relocation of NGET’s infrastructure for the Applicant’s benefit. The Protective Provisions should not place an obligation on NGET to assist with this, although its position is that in practice it may do so.</p>
<p>The cap on the indemnity in paragraph 10(9) of £25m per event and the exclusion of works done by NGET within the scope of the indemnity</p>	<p>The Applicant considers that this is a reasonable figure based on the risk profile of the Proposed Development and the interactions with NGET apparatus.</p> <p>It is not appropriate for the Applicant to indemnify NGET where it is carrying out works itself, since NGET will be in control of the works being carried out and can therefore ensure that harm is not caused to its own apparatus.</p>	<p>NGET's Protective Provisions have been drafted so as to provide, when taken as a whole, the level of protection needed for the NETS. The NETS is nationally significant infrastructure in its own right and NGET submits that it should receive the highest degree of protection where a third party’s development could place it at risk.</p> <p>NGET submits that the starting point for consideration of this issue should be that any losses it suffers would not have occurred but for the Applicant’s project and that the Applicant should, therefore, indemnify those losses. This point is of general application but is particularly powerful in the context of the NETS. Risks associated with a third-party project should not be for NGET (and, by extension, bill payers) to bear or subsidise – it is the Applicant that wishes to carry out works that may affect NGET apparatus.</p> <p>The scope, nature, or extent of the potential liabilities or damages that may arise from the Applicant’s actions or omissions is not currently clear or quantifiable and all possible scenarios or contingencies must therefore be covered. An uncapped indemnity is the most efficient and equitable way of addressing any issues or disputes that may arise, without having to specify or limit the types, amounts, or durations of the indemnifiable claims. The Applicant has provided no justification for the specific figure that it has proposed beyond suggesting that it is "reasonable". Given the potentially catastrophic</p>

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		<p>consequences of damage to the NETS and the fact that it will be NGET and its customers who (through no fault of their own) will be exposed to the risk where costs exceed the cap, any indemnity cap should require detailed justification.</p> <p>In relation to the Applicant's second point, the drafting is clear that the Applicant will not be liable where NGET is at fault. The relevant wording is intended to cover situations where NGET is carrying out works on behalf of the Applicant, where NGET has approved plans or required protective works, or is supervising works being undertaken by the Applicant. It is appropriate that the Applicant indemnify any losses incurred in these circumstances, provided they were not caused by NGET's neglect or default.</p>
<p>Provision of 'acceptable security' in paragraph 10(6)</p>	<p>The Applicant does not consider it necessary that both security and insurance is provided. The Applicant is content to provide insurance during the construction period and has included drafting to that effect in the dDCO.</p>	<p>As already noted above, the NETS should be subject to the highest degree of protection. Again, the Applicant has not provided any justification for its position beyond stating that it "does not consider it necessary" to provide the requested security.</p> <p>The insurance and security provisions are required to back up the indemnity provided in the Protective Provisions. Both are required to prevent a situation arising where losses are not recoverable under the insurance policy and the Applicant is unable to meet them from its own resources. A parent company guarantee, or a bond/letter of credit ensures that an entity with sufficient financial standing is able to cover such losses. NGET submits that this is a reasonable requirement where risks would otherwise be borne by NGET and its customers in relation to losses that would not have occurred but for the Applicant's project.</p>

**Commentary on the outstanding issues between the Applicant and National Grid Electricity Transmission Limited (“NGET”) in relation to the Protective Provisions
1 August 2024**

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NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SCHEDULE 1

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1.(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 5 (*benefit of Order*) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to 11(3)b).

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained [\(a\) during the construction period of the authorised works; and \(b\) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works](#) and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker’s liability to National Grid for an amount of not less than £25,000,000.00 (twenty-five million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

Apparatus of National Grid in stopped up streets

3.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 [*temporary closure of streets*], National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

4. The undertaker, in the case of the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

5. Acquisition of land

(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed

between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

5.6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may in its sole discretion~~must~~, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

~~6.7.~~—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

~~7.8.~~—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and

comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

8.9(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and

expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National

Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

~~9.10.~~—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

~~(2)~~(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (*benefit of the Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 8; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

~~(3)~~(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

~~(4)~~(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

~~(5)~~(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any

obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

~~(6)~~(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

~~(a)~~(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

~~(7) Notwithstanding any other provisions of this Schedule, the liability of the undertaker pursuant to the provisions of this paragraph shall not in any circumstances exceed the amount of £25,000,000 per event.~~

~~(8)~~

Enactments and agreements

~~10.~~11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

~~11.~~12.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

~~12.~~13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13.14. Save for differences or disputes arising under paragraph 6(2), 6(4) 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 48 (*arbitration*).

Notices

14.15. Notwithstanding article 56 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

APPENDIX 3

Outstanding Points on the Network Rail Protective Provisions

**Commentary on the outstanding issues between the Applicant and Network Rail Infrastructure Limited (“NR”) in relation to the Protective Provisions
1 August 2024**

A mark up the version of the protective provisions submitted at Deadline 5 is appended to this submission, showing the amendments sought by NR in tracked changes. A commentary of these changes is set out in the table below:

Provision	Applicant’s comment	NR’s comment
<p>The insertion of paragraphs 4(1), (3) and (4) to prevent the exercise of Order powers without NR consent</p>	<p>The Applicant cannot accept restrictions on its ability to exercise its powers under the Order in the absence of a voluntary agreement being in place as to land, in order since this would prevent the Applicant from being able to build out the Development. The parties are currently in discussions to agree a property agreement.</p> <p>This approach is in line with Paragraph 012 of the Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects guidance published by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities (Reference ID 04-012-20240430) which states:</p> <p><i><u>“Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land.”</u></i></p>	<p>Whilst NR understand the Applicant's position, the property agreement, which will be in a form of an easement, is currently being negotiated and the heads of terms are close to being finalised.</p> <p>Paragraphs 4(1),(3) and (4) are crucial to protect NR's assets and Land and is a red line for NR and must be included in the protective provisions. The compulsory acquisition powers include the permanent acquisition of rights benefiting Network Rail. It would severely compromise Network Rail's ability to carry out its statutory functions if the promoter were to have unfettered power to compulsorily acquire rights and interests belonging to Network Rail and on which it relies for its railway undertaking. As such, the wording at paragraph 4 provides that the promoter cannot exercise its powers in relation to railway property without the consent of Network Rail.</p> <p>The wording at paragraph 4(6) of protective provisions, provides that this consent must not be unreasonably withheld (but may be given subject to conditions). Paragraph 4(6) should provide the Promoter with sufficient comfort that Network Rail cannot act unreasonably in relation to this point. The promoter also has the reassurance that the restriction on the exercise of such powers wording only applies in relation of "railway property". Network Rail are not seeking to control the exercise of powers save in respect of railway and land on or in which it has interests or assets.</p>
<p>The cap on the indemnity in paragraph 15(1) of £25m per event and the exclusion of works done by NR within the scope of the indemnity</p>	<p>The Applicant considers that the proposed cap is a reasonable figure based on the risk profile of</p>	<p>The suggested cap of £25m per event is unacceptable. NR do not agree that the risk profile of the Proposed Development, which</p>

**Commentary on the outstanding issues between the Applicant and Network Rail Infrastructure Limited (“NR”) in relation to the Protective Provisions
1 August 2024**

	<p>the Proposed Development and the interactions with NR apparatus.</p> <p>It is not appropriate for the Applicant to indemnify NR where it is carrying out works itself, since NR will be in control of the works being carried out and can therefore ensure that harm is not caused to its own apparatus.</p>	<p>includes significant construction activity under the operational rail network, is of a suitable nature to allow for a cap of the Applicant’s liability particularly where prior detail of design, methodology, and construction are unknown (noting that Network Rail is not funded to take any risk on behalf of the Applicant’s project). This is a scheme solely initiated by the Applicant, and so any costs associated with it should be met in whole by the Applicant.</p> <p>It is NR's preference to include its standard wording in the PPs. The indemnity wording proposed by Network Rail is in a standard form that has been included in other DCOs, including:</p> <ul style="list-style-type: none"> a) Longfield Solar Farm 2023 b) Hornsea Project Four Offshore Wind Farm DCO 2023 c) Keadby 3 Carbon Capture Power Station 2023 <p>The text as drafted ensures that the indemnity right will not be triggered by NR's negligent action. NR cannot accept deletion of this paragraph.</p>
<p>The removal of “(but excluding loss of revenue)” from paragraph 15(6) in respect of costs which may be recovered in respect of losses by train operators</p>	<p>The Applicant's position is that only direct costs should be recoverable, as lost revenues of train operators is too wide and remote a category of loss for it to be responsible for.</p> <p>The Applicant has been unable to conclude a Framework Agreement by Deadline 6 and so has retained this wording on the face of the DCO but remains committed to continuing discussions with Network Rail so that the Framework Agreement can be agreed as soon as possible.</p>	<p>The proposed wording seeks to prevent NR from recovering losses which it would be entitled to recover under common law. It is neither reasonable nor appropriate that a loss suffered by NR as a consequence of the actions of the promoter which would be recoverable under common law should be excluded from being recoverable under the protective provision.</p> <p>NR is also willing to continue negotiations to complete the Framework Agreement as soon as possible.</p>

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers of the Order.

- 3. (1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.
- (2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—
 - (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
 - (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. (1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by the Order);

(b) article 4 (power to maintain the authorised project);

- (c) article 13 (access to works)
 - (d) article 16 (discharge of water);
 - (e) article 18 (authority to survey and investigate the land);
 - (f) article 22 (compulsory acquisition of land);
 - (g) article 23 (Time limit for exercise of authority to acquire land compulsorily or to take land temporarily)
 - (h) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);
 - (i) article 30 (acquisition of subsoil or airspace only);
 - (j) article 26 (power to override easements and other rights);
 - (k) article 32 (temporary use of land for carrying out the authorised project);
 - (l) article 33 (temporary use of land for maintaining the authorised project);
 - (m) article 34 (compulsory acquisition of land – incorporation of the mineral code)
 - (n) article 35 statutory undertakers);
 - (o) article 43 (felling or lopping of trees or shrubs);
 - (p) article 44 (trees subject to tree preservation orders);
 - (q) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
 - (r) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
 - (s) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 16;
 - (t) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;
 - (u) other provisions where the exercise of the powers under that provision would impact on railway property
- in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) Save for in the case of unforeseen event or emergency , the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (statutory undertakers), article 26 (power to override easements and other rights) or article 25 (private rights over land), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

4-5. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker

that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

~~5-6.~~ (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network

Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

~~6-7.~~ The undertaker must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

~~7-8.~~ Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

~~8-9.~~ (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail

may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

~~9-10.~~ The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

~~10-11.~~ (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon

receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

~~41-12.~~ If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

~~42-13.~~ The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

~~43-14.~~ Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

~~44-15.~~ (1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 53 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work.

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission ~~provided that the liability of the undertaker pursuant to the provisions of this paragraph shall not in any circumstances exceed the amount of £25,000,000 per event and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.~~

(2) Network Rail must –

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses ~~(but excluding loss of revenue)~~ reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the

construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

~~15-16.~~ Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

~~16-17.~~ In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

~~17-18.~~ The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

~~18-19.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20 The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 5 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21 The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

22 In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11 the provisions of article 47 (Arbitration) shall not apply and] any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

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