



# Longfield Solar Farm

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# 1. GLOSSARY

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| <b>"1990 Act"</b>                                   | The Town and Country Planning Act 1990 (as amended).  |
| <b>"1991 Act"</b>                                   | The New Roads and Street Works Act 1991 (as amended).   |
| <b>"2008 Act"</b>                                   | The Planning Act 2008 which is the legislation that governs applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.  |
| <b>"APFP Regulations"</b>                           | The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.  |
| <b>"Applicant"</b>                                  | Longfield Solar Energy Farm Limited (Company number 11618210). In the Order, the Applicant is referred to as the "undertaker".  |
| <b>"Application"</b>                                | The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Scheme. A DCO is required pursuant to section 31 of the 2008 Act because the Scheme comprises a NSIP under section 14(1)(a) and section 15 of the 2008 Act by virtue of it being a generating station in England with a capacity of over 50MW.  |
| <b>"Associated Development"</b>                     | Defined under section 115(2) of the 2008 Act as development which is associated with the principal development (i.e. the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development. |
| <b>"Book of Reference"</b>                          | The Book of Reference, which accompanies the Application (and which has been updated throughout the Examination) , which is a reference document providing details of all land ownership interests within the Order Land with reference to the Land Plans.  |
| <b>"Consents and Agreements Position Statement"</b> | The Consents and Agreements Position Statement, which accompanies the Application (and which has been updated at the end of the Examination) , that explains the Applicant's approach to obtaining all other necessary consents to deliver the Scheme beyond the Order.   |

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| <b>"Consultation Report"</b>                            | The Consultation Report, which accompanies the Application <b>[REP1b-007]</b> , that explains the consultation undertaken by the Applicant in accordance with the 2008 Act.   |
| <b>"DCO"</b>  | A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a NSIP.   |
| <b>"Design Statement"</b>                               | The Design Statement which accompanies the Application <b>[APP-205]</b> that explains the approach to the design of the Scheme and appends the Outline Design Principles.   |
| <b>"EIA"</b>  | Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Scheme undertaken in accordance with the EIA Regulations.  |
| <b>"EIA Regulations"</b>                                | The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of NSIPs must be carried out and the procedures that must be followed.   |
| <b>"Environmental Statement"</b>                        | The Environmental Statement which accompanies the Application, documenting the findings of the EIA (as defined in Schedule 13 to the Order).  |
| <b>"Explanatory Memorandum"</b>                         | This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks.  |
| <b>"Framework Construction Traffic Management Plan"</b> | The Framework Construction Traffic Management Plan, which accompanies the Application, outlining the management of construction traffic within the vicinity of the Order Limits (as defined in Schedule 13 to the Order); |
| <b>"Funding Statement"</b>                              | The Funding Statement, which accompanies the Application <b>[APP-015]</b> , that explains how the Scheme will be funded.  |
| <b>"Land Plans"</b>                                     | Sheets 1 - 9 of the plans which accompany the Application, showing the Order Land (as defined in Schedule 13 to the Order).   |
| <b>"MW"</b>   | Megawatt.   |
| <b>"NSIP"</b>   | A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.  |

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| <b>"Order"</b>                       | The Longfield Solar Farm Order 202[*], being the DCO that would be made by the Secretary of State authorising the Scheme, a draft of which has been submitted as part of the Application (and further revisions of which have been submitted throughout the Examination) .  |
| <b>"Order Land"</b>                  | The land over which the Order would authorise compulsory acquisition and temporary possession.  |
| <b>"Order Limits"</b>                | The limits of the land to which the Application relates and shown on the Works Plans.   |
| <b>"Outline Design Principles"</b>   | The Design Principles which are contained in the Outline Design Principles as an appendix to the Design Statement (as defined in Schedule 13 to the Order).   |
| <b>"PV"</b>                          | Photovoltaic.   |
| <b>"Relevant Planning Authority"</b> | Chelmsford City Council and Braintree District Council are each the relevant planning authority for those parts of the Scheme that are in their respective administrative areas.  |
| <b>"Scheme"</b>                      | <p>The development to which the Application relates and which is described in Schedule 1 to the Order. In Schedule 1, the Scheme is described as the "authorised development."</p> <p>The Scheme comprises the construction, operation and maintenance, and decommissioning of a solar photovoltaic (PV) array electricity generating facility and energy storage facility with a total capacity exceeding 50 megawatts (MW) and export connection to the National Grid. The Scheme will be located within the Order Limits and is the subject of the Application.</p> <p>The Scheme is also known as "Longfield Solar Farm".</p> |
| <b>"Secretary of State"</b>          | The Secretary of State for Business, Energy and Industrial Strategy who will determine the Application.   |
| <b>"the Site"</b>                    | The site located in the administrative areas of Chelmsford and Braintree in the county of Essex within which the Scheme is situated.  |
| <b>"Statement of Need"</b>           | The Statement of Need, which accompanies the Application <b>[APP-203]</b> , that explains the national need for the Scheme.   |

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| <b>"Statement of Reasons"</b>                    | The Statement of Reasons which accompanies the Application <b>[APP-014]</b> and sets out the justification for the acquisition or interference with the Order Land.  |
| <b>"Streets, Rights of Way and Access Plans"</b> | The Streets, Rights of Way and Access Plans which accompany the Application, showing the accesses and rights of way that form part of the Scheme (as defined in Schedule 13 to the Order).   |
| <b>"Traffic Regulation Measures Plans"</b>       | The Traffic Regulation Plans which accompany the Application showing the traffic regulation measures of temporary traffic signal and banksman control areas (as defined in Schedule 13 to the Order).  |
| <b>"Works Plans"</b>                             | The plans, which accompany the Application (and which have been updated during the Examination) , showing the Order Limits and the numbered works that form the Scheme and as described in Schedule 1 to the Order (as defined in Schedule 13 to the Order). |

The Explanatory Memorandum also uses terms as defined in Chapter 0 of the Environmental Statement (Glossary) **[APP-032]**.

## 2. INTRODUCTION

### 2.1 Overview

- 2.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant and forms part of the Application.
- 2.1.2 The Applicant is seeking development consent for the Scheme, which in summary comprises the construction, operation, maintenance and decommissioning of a solar PV generating station with a total capacity exceeding 50MW; and a battery energy storage system; export connection to the National Grid; upgrades, modifications and an extension to the existing Bulls Lodge Substation; a new Longfield Substation; and other associated and ancillary development.
- 2.1.3 The Scheme is situated in the districts of Braintree and Chelmsford City in Essex, England. The site is located 5.7 kilometres north west of Chelmsford and approximately 1.1 kilometres to the west of the village of Terling.
- 2.1.4 A DCO is required for the Scheme as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act. This is because it consists of a generating station with a gross electrical output capacity exceeding 50MW, this being a ground mounted solar PV generating station.
- 2.1.5 The DCO, if made, would be known as the Longfield Solar Farm Order 202[\*]. A draft of the DCO has been submitted with the Application.
- 2.1.6 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. It should be read in conjunction with the suite of documents accompanying the Application, in particular the draft Order, the Environmental Statement, the Works Plans, Land Plans, Book of Reference, Statement of Reasons, Consultation Report and Statement of Need. This Explanatory Memorandum has been updated at Deadline 7 of the Examination to reflect amendments made to the draft Order during the Examination.

### 2.2 Longfield Solar Energy Farm Limited

- 2.2.1 The Applicant is a limited company registered at Companies House under company number 11618210 and whose registered office is at Alexander House, 1 Mandarin Road, Rainton Bridge Business Park, Houghton Le Spring, Sunderland DH4 5RA. More information on the Applicant's ownership and corporate structure is set out in the Funding Statement.
- 2.2.2 On 16 December 2021, the Applicant submitted an application for a licence to generate electricity under section 6(1)(a) of the Electricity Act 1989. This licence was granted in May 2022, meaning the Applicant is now a statutory undertaker for the purposes of the Electricity Act 1989 and the 2008 Act.

### 2.3 The Site



2.3.1 The Site comprises 452.93 hectares (ha) and is located within the administrative areas of Chelmsford and Braintree, in the county of Essex. The Scheme will have export connection to the National Grid and it also includes upgrades, modifications and an extension to the existing Bulls Lodge Substation. For the purposes of the Application, the areas within the Site are referred to as follows:

- (a) **The Solar Farm Site** (the main area of the Site where the Solar PV Array Works Areas, BESS Compound, Longfield Substation and other works would be located);
- (b) **The Bulls Lodge Substation Site** (the area of the proposed extension to the existing Bulls Lodge 400kV Substation);
- (c) **Grid Connection Route** (the proposed grid connection, being Work No. 4A in Schedule 1 of the Order); and
- (d) **Site Access Works** (being works to facilitate access to the Scheme, comprising Work No. 9 in Schedule 1 of the Order).

2.3.2 The Order Limits is the area within which the Scheme may be carried out. The Order Limits is shown on the Land Plans and Works Plans. The powers in the Order enabling the acquisition of land, new rights over land and the imposition of restrictions over land, relate to the Order Land only, which is all the land within the Order Limits, with the exception of some small areas which are shown white on the Land Plans and Works Plans and which may be needed only to carry out minor ancillary works set out in the final paragraph of Schedule 1 of the Order, to facilitate the carrying out of the "authorised development".

2.3.3 Information about the Site, including about the current land use and any environmental constraints, is provided in greater detail in Chapter 2 of the Environmental Statement.

## 2.4 The Proposed Scheme

2.4.1 A detailed description of the Scheme can also be found in Chapter 2 of the Environmental Statement. It comprises a generating station of more than 50MW, being the NSIP, and is described in Work No.1 in Schedule 1 to the Order. The Scheme also includes Associated Development, which comprises Work Numbers 2-10 in Schedule 1 to the Order.

2.4.2 All elements of the NSIP are described in the sub-paragraph below and the Associated Development is described from paragraph 2.4.6:

- (a) **Work No. 1** - the ground mounted solar PV generating station with a gross electrical output capacity of over 50 MW including:-
  - i solar panels fitted to mounting structures; and
  - ii balance of solar system (BoSS) plant.

2.4.3 The description of Work No.1 refers to a gross electrical output of over 50MW. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that a

generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.

2.4.4 The description of the NSIP at Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Scheme will be constrained and it is on this basis which the EIA has been undertaken, as is set out in the Environmental Statement and explained further below at Section 2.6 in relation to the "consent envelope". There is no reason to limit the electrical output capacity of the Scheme provided those parameters of the consent envelope are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.

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

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

(a) **Work No. 2** – an energy storage facility comprising -

- i **Work No. 2A** - a battery energy storage system compound (Phase 1). This includes battery energy storage system (BESS) units; transformers and associated bunding; inverters, switch gear, power conversion systems (PCS) and ancillary equipment; containers or enclosures; monitoring and control systems; heating, ventilation and air conditioning (HVAC) systems; electrical cables including electrical cables connecting to Work No.3; fire safety infrastructure; and containers or similar structures (e.g. for housing materials for the BESS facility).
- ii **Works No. 2B** – a battery energy storage system compound (Phase 2). This includes BESS units; transformers and associated bunding; inverters, switch gear, PCS and ancillary equipment; containers or enclosures; monitoring and control systems; heating, ventilation and air conditioning (HVAC) systems; electrical cables including electrical cables connecting to Work No.3; fire safety infrastructure; and containers or similar structures (e.g. for housing materials for the BESS facility).

- (b) **Work No.3** – works in connection with an onsite substation, being Longfield Substation. This includes a substation, switch room buildings and ancillary equipment; control building housing offices, storage and welfare facilities; monitoring and control systems; 400 kilovolt harmonic filter compound; and electrical cables including cables connecting to Work No. 2.
- (c) **Work No.4** – works to lay high voltage electrical cables, access and temporary construction laydown areas for the electrical cables including –
  - i **Work No. 4A** –
    - (i) works to lay electrical cables including one 400 kilovolt cable circuit connecting Work No. 3 to Work No.5;
    - (ii) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and
  - ii **Work No. 4B** – temporary construction laydown areas.
- (d) **Work No.5** – an extension to the existing Bulls Lodge Substation. This includes -
  - i **Work No. 5a** – an electricity switching station. This includes an indoor gas insulated switchgear (GIS) switch hall, ancillary plant rooms, amenities block, storage and workshop units; outdoor air insulated (AIS) switchgear, GIS busbars, two overhead line gantries and associated foundations and structures; a new permanent access road; internal roadways and footpaths; earthworks; car parking area; lighting columns and lighting; perimeter fencing and security cameras; drainage system and a new drainage outfall to Boreham Brook; and new connections from pylons 4VB061A and 4VB061B including pylon modifications; and
  - ii **Work No. 5B** – temporary overhead line alterations including two new temporary pylons and realignment of the existing 400kV overhead line.
- (e) **Work No.6** – works including electrical cables; fencing, gates, boundary treatment and other means of enclosure; works for the provision of security and monitoring measures; landscaping and biodiversity mitigation and enhancement measures; improvement, maintenance and use of existing private tracks; laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, cycle routes and roads; temporary footpath diversions; earth works; SuDs Ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems; up to 10 secondary temporary

construction compounds; and works to divert and underground existing electrical overhead lines.

- (f) **Work No. 7** – temporary construction and decommissioning laydown areas including -
- i **Work No. 7A** – a main temporary construction and decommissioning laydown area on the Solar Farm Site in connection with Work Nos. 1-4, 6 and 8-10 comprising areas of hardstanding; car parking; site and welfare offices, canteens, and workshops; area to store materials and equipment; storage and waste skips; area for download and turning; security infrastructure; site drainage and waste management infrastructure; and electricity, water, waste water and telecommunications connections; and
  - ii **Work No. 7B** – a temporary construction laydown area in connection with the Bulls Lodge Substation extension works comprising areas of hardstanding; car parking; site and welfare offices, canteens, and workshops; area to store materials and equipment; storage and waste skips; area for download and turning; security infrastructure; site drainage and waste management infrastructure; and electricity, water, waste water and telecommunications connections, as well as a new temporary access.
- (g) **Work No. 8** – an office, warehouse and plant storage building comprising office and welfare facilities; storage facilities; waste storage within a fenced compound; parking areas; and a warehouse building for the storage of spare parts, ,operational plant and vehicles.
- (h) **Work No. 9** – works to facilitate construction access to Work Nos.1 to 8 and 10 including creation of accesses from the public highway; creation of visibility splays; and works to widen and surface the public highway.
- (i) **Work No. 10** – areas of habitat management including landscape and biodiversity enhancement measures; habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure; and laying down of permissive paths, signage and information boards.
- (j) The Associated Development includes such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Scheme but only within the Order Limits and insofar as these works or operations are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement, including:-
- i boundary treatments, including means of enclosure;
  - ii bunds, embankments, trenching and swales;

- iii works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- iv surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- v electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the provision of, such services and utilities connections;
- vi works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- vii site establishments and preparation works including site clearance (including vegetation removal, demolition of existing structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- viii works to maintain and repair streets and access roads; and
- ix tunnelling, boring and drilling works

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

2.4.8 **Work No. 2** has a direct relationship with Work No.1 because it will store any electricity generated above immediate market demand, and release it at a time of sufficient demand. This increases the efficiency of the Scheme and permits the most effective capture of energy thereby supporting its operation as a generating station and the export of electricity to the national grid. The battery energy storage system would not be constructed without the solar farm and whilst the solar farm is supported by the battery energy storage system, it is not dependent upon it.

## 2.5 Phasing

2.5.1 The construction of the Scheme is expected to commence not earlier than the first quarter of 2024 and be completed not earlier than the first quarter of 2026. During construction, several temporary construction compounds will be required as well as temporary roadways to facilitate access to all land within the Order Limits. It is not intended that the Scheme will be built in separate phases, with the exception of the BESS. The BESS may be constructed in two phases, with the first part built alongside the solar PV, and a second phase after five years of operation. BESS Phase 1 will be constructed as part of the main 24 month construction phase for the wider Scheme. If only Phase 1 of the BESS is constructed, with the second phase not required, that area of land would instead be utilised for Solar PV Arrays. Requirement 3 in Schedule 2 to the Order requires a written scheme setting out the phasing (that is, the order and timing of which stages of the Scheme will be constructed) of the construction of the Scheme, and the Requirements in Schedule 2 are drafted to allow phased discharge (or discharge for parts of the works) of the requirements and conditions.

## 2.6 Parameters of the Order and the "consent envelope"

2.6.1 The detailed design of the Scheme must be in accordance with the Outline Design Principles, as secured in requirements 7 and 22 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Scheme, such that new technology can be used, while ensuring that the development will always comply with the Environmental Statement. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in PINS' Advice Note 9: Rochdale Envelope (July 2018).

2.6.2 In addition to the Outline Design Principles, other DCO Requirements, certified documents and plans will operate to control and manage the detailed design of the Scheme, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the authorised development is to be undertaken, is explained in more detail below.

2.6.3 Article 3 (*Development consent etc. granted by this Order*) and Schedule 2 (requirements) operate to create a "consent envelope" within which the Scheme would be brought forward:

- (a) The Scheme is described in Schedule 1 of the Order, where it is referred to as the "authorised development". The authorised development is granted consent pursuant to Article 3(1).
- (b) In Schedule 1 the Scheme (the authorised development) is divided into a series of component parts, referred to as "numbered works".
- (c) Article 3(2) requires that the numbered works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans.



- (d) The **design** of the Scheme is also controlled via Requirements 7 and 22 (detailed design approval) which require approval of details of the Scheme's design, and require that the details submitted must accord with the Outline Design Principles. The Outline Design Principles set out the Design Principles (including maximum parameters) of the Scheme and are the basis on which the assessment set out in the Environmental Statement has been undertaken (see further explanation below). The Outline Design Principles capture the important parameters that are necessary to ensure that the Scheme is constructed in such a way that the impacts and effects would not exceed the worst-case scenario assessed in the Environmental Statement.
- (e) In addition to those design principles, the design of the Scheme is also controlled by:
- i in the case of Work No. 2 (battery energy storage), the design requirements set out in the Battery Safety Management Plan (pursuant to Requirement 7);
  - ii approval and implementation of the Landscape and Ecological Management Plan (which is also required to demonstrate how any approaches and measures in the Biodiversity Design Strategy have been adopted in the Scheme's design) (Requirement 9);
  - iii approval and implementation of permanent fencing and means of enclosure (Requirements 10, 23);
  - iv approval and implementation of any surface and foul water drainage scheme or system (Requirements 11, 24);
  - v approval and implementation of a written scheme of archaeological investigation (Requirements 12, 25);
  - vi in the case of numbered works 1, 2 and 3, the requirement for the design of the Scheme to comply with noise rating levels in the Environmental Statement (Requirement 16); and
  - vii provision of permissive paths (Requirement 17).

Where the Outline Design Principles do not include a design principle for an aspect of a numbered work, this is justified on the basis of the environmental impact assessment and having regard to the other controls in place via the measures listed at (i) to (vii) above. The Design Statement provides a useful guide as to how the various design objectives of the Scheme are secured by the consent envelope, and Appendix 2A to the Environmental Statement **[REP6-005]** sets out the Concept Design Parameters, alongside the relevant Design Principle, to make clear how the

detailed design of each element would be controlled by the Outline Design Principles document.

- (f) The **construction** phase of the Scheme (as set out in Schedule 1 of the Order and which is required to be constructed within the areas on the Works Plans) is also controlled by:
- i the implementation of a community liaison group (Requirement 6);
  - ii approval and implementation of a Battery Safety Management Plan (Requirement 8);
  - iii approval and implementation of temporary fencing and means of enclosure (Requirements 10, 23);
  - iv approval and implementation of any surface and foul water drainage scheme or system (Requirements 11, 24);
  - v approval and implementation of a written scheme of archaeological investigation (Requirements 12, 25);
  - vi approval and implementation of a Construction Environmental Management Plan (Requirements 13, 26);
  - vii approval and implementation of a Construction Traffic Management Plan (Requirements 15, 27);
  - viii approval and implementation of the Public Rights of Way Management Plan (Requirement 18);
  - ix approval and implementation of a Soils Resource Management Plan (Requirements 19, 28); and
  - x the Skills, Supply Chain and Employment Plan (proposed section 106 agreement).
- (g) The ongoing **operation and maintenance** of the Scheme is controlled by:
- i approval and implementation of a Battery Safety Management Plan (Requirement 8);
  - ii approval and implementation of the Landscape and Ecological Management Plan (Requirement 9);
  - iii approval and implementation of any surface and foul water drainage scheme or system (Requirements 11, 24);
  - iv approval and implementation of an Operational Environmental Management Plan (Requirements 14, 29);



- v provision and maintenance of permissive paths (Requirement 17);
- vi approval and implementation of a Soils Resource Management Plan (Requirements 19, 28); and
- vii the Skills, Supply Chain and Employment Plan (proposed section 106 agreement).

(h) The **decommissioning** of the Scheme is controlled by:

- i approval and implementation of a Battery Safety Management Plan (Requirement 8);
- ii approval and implementation of a Soils Resource Management Plan (Requirements 19, 28); and
- iii approval and implementation of a Decommissioning Environmental Management Plan (Requirement 20).

2.6.4 The Application seeks flexibility to undertake the Scheme within the above envelope, in particular within the maximum areas and parameters secured via the Works Plans and Outline Design Principles. As set out in Chapter 5 of the Environmental Statement and the individual technical chapters, the environmental impact assessment has assessed the upper extent of the areas and sizes allowed by the Works Plans and Outline Design Principles. As a result, the Environmental Statement has assessed a worst case, and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.

2.6.5 A "Concept Design" has been created, as an illustrative example of a tangible scheme that could be built out within the "consent envelope" (as set out in paragraph 2.6.3 (d) above, the design aspect of which is controlled primarily through the Works Plans and Outline Design Principles). As explained in paragraph 2.6.4, the environmental impact assessments have assessed the Outline Design Principles, however, some disciplines (such as landscape and visual, cultural heritage, noise) have needed some additional detail due to the nature of their assessment (for example they are dependent upon appearance or specific locations of plant). For those disciplines, they have utilised aspects of the illustrative Concept Design in their assessments, and have then done a form of sensitivity test, to ensure that for any other scheme built within the consent envelope, the effects would be no worse than those assessed. In this way the Environmental Statement has assessed, and reports on, the effects of the authorised development for which consent, subject to the appropriate requirements and controls, is sought under the draft DCO.

## 3. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 3.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each article of, and Schedule to, the Order is required for the Scheme.
- 3.1.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**model provisions**"). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions.
- 3.1.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Scheme. This reflects the integrated consenting objective of the 2008 Act regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the 2008 Act, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152 so far as these are relevant to the Scheme. All powers provided for within the Order come within the scope of section 120 of, and Schedule 5 to, the 2008 Act.
- 3.1.4 The provisions contained in the Order are briefly described below and then considered in more detail in the following sections:-
- (a) **Part 1 (Preliminary): Article 1** sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of the defined terms used in the Order;
  - (b) **Part 2 (Principal Powers): Articles 3 to 5** provide development consent for the Scheme, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to the application and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
  - (c) **Part 3 (Streets): Articles 8 to 14** provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to stop up temporarily or divert public rights of way; to enter into agreements with street authorities and provisions relating to traffic regulations;
  - (d) **Part 4 (Supplemental Powers): Articles 15 to 18** set out four supplemental powers relating to the discharge of water; the removal of

human remains; undertaking protective works to buildings; and the authority to survey and investigate land;

- (e) **Part 5 (Powers of Acquisition): Articles 19 to 32** provide for the undertaker to be able to compulsorily acquire the Order Land and rights over and within it, and to be able to temporarily use parts of the Order Land for the construction or maintenance of the Scheme. Article 20 sets out a time limit for the exercise of the compulsory acquisition powers and Article 22 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 28 and 29 provide for the temporary use of land for constructing and maintaining the Scheme. Article 30 provides for powers in relation to the land and apparatus of statutory undertakers;
- (f) **Part 6 (Miscellaneous and General): Articles 33 to 45** include various general provisions in relation to the Order:-
- (g) **Article 33** sets out who has the benefit of the powers contained in the Order and **Article 34** sets out how those powers can be transferred.
- (h) **Articles 35 and 36** provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";
- (i) **Articles 37 and 38** provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Scheme and in relation to trees subject to tree preservation orders;
- (j) **Articles 39 to 45** include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 15); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; and the incorporation of the mineral code.

3.1.5 There are then 16 Schedules to the Order, providing for:

- (a) **Schedule 1** – the description of the Scheme;
- (b) **Schedule 2** - the requirements that apply to the Scheme (i.e. the controls that apply to the Order, similar to planning conditions). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order;
- (c) **Schedule 3** - a list of the local legislation relating railways, electric supply, rivers and other watercourses that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order;
- (d) **Schedules 4 to 8** – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary

traffic regulation measures during construction of the authorised development;

- (e) **Schedule 9** - details of land in which only new rights may be acquired;
- (f) **Schedule 10** - amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- (g) **Schedule 11** - details of land over which temporary possession may be taken;
- (h) **Schedule 12** – details of hedgerows to be removed;
- (i) **Schedule 13** - the documents and plans to be certified by the Secretary of State;
- (j) **Schedule 14** – arbitration rules that apply to most arbitrations in connection with the Order;
- (k) **Schedule 15** - provisions for the protection of statutory undertakers and their apparatus; and
- (l) **Schedule 16** – procedure for the discharge of requirements.

## 4. PURPOSE OF THE ORDER

- 4.1.1 The Scheme involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant requires development consent under the 2008 Act in order to construct, maintain and operate the Scheme. Under section 37 of the 2008 Act, development consent may only be granted by a DCO, following an application to the Secretary of State.
- 4.1.2 The Applicant is therefore making an application to the Secretary of State for a development consent order for the Scheme. In the Order, the Scheme is referred to as the "authorised development". The Order refers to the person authorised to exercise the powers in the Order as the "undertaker" and defines the undertaker as Longfield Solar Energy Farm Limited.
- 4.1.3 The matters for which development consent is sought are summarised from paragraph 4.1.5 below and described more formally in Schedule 1 to the Order.
- 4.1.4 Section 115(1) of the 2008 Act provides that development consent may be granted for Associated Development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the authorised development are either the NSIP or are Associated Development, in order to include them in the Order.
- 4.1.5 The ground mounted solar PV generating station within Work No. 1 in Schedule 1 to the Order constitutes "development for which development consent is required", and as such is the NSIP, as set out at 4.1.1 above.
- 4.1.6 The Order also includes other development which is Associated Development, included at Work Nos. 2 to 10 of Schedule 1 of the Order. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the 2008 Act.
- 4.1.7 The approach taken by the Applicant between those parts of the authorised development which form the NSIP and those parts that form Associated Development follows the approach taken by other DCO applications to date, most notably the Cleve Hill Solar Park Order 2020, which also comprised ground mounted solar PV panel arrays, a battery energy storage system and ancillary development (although it should be noted that at the time the Cleve Hill Solar Park Order was made, battery energy storage over 50MW was classed as a NSIP in its own right). This position has now changed, as summarised above in paragraph 2.4.7.
- 4.1.8 In particular, Work Nos. 2 to 10 are:
- (a) all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);

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

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

## 4.2 Compulsory Acquisition

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

4.2.2 The Book of Reference sets out a description of, and interests included in, the Order Land, split by "plots", and these are shown on the Land Plans (the Book of Reference is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests, and the identification of those interests is explained in both the Book of Reference and the Consultation Report). The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired and other rights and interests that will be affected. The Order and the Book of Reference should be read together with the Land Plans and the Statement of Reasons, which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

4.2.3 Further information on the compulsory acquisition powers sought is provided below.

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

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

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

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

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

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

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

4.3.5 The Order includes protective provisions in respect of statutory undertakers (see Article 41 and Schedule 15). The Applicant has agreed the form of protective provisions with all affected undertakers, except for National Grid and Essex and Suffolk Water (the Applicant expects to reach agreement with these parties



shortly). Further details as to how the tests under sections 127 and 138 of the 2008 Act have been satisfied are set out in the Statement of Reasons.



## 5. PROVISIONS OF THE ORDER

5.1.1 The Order consists of 45 operative provisions, each referred to as articles and 16 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below. Equally, the Scheme is referred to as the "authorised development" in the Order and so for ease this document refers to the "authorised development" when explaining the provisions of the Order.

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

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

5.2.2 Article 2 (*Interpretation*) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:

- (a) definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 13 to the Order;
- (b) the definition of "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary, markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Riverside Energy Park Order 2020**;
- (c) the definition of "authorised development" means the development and Associated Development described in Schedule 1 to the Order, which is development as defined in section 32 of the 2008 Act. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of Associated Development is included in the definition of "authorised development" and is described in detail in Schedule 1, as it is considered that this drafting is neater;
- (d) the definition of "commence" is defined so as to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the

Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as "permitted preliminary works", there may be a requirement to submit details to the Relevant Planning Authority. Where this is the case, the requirement expressly prevents the "permitted preliminary works" from being carried out until those details have been approved.

- (e) a definition of "limits of deviation" has been added and operates by reference to the Works Plans. These are the areas within which the authorised development can be constructed and are required so that the design of the authorised development does not lead to effects that would exceed the worst-case scenario assessed in the Environmental Statement, see further below in relation to Article 3 and Section 2.6 above in relation to the parameters and consent envelope;
- (f) a definition of "maintain" has been added to make clear what activities are authorised under Article 5 (see 5.2.10 below) during the operation of the authorised development;
  - i The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology;
  - ii For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
    - (i) **Maintenance and inspection:** Throughout the life of the Scheme there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to plant failures. It is anticipated that there will be up to 8 permanent staff onsite during the operational phase, with additional staff attending when required for maintenance and cleaning activities;

- (ii) **Repair / Refurbish / Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced;
  - (iii) **Adjust and alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions;
  - (iv) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed;
  - (v) **Reconstruct:** If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;
  - (vi) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part;
- (g) the definition of "Order land" means the land shown on the Land Plans which is within the limits of land to be acquired or used and described in the Book of Reference. This land is coloured pink (land to be permanently acquired), blue (land in which the undertaker can create and acquire new rights), brown (land in which the undertaker can create and acquire new rights, excluding the subsoil) and green (land over which rights of temporary possession only can be exercised by the undertaker). In addition, the Land Plans show land within the Order Limits, but outside of the Order Land, in relation to which no compulsory acquisition powers are included in the Order (that land has been left white). The Land Plans also provide clarity (by way of hatching) as to land that is excluded from both the Order Limits and Order Land;
- (h) the definition of "Order limits" means the limits shown on the Land Plans and Works Plans within which the authorised development may be carried out and land acquired or used;
- (i) the definitions "solar farm works" (meaning that part of the authorised development identified in work numbers 1, 2, 3, 6, 7A, 8, 9 (to the extent work number 9 is to facilitate access to work numbers 1, 2, 3, 6, 7A, 8 and 10), and 10), "grid connection works" (that part of the authorised development identified in work numbers 4 and 9 (to the extent work number 9 is to facilitate access to work number 4)) and "Bulls Lodge substation

works" (that part of the authorised development identified in work numbers 5, 7B and 9 (to the extent work number 9 is to facilitate access to work numbers 5 and 7B)) have been used to differentiate between key elements of the authorised development for the purposes of the Requirements in Schedule 2 and other provisions in the Order;

- (j) the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing a network or service to members of the public and, insofar as they may have assets or apparatus within the Order Limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is precedent for this approach, for instance the **Riverside Energy Park Order 2020**;
- (k) the definition of "street works" has been amended to refer to the works listed in the street works Article (Article 8(1)) so as to ensure consistency between the powers in the Article and the definition itself; and
- (l) the "undertaker" is defined as Longfield Solar Energy Farm Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 33 (see 5.6.3 below).

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

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

5.2.5 Article 3 (*Development consent etc. granted by this Order*) grants development consent for the authorised development. This article is adapted from the model provisions. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The content of the works contained within each work number is described in greater detail in sections 2.4.1 to 2.4.6 above.

5.2.6 Paragraph (2) of Article 3 requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans.

This is in order to provide certainty as to what has been consented by the Order, in respect of which areas of land.

- 5.2.7 The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development within the set limits.
- 5.2.8 Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the authorised development by reference to the Works Plans, while preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement accompanying the application for development consent has assessed the authorised development within the full envelope provided by the limits of deviation, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the Environmental Statement. Further detail in this respect is provided above in Section 2.6.
- 5.2.9 Article 4 (*Operation of generating station*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station. “Generating station” in this Article would include the energy storage facility. The drafting of Article 4 adopted by the Applicant is in keeping with recently made energy DCOs: **The Little Crow Solar Park Order 2022, The Wheelabrator Kemsley K3 Generating Station Order 2021, The Immingham Open Cycle Gas Turbine Order 2020, The Cleve Hill Solar Park Order 2020 and The Drax Power (Generating Stations) Order 2019.**
- 5.2.10 Article 5 (*Power to maintain the authorised development*) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order Limits in order to provide a defined parameter within which this power can be exercised. A definition of “maintain” has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement.
- 5.2.11 Article 6 (*Disapplication of legislation, etc.*) disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act’s integrated approach to consenting. Section 120(5) provides that, subject to specified limitations



and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

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

- (a) section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority, being Essex County Council;
- (b) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
- (c) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;
- (e) section 118 of the Water Industry Act 1991, which relates to the discharge of any trade effluent into public sewers;
- (f) Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) or a water activity permit(s) is required; and
- (g) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 28 and 29 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being articles 28 and 29. This approach has precedent and has been accepted by the Secretary of State; see for example the **Drax Power (Generating Stations) Order 2019**, the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**.

5.2.13 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, the Water Resources Act 1991, the Water Industry Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency and the relevant drainage authorities (Parts 5 and 6 of Schedule 15 to the Order). Such matters

should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Scheme.

- 5.2.14 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, have been sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Environment Agency has agreed to disapply the requirement for flood risk activity permits under Regulation 12 of the Environmental Permitting Regulations (England and Wales) 2016, and protective provisions have been agreed with the Environment Agency. The Applicant has also agreed the disapplication and protective provisions with Essex County Council as the Lead Local Flood Authority. The Applicant's approach to obtaining the other consents required for the Scheme is set out in greater detail in the Consents and Agreements Position Statement.
- 5.2.15 Article 6 also applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Paragraph (2) of Article 6 extends the exception to any trees felled as a result of the authorised development.
- 5.2.16 In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3, which relates to railways, electric supply, rivers and other watercourses within, and in the vicinity of, the Order Limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the Order, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6 disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are inconsistent with how the powers in the Order can be exercised.
- 5.2.17 Article 6(3) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.
- 5.2.18 Article 6(4) is included in the Order to address the overlap between the Order and an extant planning permission relating to works to, and the restoration of, Park Farm, which is part of a consented quarry located at and near to the existing Bulls Lodge Substation (planning permission CHL 1890/87 granted by Essex County Council on 15 June 1990 (as amended)). The land to which the overlap relates is part of the Bulls Lodge substation works on plot 1/2C, as shown on the Land Plans. The undertaker has reviewed the permission and subsequent application to vary the permission and an inconsistency is likely to arise between the Order and the planning permission in respect of mineral extraction and restoration permitted in the

area of overlap. Given that this permission has the potential to interfere with the authorised development, the Applicant deems it necessary to disapply the planning permission over the area of overlap at plot 1/2C to the extent that there is an inconsistency with the authorised development or with anything done or approved under Schedule 2 (requirements).

- 5.2.19 Article 6(4) is included in the Order pursuant to section 120 of the 2008 Act. Section 120 provides for what may be included in an order granting development consent. The disapplication of conditions relating to the Park Farm planning permission would fall within section 120(3), on the basis that it is a matter ancillary to the main development, and section 120(5)(c), which enables the Secretary of State to include any provision that appears to them to be necessary or expedient for giving full effect to the Order.
- 5.2.20 The term "statutory provision" used in section 120(5) of the 2008 Act is defined in section 120(6) as meaning "a provision of an Act or of an instrument under an Act." Section 120(5) is therefore wide enough to exclude conditions attached to a planning permission granted under the 1990 Act, as is being sought under Article 6(4). Planning permission CHL 1890/87 and any subsequent variations are instruments made under the 1990 Act and their provisions, i.e. conditions, are "statutory provisions" for the purposes of section 120(5)(a) and can therefore be modified or excluded.
- 5.2.21 Article 7 (Defence to proceedings in respect of statutory nuisance) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 7 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Scheme and for this reason it is necessary to include the article in the Order. It should be noted that certain Outline Design Principles relate to noise and Requirement 16 relates to operational noise.

### 5.3 Part 3 (Streets)

- 5.3.1 Article 8 (*Street works*) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the 1991 Act to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been extended in paragraph (1)(e) to provide for works which may be required to any culvert under a street. This article is based on Article 9 of **The Immingham Open Cycle Gas Turbine Order 2020**.



- 5.3.2 Article 9 (*Power to alter layout, etc., of streets*) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 then sets out the alterations to streets (split into three parts showing temporary and permanent works respectively). This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street) require the consent of the street authority before they can be exercised, and this is subject to the provisions of Article 43, which seeks to ensure that the consenting process does not inappropriately delay the implementation of the authorised development. This general power is required given the rural location of the Scheme noting that, insofar as possible, the likely locations of the alterations have been identified. Article 9 has precedent and appears in the **Drax Power (Generating Stations) Order 2019** and the **Great Yarmouth Third River Crossing Development Consent Order 2020**.
- 5.3.3 Article 10 (*Construction and maintenance of altered streets*) provides that the permanent alterations to the streets listed in Part 1 of Schedule 5 must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the highway authority (paragraph (1)). For the streets listed in Part 2 of Schedule 5, the permanent alterations must be completed to the reasonable satisfaction of the street authority and be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the street authority (paragraph (2)). Temporary alterations are set out in Part 3 of Schedule 5 and they must be completed to the reasonable satisfaction of the street authority, and they must be maintained at the undertaker's expense (paragraph (3)). The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 5.3.4 Paragraphs (5) and (6) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (7) provides that with the exception of paragraph (1) of this Article, the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in the **Drax Power (Generating Stations) Order 2019**.
- 5.3.5 Article 11 (*Temporary stopping up of public rights of way*) provides for the temporary stopping up, prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of public rights of way for the purposes of constructing or maintaining the authorised development. It is required because, in particular, the undertaker will need to temporarily divert certain public rights of way in order to construct the authorised development, for up to a period of 2-3 weeks at any location as provided for in the Framework Construction Traffic Management Plan (which is secured by Requirement 15). No permanent stopping up or diversion of public rights of way is

required. Schedule 6 is comprised of three parts (public rights of way to be temporarily stopped up and diverted; permanent use of motor vehicles on public rights of way; and temporary management of public rights of way).

- 5.3.6 The authorisation under Article 11 of the use of motor vehicles over public rights of way where there is no public right to use motor vehicles is necessary to enable the undertaker to access parts of the authorised development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 6 to the Order and as shown on the Streets, Access and Rights of Way Plans. Article 11 mirrors Article 11 of the model provisions in providing that where the public right of way is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other public rights of way not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 14 (see below) deals with traffic regulation more widely.
- 5.3.7 Article 11(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any public right of way temporarily stopped up as a temporary working site (which is not in the model provision). Similar wording to this Article has been used in other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, **Article 12 of the Meaford Gas Fired Generating Station Order 2016** and Article 13 of the Riverside Energy Park Order 2020.
- 5.3.8 Article 12 (*Access to works*) is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 7 to the Order. This article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 7 is split into Part 1 (permanent means of access to works) and Part 2 (temporary means of access). The Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the Relevant Planning Authority, in consultation with the highway authority. In addition, the Article also requires the undertaker to restore any access that has been temporarily created under the Order to the reasonable satisfaction of the street authority.
- 5.3.9 Article 13 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets, stopping up, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 8 (street works), 9 (power to alter layout, etc of streets) and 10 (construction and maintenance of altered streets) of the Order and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a

street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development. This provision has precedent in the **Riverside Energy Park Order 2020** and is required so that the undertaker may enter into agreements with the relevant street authorities.

- 5.3.10 Article 14 (*Traffic regulation measures*) provides the undertaker with powers to place temporarily traffic signs and signals in the extents of the roads specified in Schedule 8. This Schedule identifies the relevant roads, and specifies the extents of the roads that will be subject to temporary traffic signal and banksman control areas. These specific measures are required to safely regulate traffic during the construction of the Scheme. These measures are shown on the Traffic Regulation Measures Plans. Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures, for the purposes of the construction or decommissioning of the Scheme. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Scheme. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the authorised development for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act. For example, similar provision is contained within the **Network Rail (Norton Bridge Area Improvements) Order 2014, National Grid (Hinkley Point C Connection Project) Order 2016 and more recently in the Great Yarmouth Third River Crossing Development Consent Order 2020.**

## 5.4 Part 4 (Supplemental Powers)

- 5.4.1 Article 15 (*Discharge of water*) is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, maintenance or decommissioning of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to a drainage authority, these provisions are disapplied as sufficiently detailed provision will be made by the relevant protective provisions (see Parts 6 and 8 of Schedule 15 (protective provisions)).
- 5.4.2 Article 16 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order Limits and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This Article has been included because the undertaker's

environmental surveys indicate that there is potential for archaeological findings within the Order Limits and therefore the undertaker is not able to rule out the presence of any human remains, meaning that a clear statutory authority for removing any human remains that may be discovered is required. This provision is considered necessary so that the discovery of any remains does not delay the implementation of the authorised development.

- 5.4.3 Article 17 (*Protective work to buildings*) is a model provision which is included in most made DCOs to date. Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Land, subject to a number of conditions including the service of 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 5.4.4 Protective works can also be undertaken after the carrying out of the works forming part of the authorised development for a period of 5 years from the date of completion of the part of the authorised development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. A definition of "building" has also been included within the Article for clarity. This Article is required because there are buildings within, and in close proximity to, the Order Land that might feasibly require surveys and protective works as a result of the authorised development.
- 5.4.5 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).
- 5.4.6 Article 18 (*Authority to survey and investigate the land*) is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 5.4.7 The model provision has been modified so that no trial holes are to be made:
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority.

- 5.4.8 Where consent is required, the provisions of Article 43 (procedure in relation to certain approvals etc.) apply, being consent not to be unreasonably withheld or delayed and a period of eight weeks for the relevant authority to make a decision and, if no decision is made, it is deemed to have been given.
- 5.4.9 The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development, and has precedent in the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.

## 5.5 Part 5 (Powers of Acquisition)

- 5.5.1 Article 19 (*Compulsory acquisition of land*) is a model provision that provides for the compulsory acquisition of such land as is required for the authorised development, or to facilitate, or is incidental to, the authorised development. The Article is necessary to secure the delivery of the authorised development as set out in more detail in the Statement of Reasons accompanying the application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 22 (Private rights). Similarly, Article 21 (Compulsory acquisition of rights) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the authorised development. This approach has precedent in the **Riverside Energy Park Order 2020** and the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.
- 5.5.2 Article 19(2) makes clear that the powers in this Article are subject to the powers and restrictions in Article 21 (Compulsory acquisition of rights) and Article 28 (Temporary use of land for constructing the authorised development), to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.
- 5.5.3 Article 20 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 to the Order and has precedent in the majority of made DCOs to date.
- 5.5.4 Article 21 (*Compulsory acquisition of rights*) enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 19 (Compulsory acquisition of land). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 28 (temporary use of land for constructing the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 11 to the Order (i.e. land of which temporary possession may be taken).



- 5.5.5 The Article provides that, in respect of the Order Land set out in Schedule 9 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct and maintain the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 9 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 5.5.6 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenant for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.
- 5.5.7 This Article is a departure from the model provisions, but it has precedent in many DCOs including the **East Anglia Three Offshore Wind Farm Order 2017, the Cleve Hill Solar Park Order 2020 and the Riverside Energy Park Order 2020.**
- 5.5.8 Article 22 (*Private rights*) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 19 (Compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 21 (Compulsory acquisition of rights); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.
- 5.5.9 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.
- 5.5.10 Article 23 (*Application of the 1981 Act*) is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.

- 5.5.11 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 which has precedent in numerous DCOs including the **Drax Power (Generating Stations) Order 2019**.
- 5.5.12 Article 24 (*Acquisition of subsoil only*) is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to Article 19 or Article 21), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners.
- 5.5.13 Article 25 (*Power to override easements and other rights*) provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in Article 19 of the **Immingham Open Cycle Gas Turbine Order 2020**.
- 5.5.14 Article 26 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Article 17 (Protective work to buildings), Article 28 (Temporary use of land for constructing the authorised development) or Article 29 (Temporary use of land for maintaining the authorised development). These modifications have precedent in numerous made DCOs and other legislation including Schedule 14 to the High Speed Rail (**London - West Midlands**) Act 2017, the **Wrexham Gas Fired Generating Station Order 2017** and the **Silvertown Tunnel Order 2018**.
- 5.5.15 Article 27 (*Rights under or over streets*) is a model provision which has been included in the majority of made DCOs to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.
- 5.5.16 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Land, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is

prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.

- 5.5.17 Article 28 (*Temporary use of land for constructing the authorised development*) allows the land specified in Schedule 11 (Land of which temporary possession may be taken) to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the authorised development for which temporary possession of the land was taken. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.
- 5.5.18 Wording has been added to paragraph (1)(a)(ii) in order to allow Article 28 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 5.5.19 New wording has also been added to paragraphs (4) and (5) to take into account that the Applicant may, pursuant to Article 28(1)(a)(ii), temporarily use land that it may compulsorily acquire. New wording has also been added to paragraph (4) to require that the undertaker must not remain in possession of land under this article for longer than reasonably necessary and in any event the period of temporary possession is also subject to a one year limit beginning with the date of final commissioning of the authorised development.
- 5.5.20 Paragraph (10) makes clear that the undertaker cannot compulsorily acquire, nor permanently acquire rights or impose restrictive covenants over, the land specified in Article 28(1)(a)(i) (which is land of which temporary possession only is required). Wording has also been deleted in paragraph (9) to dovetail with the new drafting in paragraph (1). This Article has precedent in Article 26 of **The Wrexham Gas Fired Generating Station Order 2017**.
- 5.5.21 Wording has been added at paragraph (11) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 9 (land in which only new rights etc. may be acquired), and nor are the powers under Article 24 (Acquisition of subsoil only) or Article 27 (Rights under or over streets) precluded.
- 5.5.22 Article 29 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.



- 5.5.23 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders in connection with generating stations, including the **Drax Power (Generating Stations) Order 2019 and the Immingham Open Cycle Gas Turbine Order 2020**.
- 5.5.24 Articles 28 and 29 are broadly based on the model provisions and provide for the payment of compensation for that temporary use of the land.
- 5.5.25 Article 30 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 41 below) included at Schedule 15 of the Order. Further details on statutory undertakers' land and apparatus is included in the Statement of Reasons. This power is required over the whole of the Order Land and similar wording has been used in other made Orders including the **Wrexham Gas Fired Generating Station Order 2017 and the Immingham Open Cycle Gas Turbine Order 2020**.
- 5.5.26 Article 31 (*Apparatus and rights of statutory undertakers in stopped up streets*) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 15.
- 5.5.27 Article 32 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 31 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

## 5.6 Part 6 (Miscellaneous and General)

- 5.6.1 Article 33 (*Benefit of the Order*) overrides section 156(1) of the 2008 Act (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the Scheme and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the **Drax Power (Generating Stations) Order 2019 and Cleve Hill Solar Park Order 2020**.
- 5.6.2 Article 33 also provides that, without prejudice to the rest of the article, for the Bulls Lodge substation works the benefit of the Order is for the undertaker and National Grid Electricity Transmission Plc. This is because National Grid Electricity Transmission Plc is best placed to carry out all or part of the works to the existing Bulls Lodge Substation, partly within National Grid's operational land. Article 33 also

provides that for numbered work 6(k) the benefit is for the undertaker and UK Power Networks Limited ("**UKPN**"). This is because those works relate to the undergrounding of UKPN's overhead lines, which will largely be undertaken by UKPN. This approach has precedent in orders such as the **Progress Power (Gas Fired Power Station) Order 2015** and the **Drax Power (Generating Stations) Order 2019**.

5.6.3 Article 34 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:

- (a) the transferee or lessee is National Grid Electricity Transmission Plc;
- (b) the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989;
- (c) the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (d) the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

5.6.4 Article 34(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.

5.6.5 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The provision that the undertaker is able to transfer the Order to a holding company or subsidiary is to allow commercial flexibility for the undertaker in the event that it would be preferable that a connected corporate entity takes the benefit of all or part of the Order. Article 34(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State, the Relevant Planning Authorities and Essex County Council in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 34(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017**.

5.6.6 Article 34(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:

- (a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
- (b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;

- (c) the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.

- 5.6.7 This approach has precedent in the **Cleve Hill Solar Park Order 2020**.
- 5.6.8 Article 35 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the Scheme.
- 5.6.9 Article 36 (*Operational land for purposes of the 1990 Act*) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.
- 5.6.10 Article 37 (*Felling or lopping of trees and removal of hedgerows*) is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development; constituting a danger for persons using the authorised development or obstructing or interfering with the passage of construction vehicles. The Article also allows the undertaker to remove those hedgerows specified in Schedule 12 (Hedgerows to be removed) along with the specific purpose of each removal. The removal of vegetation is also controlled via the Outline Design Principles which restrict vegetation loss to the maximum extents shown on the Vegetation Removal Plan [**Figure 10-15 of EN010118-APP-6.3(A)**] and as described in Chapter 10 of the Environmental Statement.
- 5.6.11 The Article provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited.
- 5.6.12 Article 37 does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order ("TPO"). Article 38 (Trees subject to tree preservation orders) provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a

TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. The Article is a model provision included in numerous made DCOs save that it applies generally to any tree subject to a TPO made before and after the date of the Order coming into effect and either within or overhanging the Order Limits. This approach has precedent in the **Cleve Hill Solar Park Order 2020**

- 5.6.13 Article 39 (Certification of plans and documents, etc.) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the Book of Reference, plans and Environmental Statement) to the Secretary of State so that they can be certified as being true copies. The article refers to Schedule 13, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 13 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.
- 5.6.14 Article 40 (Arbitration) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 14 (Arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**, amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 5.6.15 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- 5.6.16 It applies Schedule 14 to the Order, which sets out further detail of the arbitration process. The detail of Schedule 14 is set out at 6.14 below.
- 5.6.17 In addition, Article 40(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 5.6.18 Article 41 (Protective Provisions) provides for Schedule 15, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail at 6.15 below. This is a model provision.
- 5.6.19 Article 42 (*Service of notices*) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and numerous made DCOs.
- 5.6.20 Article 43 (*Procedure in relation to certain approvals etc.*) provides procedures in relation to consents and approvals required pursuant to the Order (other than

Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within eight weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article.

- 5.6.21 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 16 (Procedure for discharge of requirements) (see below).
- 5.6.22 This Article has precedent in Article 38 of The Immingham Open Cycle Gas Turbine Order 2020, and is considered appropriate and justified in order to ensure that the authorised development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.
- 5.6.23 Article 44 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under articles 19, 21, 22, 27, 28, 29 and 30 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the **Wrexham Gas Fired Generating Station Order 2017** and the **Drax Power (Generating Stations) Order 2019**.
- 5.6.24 Article 45 (*Compulsory acquisition of land - incorporation of the mineral code*) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order Limits, and that the Order Limits is located within Mineral Consultation and Safeguarding Areas.



## 6. SCHEDULES

### 6.1 Schedule 1 (Authorised Development)

- 6.1.1 This Schedule describes the authorised development in detail, and split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.
- 6.1.2 The works set out in Schedule 1 to the Order are explained in detail above at section 2.4.1 above.
- 6.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement. This is achieved through the following mechanisms in the Order:
- (a) Article 3 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the Works Plans – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the Environmental Statement.
  - (b) In terms of the detailed design, requirements 7 and 22 of Schedule 2 (see below) prevents the undertaker from commencing any phase of the authorised development until it has obtained the approval of the Relevant Planning Authorities (or authority, as applicable) to the layout, scale, ground levels, external appearance, hard surfacing materials, access, refuse or other storage units, signs and lighting, drainage, water, power and communications cables and pipelines and programme for landscaping.
  - (c) Paragraph (2) of the detailed design requirement requires that the details submitted must accord with the Outline Design Principles and, in the case of Work No. 2 (BESS), the Outline Battery Safety Management Plan. Both the Outline Design Principles and the Outline Battery Safety Management Plan are certified documents pursuant to Article 39 (certification of plans and documents) and Schedule 13 (documents and plans to be certified). The Outline Design Principles contain the maximum parameters for the authorised development and are the same as those used for the assessment of effects in the Environmental Statement. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the Environmental Statement, recognising that the final massings may differ from (but will never be larger than) these maxima.

6.1.4 The combined effect of, and relationship between, these provisions means that the final built form of the authorised development will not give rise to environmental effects beyond those which have been assessed. This approach, and what we have called the "consent envelope" is explained further in Section 2.6 above.

## 6.2 Schedule 2 (Requirements)

6.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the Relevant Planning Authority or other relevant statutory consultee.

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

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

6.2.4 The requirements are drafted in three parts: Part 1 being General Requirements that apply to the authorised development as a whole, Part 2 being requirements relating only to the solar farm works and grid connection works, and Part 3 being requirements relating only to the Bulls Lodge substation works. This approach has been taken to reflect that there are requirements that are relevant only to distinct parts of the authorised development. In addition, within those parts, some of the requirements are drafted with a view to distinguishing between the different specific work numbers, or more generally different parts of the authorised development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker which allows it to (potentially) discharge a requirement in respect of a part of the authorised development and construct that element, while continuing to submit details to discharge the requirement in relation to other parts. This provides an appropriate balance between development not starting until details are approved, and allowing other parts of the authorised development (where details are already approved) to be constructed.

6.2.5 In the undertaker's opinion the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from



the Environmental Statement; enforceable and precise in their language; and reasonable in all other respects.

- 6.2.6 In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan. This is subject to requirement 5, as explained below.
- 6.2.7 Requirement 1 – Interpretation: This provides a definition in relation to "both relevant planning authorities" that applies to this Schedule only, rather than the Order as a whole.

### **Part 1: General Requirements**

- 6.2.8 *Requirement 2 - Commencement of the authorised development:* This requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- 6.2.9 *Requirement 3 – Phasing of the authorised development and date of final commissioning:* This requirement provides that no part of the authorised development may commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the Relevant Planning Authorities. The scheme must be implemented as approved. Notice of the date of final commissioning with respect to the first phase of numbered work 1 to complete commissioning must be given to both Relevant Planning Authorities within 15 working days of the date of final commissioning for that phase.
- 6.2.10 *Requirement 4 – Requirement for written approval:* This requirement provides that where any approval, agreement or confirmation is required under these requirements, then such approval, agreement or confirmation must be provided in writing.
- 6.2.11 *Requirement 5 – Approved details and amendments to them:* This requirement provides that where any documents have been certified under Article 39 and where any plans, details or schemes have been approved by the Relevant Planning Authority (or authorities), the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the Relevant Planning Authority (or authorities), those documents, plans, details or schemes are to be taken to include the amendments approved by the Relevant Planning Authority (or authorities). Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.
- 6.2.12 *Requirement 6 – Community liaison group:* This requirement requires the undertaker to establish a community liaison group prior to commencement of the authorised development. Such group to be in accordance with terms of reference approved by both Relevant Planning Authorities, and to run until the date of final commissioning of the final phase of the authorised development, unless otherwise agreed with the Relevant Planning Authorities.

### **Part 2: Solar Farm Works and Grid Connection Works**

- 6.2.13 *Requirement 7* – Detailed design approval: This requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority (or authorities) before any phase of the solar farm works and grid connection works can commence. The details submitted must be in accordance with the Outline Design Principles and, for Work No. 2, the Outline Battery Safety Management Plan. The solar farm works and grid connection works must be carried out in accordance with the approved details. This is required so that the detailed design accords with the information submitted with the application for development consent. The relevant planning authority must consult with Essex County Council in its role as lead local flood authority in relation to drainage and water.
- 6.2.14 *Requirement 8* – Battery safety management: The requirement states that a Battery Safety Management Plan ("BSMP"), substantially in accordance with the outline battery safety management plan, must be submitted and approved by the Relevant Planning Authorities before commencement of Work No. 2 of the authorised development. The BSMP must be consulted on with the Health and Safety Executive, the Essex County Fire and Rescue Service and the Environment Agency and must be implemented as approved.
- 6.2.15 *Requirement 9* – Landscape and ecological management plan: The requirement stipulates that no phase of the solar farm works and grid connection works may commence until a written landscape and ecological management plan (which is substantially in accordance with the outline landscape and ecological management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The landscape ecological management plan must include details of how the plan will secure a minimum of 87% biodiversity net gain during the operation of the authorised development, calculated using The Biodiversity Metric 3.1, published by Natural England on 7 July 2021 and updated to Version 3.1 on 21 April 2022, and how the measures set out in the plan will be managed up until the date the decommissioning and restoration plan is implemented pursuant to Requirement 20 (Decommissioning and restoration). The landscape and ecological management plan is also required to demonstrate how any approaches and measures in the biodiversity design strategy have been incorporated into the design of the solar farm works and grid connection works. The landscape and ecological management plan must be implemented as approved. For this requirement, "commence" includes site clearance involving vegetation removal.
- 6.2.16 *Requirement 10* – Fencing and other means of enclosure: The undertaker is required to obtain the written approval from the Relevant Planning Authority (or authorities, as applicable) for any proposed permanent and temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for each phase prior to commencement of the phase in question of the solar farm works and grid connection works. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any temporary fencing must be removed on completion of the phase of construction of the solar farm works and grid connection works for which it was used.
- 6.2.17 *Requirement 11* – Surface and foul water drainage: This requirement provides that no phase of the solar farm works and grid connection works may commence until details of the surface water drainage scheme and (if any) foul water drainage system

(including means of pollution control) for that phase have been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with Essex County Council as the lead local flood authority. The surface water drainage strategy must be substantially in accordance with the drainage strategy.

- 6.2.18 *Requirement 12 – Archaeology:* This requirement stipulates that no part of the solar farm works and grid connection works may commence until a written scheme of investigation for that part has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The written scheme of investigation must accord with the overarching written scheme of investigation and outline construction environmental management plan. The detailed scheme must include details as specified in the requirement, which would apply if site investigation is required. Any archaeological works or watching brief must be carried out in accordance with the approved scheme, and any site investigation must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition and strategy.
- 6.2.19 *Requirement 13 – Construction and environmental management plan:* Under this requirement, no phase of the solar farm works and grid connection works may commence until a construction environmental management plan (which must substantially accord with the outline construction environmental management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the relevant highway authority and the Environment Agency. For this requirement, “commence” includes remedial works in respect of any contamination or other adverse ground conditions and site clearance involving vegetation removal.
- 6.2.20 *Requirement 14 - Operational environmental management plan:* This requirement provides that prior to the date of final commissioning for any phase of the solar farm works and grid connection works an operational environmental management plan (which must substantially accord with the outline operational environmental management plan) must be submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the relevant highway authority and the Environment Agency.
- 6.2.21 *Requirement 15 - Construction traffic management plan:* This requirement provides that no phase of the solar farm works and grid connection works may commence until a construction traffic management plan (which must substantially accord with the framework construction traffic management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with National Highways and the relevant highway authority.
- 6.2.22 *Requirement 16 – Operational noise:* This requirement stipulates that no part of numbered works 1, 2 or 3 may commence until an operational noise assessment containing details of how the design of those numbered works has incorporated mitigation to ensure the operational noise rating levels as set out in Tables 11-13, 11-14 and 11-15 of Chapter 11 of the Environmental Statement are to be complied with has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable).

- 6.2.23 *Requirement 17* – Permissive paths: This requirement provides that where a phase of the solar farm works includes a permissive path(s), such path(s) must be provided and open to the public prior to the date of final commissioning of that phase, as shown on the permissive paths plans. The permissive paths must be maintained and access by the public permitted for 364 days a year (subject to closures for maintenance or emergencies) until commencement of decommissioning.
- 6.2.24 *Requirement 18* – Public rights of way diversions: This requirement stipulates that no phase of the solar farm works and grid connection works may commence until a public rights of way management plan (substantially in accordance with the outline public rights of way management plan) for any sections of public rights of way to be temporarily closed for that phase (as shown on the streets, access and rights of way plans) has been approved by the Relevant Planning Authority (or authorities, as applicable) in consultation with the relevant highway authority.
- 6.2.25 *Requirement 19* – Soils management: This requirement provides that prior to commencement of construction, the date of final commissioning, and decommissioning, of any phase of the solar farm works and grid connection works, a soils resource management plan (substantially in accordance with the outline soils resource management plan as applicable to the relevant stage) must be approved by the Relevant Planning Authority (or authorities, as applicable).
- 6.2.26 *Requirement 20* – Decommissioning and restoration: This requirement provides that within 12 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, the undertaker must submit to the Relevant Planning Authority (or authorities, as applicable) for its approval a decommissioning environmental management plan for that part which substantially accords with the decommissioning strategy, and a decommissioning travel management plan. The decommissioning environmental management plan must also contain a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials during decommissioning. Decommissioning will commence no later than 40 years following the date of final commissioning of the first phase of numbered work 1 as notified by the undertaker pursuant to requirement 3.
- 6.2.27 *Requirement 21* – Highway improvements: This requirement requires that no phase of the solar farm works and grid connection works (except for Work No. 9) may commence until the necessary accesses, visibility splays and works to widen the public highway to facilitate access to those solar farm works have been carried out and completed.

### **Part 3: Bulls Lodge Substation Works**

- 6.2.28 *Requirement 22* – Detailed design approval: This requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority before any phase of the Bulls Lodge substation works can commence. The details submitted must be in accordance with the Outline Design Principles. The Bulls Lodge substation works must be carried out in accordance with the approved details. The relevant planning authority must consult with Essex County Council in its role as lead local flood authority in relation to drainage and water. This is required

so that the detailed design accords with the information submitted with the application for development consent.

- 6.2.29 *Requirement 23* – Fencing and other means of enclosure: The undertaker is required to obtain the written approval from the Relevant Planning Authority for any proposed permanent and temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for each phase prior to commencement of the phase in question of the Bulls Lodge substation works. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any temporary fencing must be removed on completion of the phase of construction of the Bulls Lodge substation works for which it was used.
- 6.2.30 *Requirement 24* – Surface and foul water drainage: This requirement provides that no phase of the Bulls Lodge substation works may commence until details of the surface water drainage scheme and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the Relevant Planning Authority, in consultation with Essex County Council as the lead local flood authority. The surface water drainage strategy must be substantially in accordance with the drainage strategy.
- 6.2.31 *Requirement 25* – Archaeology: This requirement stipulates that no part of the Bulls Lodge substation works may commence until a written scheme of investigation for that part has been submitted to and approved by the Relevant Planning Authority. The written scheme of investigation must accord with the overarching written scheme of investigation and outline construction environmental management plan. The detailed scheme must include details as specified in the requirement, which would apply if site investigation is required. Any archaeological works or watching brief must be carried out in accordance with the approved scheme, and any site investigation must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition and strategy.
- 6.2.32 *Requirement 26* – Construction and environmental management plan: Under this requirement, no phase of the Bulls Lodge substation works may commence until a construction environmental management plan (which must substantially accord with the outline construction environmental management plan) has been submitted to and approved by the Relevant Planning Authority, in consultation with the relevant highway authority and the Environment Agency. For this requirement, “commence” includes remedial works in respect of any contamination or other adverse ground conditions and site clearance involving vegetation removal.
- 6.2.33 *Requirement 27* - Construction traffic management plan: This requirement provides that no phase of the Bulls Lodge substation works may commence until a construction traffic management plan (which must substantially accord with the framework construction traffic management plan) has been submitted to and approved by the Relevant Planning Authority, in consultation with National Highways and the relevant highway authority.
- 6.2.34 *Requirement 28* – Soils management: This requirement provides that prior to commencement of construction and the completion of any phase of the Bulls Lodge



substation works, a soils resource management plan (substantially in accordance with the outline soils resource management plan as applicable to the relevant stage) must be approved by the Relevant Planning Authority.

- 6.2.35 *Requirement 29* - Operational environmental management plan: This requirement provides that prior to the completion of any phase of the Bulls Lodge substation works an operational environmental management plan (which must substantially accord with the outline operational environmental management plan) must be submitted to and approved by the Relevant Planning Authority, in consultation with the relevant highway authority and the Environment Agency.

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

- 6.3.1 This Schedule lists out the legislation that the Order disapplies that relates to railways, electric supply, rivers and other watercourses in the vicinity of the Order Limits in so far as such legislation is in force and is incompatible with the powers contained within the Order.

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

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

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

- 6.5.1 This Schedule sets out the streets that are to be permanently altered and maintained by the highway authority (Part 1), permanently altered and maintained by the street authority (Part 2) and temporarily altered (Part 3) by reference to the Streets, Access and Rights of Way Plans. This Schedule relates to Articles 9 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).

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

- 6.6.1 This Schedule sets out the locations of the public rights of way to be temporarily stopped up and diverted (Part 1), the public rights of way over which the undertaker seeks authorisation to use motor vehicles permanently (Part 2) and the public rights of way to be managed temporarily (Part 3). It references the Streets, Access and Rights of Way Plans. This Schedule relates to Article 11 (Temporary stopping up of public rights of way).

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

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

## **6.8 Schedule 8 (Traffic regulation measures)**

6.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 14, and contains details of the nature of the measures for each affected street.

## **6.9 Schedule 9 (Land in which only new rights etc. may be acquired)**

6.9.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue and brown on the Land Plans and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 21 (Compulsory acquisition of rights).

## **6.10 Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

6.10.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the Cleve Hill Solar Park Order 2020 and the A303 (Amesbury to Berwick Down) Development Consent Order 2020. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 21 (Compulsory acquisition of rights).

## **6.11 Schedule 11 (Land of which temporary possession may be taken)**

6.11.1 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 28 (Temporary use of land for constructing the authorised development). This land is shown green on the Land Plans, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans.

## **6.12 Schedule 12 (Hedgerows to be removed)**

6.12.1 This Schedule sets out the hedgerows to be removed pursuant to Article 37, listing in Column 2 the number of hedgerow and extent of removal, and in Column 3 the purpose of removal.

## **6.13 Schedule 13 (Documents and plans to be certified)**

6.13.1 This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 39 (Certification of plans and documents, etc.). Where any documents have been updated during the examination period the latest revision is specified with the updated date.

## **6.14 Schedule 14 (Arbitration rules)**

6.14.1 This Schedule relates to Article 40 (Arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further,



the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.

6.14.2 Schedule 14 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

6.14.3 The timetable for the process is as follows:

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

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

## **6.15 Schedule 15 (Protective provisions)**

6.15.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 41 (Protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2).

6.15.2 In addition, each of Parts 3 - 10 contain provisions for the benefit of a particular body and these remaining Parts are agreed with the relevant body with the exception of two undertakers with whom negotiations are ongoing. The versions of the protective provisions contained within Parts 3 - 8 of the Order in most cases represent the provisions agreed with the relevant party. For National Grid the provisions represent the latest point that negotiations have reached and are largely in agreed form. For Essex and Suffolk Water the provisions are the subject of ongoing negotiation, however, the provisions included in the Order have been prepared by the Applicant having reference to protections in place for similar bodies and having regard to the requirements of Essex and Suffolk Water. The relevant bodies are as follows:

- (a) Part 3 - for the protection of Eastern Power Networks Plc and UK Power Networks Limited;
- (b) Part 4 – for the protection of National Grid as electricity undertaker;

- (c) Part 5 – for the protection of the Environment Agency;
- (d) Part 6 – for the protection of drainage authorities;
- (e) Part 7 – for the protection of railway interests;
- (f) Part 8 – for the protection of Essex County Council;
- (g) Part 9 – for the protection of Essex and Suffolk Water; and
- (h) Part 10 – for the protection of East of England and Ambulance Service Trust.

6.15.3 The protective provisions in Part 1 - for the protection of electricity, gas, water and sewerage undertakers, have been amended slightly to include other mains, pipelines or cables not ordinarily falling within the definition of "apparatus" and the owner of such mains, pipelines and cables as a "utility undertaker". This is to capture and protect a water supply to tenants that is privately provided within the Order Limits.

## **6.16 Schedule 16 (Procedure for discharge of requirements)**

6.16.1 This Schedule provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the Relevant Planning Authority requires further information to be provided in relation to that application. Schedules similar to Schedule 16 have been used in various orders and can be seen in a similar form in the Hinkley Point C (Nuclear Generating Station) Order 2013, as amended, and the National Grid (King's Lynn B Power Station Connection) Order 2013. The bespoke process is required in order to ensure that applications under Requirements are dealt with efficiently so that the authorised development is not held up. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be held up by the discharge of requirements. This schedule has been shared with the Relevant Planning Authorities and amended in response to their comments, and is now in agreed form. The Schedule relates to Article 43 (Procedure in relation to certain approvals etc.).