



OAKLANDS FARM SOLAR PARK

Applicant: Oaklands Farm Solar Ltd

Explanatory Memorandum

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The Oaklands Farm Solar Park Development Consent Order 202[]

EXPLANATORY MEMORANDUM

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

“1990 Act”	The Town and Country Planning Act 1990 (as amended)
“2008 Act”	The Planning Act 2008 (as amended) which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State
“APFP Regulations”	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) which set out detailed procedures that must be followed for submitting and publicising applications for NSIPs
“Applicant”	Oaklands Farm Solar Limited
“Application”	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the 2008 Act in respect of the Authorised Development, required pursuant to Section 31 of the 2008 Act because the Authorised Development comprises an NSIP under Section 14(1)(a) and Section 15 of the 2008 Act by virtue of it comprising the construction of a generating station in England or Wales of more than 50 MW
“Application Documents”	The documents submitted as part of the Application process indexed in the Application guide (Document Reference 1.4) including but not limited to the application form, a draft Order, the Environmental Statement, the Outline CEMP and associated plans which set out

the parameters for the Authorised Development

“Associated Development”

Defined under Section 115(2)(a) of the 2008 Act as development which is associated with the development for which development consent is required 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

“Authorised Development”

The development to which the Application relates and which requires a DCO, as described in Schedule 1 to the Order, comprising the Principal Development and Associated Development

“Book of Reference”

The Book of Reference (Document Reference 4.3) accompanying the Application defined in Regulation 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

“Consultation Report”

The Consultation Report (Document Reference 5.1) accompanying the Application which explains the consultation undertaken by the Applicant in accordance with the 2008 Act

“DS”

Design Statement (Document Reference 7.2) accompanying the Application which explains the design and access issues faced by the Authorised Development

“DCO”	A Development Consent Order made by the relevant Secretary of State pursuant to Section 103(1) of the 2008 Act to authorise an NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development
the “draft Order”	The draft Development Consent Order submitted with the Application Documents
“EIA”	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations
“EIA Regulations”	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) setting out how the EIA of NSIPs must be carried out and the procedures that must be followed
“ES”	The Environmental Statement Document Reference 6.1) accompanying the Application documenting the findings of the EIA, including the updates to the ES which have been submitted during the examination of the Application
“Explanatory Memorandum”	This document – it explains the intended purpose and effect of the draft DCO and the authorisations and powers that the Application seeks
“Land Plans”	The plans (Document Reference 2.2) showing the land to be used for the Authorised Development and to be certified

as the “land plans” by the Secretary of State under article 35 of the Order

“LEMP”	Landscape and ecological management plan to be prepared in accordance with Requirement 10 of Part 2 to Schedule 1 of the Order (Appendix 5.6 of the ES – Document Reference 6.1)
“Local Planning Authority”	South Derbyshire District Council
the “made Order”	The Oaklands Farm Solar Park Order, being the DCO that would be made by the Secretary of State authorising the Authorised Development
“MW”	Megawatts
“NSIP”	Defined under Section 14(1) of the 2008 Act
“Order Land”	The land within the limits of land to be acquired or used and described in the Book of Reference
“Order Limits”	The limits shown on the Land Plans within which the authorised development may be carried out and land acquired or used
“PINS”	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State
“Planning Statement”	The Planning Statement (Document Reference 7.1) accompanying the Application which explains the national local policy support for the Authorised

Development together with updates submitted during the examination of the Application

“Principal Development”

The development to which the Application relates and which requires a DCO as described in Schedule 1 to the draft Order

“Statement of Reasons”

The Statement of Reasons (Document Reference 4.1) accompanying the Application which explains the national need for the Authorised Development and sets out the justification for the acquisition or interference with the Order Land

“Secretary of State”

The Secretary of State for Energy Security and Net Zero who will determine the Application

“Undertaker”

The Applicant or such other person who takes the benefit of the DCO following the procedure within Article 5 of the draft Order

“Works Plans”

The plans (Document Reference 2.3) which shown the Work Nos referred to in Part 1 of Schedule 1 to the draft Order

The definitions included in Article 2 (interpretation) of the Order apply to the terminology used in this document. Where a specific term is not defined in this glossary the reader should refer to this Article.

2 SUMMARY

- 2.1 This Explanatory Memorandum explains the purpose and effect of each article of, and Schedules 1 and 2 to, the draft Order, as required by Regulation 5(2)(c) of the APFP

Regulations.¹ It forms part of the Application for a DCO that has been submitted to the Secretary of State under section 37 of the 2008 Act.

2.2 Regulation 5(2)(c) requires this memorandum to explain *“the purpose and effect of provisions in the draft order”*.

2.3 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) (‘the model provisions’). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, it can be helpful to explain variations made in the Order compared to the Model provisions.

3 PURPOSE OF THE ORDER The Applicant is seeking development consent for the Authorised Development, which in summary comprises a solar generating station and all infrastructure required to transmit the power generated to the substation to be constructed onsite and from there on to the local electricity network. It will be located close to the boundaries of East Staffordshire and Lichfield Districts, south east of Walton-on-Trent and south of Drakelow Power Station.

3.2 A detailed description of the Authorised Development is included in Chapter 4 of the Environmental Statement.

Nationally Significant Infrastructure Project

3.3 The Scheme is a NSIP under sections 14(1)(a) and 15(2) of the 2008 Act, as at the time of application, it consists of the construction of a generating station, being a ground mounted solar photovoltaic generating station with a capacity of over 50MW.

3.4 The DCO, if made by the Secretary of State, would be known as The Oaklands Farm Solar Park Order.

3.5 This Explanatory Memorandum should be read in conjunction with the suite of documents that accompanied the Application, in particular; the ES, the Works Plans, the Land Plans, the Consultation Report, the Planning Statement and the Statement of Reasons.

4 AUTHORISED DEVELOPMENT A detailed description of the Authorised Development can be found in Chapter 4 of the ES. It contains a generating station, battery energy storage system, substation and other works which are summarised below:

- (a) **Work No. 1** – a ground mounted solar photovoltaic generating station;
- (b) **Work No. 2** – a battery energy storage system compound;

¹ S.I. 2009/2264

- (c) **Work No. 3** – works in connection with a new 132/33kV onsite substation;
- (d) **Work No. 4** – works to trench and lay 132 kilovolt electrical cables connecting Work No. 3 and Work No. 5;
- (e) **Work No. 4A** – crossing Rosliston Road with electrical cabling;
- (f) **Work No. 4B** – temporary stopping up of watercourses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses;
- (g) **Work No. 4C** – crossing Walton Road with electrical cabling;
- (h) **Work No. 4D** – crossing Coton Road with electrical cabling;
- (i) **Work No. 5** – connection installation works to the existing transmission network substation including works to trench and lay 132 kilovolt electrical cables connecting to Work No. 4C;
- (j) **Work No. 5A** – construction, operational maintenance and decommissioning access for Work No. 5;
- (k) **Work No. 6** - temporary construction and decommissioning of access track and compounds;
- (l) **Work No. 7** – general works;
- (m) **Work No. 8** – works to facilitate access for all works excluding Work No. 5;
- (n) **Work No. 9** – works for areas of habitat management; and
- (o) **Work No. 10** – works to implement new permissive path through Order limits.

4.2 Full descriptions of the works comprising the Principal Development can be found at Part 1 of Schedule 1 to the draft Order.

Associated Development

4.3 Guidance on associated development has been issued by the Secretary of State². In this guidance associated development is described as being “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” (paragraph 6) and requiring “*a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal*”

² ‘Planning Act 2008: associated development applications for major infrastructure projects’ (Department for Communities and Local Government) (April 2013)

development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development” (paragraph 5).

- 4.4 In some cases, there may be some overlap between the Principal Development and the Associated Development. All elements of the proposed development either constitute part of the Principal Development or are associated development within the meaning of section 115(2) of the 2008 Act, and so can properly be authorised by the made Order.

5 ANCILLARY WORKS

- 5.1 The draft Order contains several ancillary works, i.e. provisions not consisting of development.

- 5.2 The draft Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. It is for this reason that under section 117 and 120(5) of the 2008 Act the draft Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.

- 5.3 The Authorised Development includes such other ancillary works as may be necessary or expedient for the purposes of or in connection with the relevant parts of the Authorised Development and which fall within the scope of work assessed by the ES. These include:

- (a) foundations, drainage, culverts and lighting;
- (b) bunds, embankments and swales;
- (c) jointing bays, cable ducts, cable protection, joint protection, manholes, construction of crossing structures, kiosks, marker posts, underground cable marker, tiles and tape, and alighting and other works associated with cable laying;
- (d) altering the course of or otherwise constructing over or under non-navigable watercourses;
- (e) site preparation works, site clearance; earthworks (including soil stripping and storage, site levelling), remediation of contamination;
- (f) working sites, storage areas, temporary vehicle parking, ramps and other means of access, hardstanding, internal roads and tracks, laydown areas, welfare facilities, construction lighting, haulage roads, and other machinery, apparatus, works and conveniences and their restoration;
- (g) landscape and biodiversity mitigation and enhancement;
- (h) horizontal directional drilling; and

- (i) works for the benefit or protection of land affected by the Authorised Development.

5.4 The Application also seeks powers and rights in the draft Order to enable the Undertaker to effectively undertake the maintenance works required for the lifetime of the Authorised Development.

Development Phasing

5.5 The Applicant wishes to retain the flexibility to construct the Authorised Development in phases. The proposed approach to phasing is described in Chapter 4 of the ES and will be carried out in accordance with the specified Works. The solar generating station will operate for 40 years. It will be supported by the battery energy storage system comprising Work No. 2 described in Part 1 of Schedule 1 to the draft Order. A single onsite substation compound will serve the whole development and connect to the distribution network at Drakelow substation.

Parameters in the draft Order

5.6 The design parameters for the Authorised Development are specified and assessed in the ES. The ES captures the important parameters necessary to ensure the Authorised Development is not constructed in such a way that would exceed the worst-case scenario assessed in the ES.

5.7 A DS has been prepared which is in accordance with the details found in the ES. The detailed design of the Authorised Development shall be in accordance with the ES as secured by a requirement of the made Order as proposed at Requirement 5 of Part 2 of Schedule 1 to the draft Order. This approach is intended to provide flexibility in the design of the Authorised Development, such that new technology can be engaged, whilst ensuring compliance with the ES.

6 THE DRAFT ORDER

6.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. Whilst the model provisions have been repealed, the draft Order is based on the model provisions as well as other development consent orders that have been made to date.

Part 1 – Preliminary

Article 1 – Citation and commencement

6.2 Article 1 sets out the name of the Order and the date on which it comes into force.

6.3 This article did not appear in the model provisions. However, it is a standard article that is included in all development consent orders.

Article 2 – Interpretation

- 6.4 Article 2(1) defines terms used in the draft Order. It is a standard article and was included in the model Provisions as article 1.
- 6.5 Definitions to note include:
- (a) “Commence” which makes clear that a number of works that would constitute a ‘material operation’ under the Town and Country Planning Act 1990 do not mean that the authorised development has been ‘commenced’. This enables the Applicant to undertake certain site preparation works prior to the submission of relevant details for approval under the requirements, which the Applicant considers proportionate. The works that are excluded from the definition of commencement are either de minimis or have minimal potential for adverse impacts. They may in some cases need to be carried out in order to comply with the pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). The Applicant should be permitted to carry out low impact preparatory works, and the manner in which they would be controlled, is addressed in Outline Construction Environment Management Plan (Appendix 4.3 of the ES (Document Reference 6.1)).
 - (b) “Maintain” which includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve. This enables clarity as to what is authorised under article 4 (see below) so as to provide the Applicant with certainty.
 - (c) “Order limits” which means the red line boundary for the Authorised Development as shown on the Works Plans and the Land Plans.
- 6.6 Article 2(2) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the works it transpires that the distances are marginally different to those listed in the made Order, there is no issue over whether the made Order permits the works. Thus this provision allows for a small tolerance, although all works will take place within the limits of deviation. It is now common practice to include such provision in development consent orders and the model provisions include similar wording in article 1(3).
- 6.7 Article 2(3) confirms that references to lettered or numbered points and numbered works are to points lettered or numbered on the relevant plans and works numbered in Schedule 1, as appropriate.
- 6.8 Article 2(7) provides that areas given in the Book of Reference are approximate, as this is not covered by Article 2(2). This is intended to clarify the position of the areas in the Book of Reference and the purpose and effect is the same as set out in paragraph 6.6 above.

Part 2 – Principal Powers

Article 3 – Development consent etc. granted by the Order

- 6.9 Article 3 provides the principal power to construct and operate the Authorised Development within the Order limits. Schedule 1 describes the Authorised Development.
- 6.10 Development consent is subject to the provisions of the draft Order, including the requirements listed in Schedule 2. This is based on article 2 of the model provisions.

Article 4 – Maintenance of authorised development

- 6.11 This article sets out the scope within which the undertaker may maintain the Authorised Development. The definition of “maintain” is contained in article 2(1). Article 4 was included in the model provisions as article 3.
- 6.12 Powers of maintenance are subject to the other provisions of the draft Order and any agreements made under the draft Order.

Article 5 – Consent to transfer benefit of Order

- 6.13 This article allows the benefit of the made Order to be transferred or leased to others by the Undertaker. The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the made Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to a specified company in respect of a particular work.
- 6.14 This article is based on article 5 of the model provisions. It differs in that it allows a transfer or grant to a specified company to take place without the Secretary of State’s consent, on the basis that it is appropriate for those companies to be able to carry out those works.
- 6.15 Article 5(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:
- (a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - (b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker; and
 - (c) the benefits or rights conferred under sub-paragraph (2) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.

- 6.16 Article 5 has precedent in The Cleve Hill Solar Park Order 2020, The Little Crow Solar Park Order 2022 and The Longfield Solar Farm Order 2023.

Article 6 – Disapplication, application and modification of legislative provisions

- 6.17 This article provides (in reliance on section 120(5)(a) of the 2008 Act) for the disapplication in relation to the Authorised Development of certain requirements which would otherwise apply under general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.
- 6.18 Article 6 is derived from article 6 of the model provisions. Paragraph (1) provides for the modification of the Neighbourhood Planning Act 2017 insofar as it relates to the temporary possession land. This is on the basis that the temporary possession of land is dealt with by articles 24 and 25, and the wording of those provisions is well established, as explained in detail below. The 2017 Act contains untested provisions that differ from those in the draft Order and although they are not yet in force it is therefore necessary to disapply them in case they should come into force in the future. This approach has precedent in The Cleve Hill Solar Park Order 2020 and The Longfield Solar Farm Order 2023.
- 6.19 Paragraph (2) provides for the modification of Regulation 6 of the Hedgerows Regulations 1997 so that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a DCO made pursuant to the 2008 Act. The Hedgerows Regulations allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to development authorised by a development consent order and therefore this modification is necessary to extend the exception to development authorised by a development consent order. This approach has precedent in The Little Crow Solar Park Order 2022.

Article 7 – Defence to proceedings in respect of statutory nuisance

- 6.20 Article 7 provides that no one 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.
- 6.21 Article 7 is a model provision that has been amended to remove reference to Section 65 (noise exceeding registered level) of the Control of Pollution Act 1974, which has been repealed.

Part 3 – Streets

Article 8 – Street works

- 6.22 Article 8 allows the undertaker to interfere with and execute works in or under the streets within the Order limits for the purposes of the Authorised Development. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991. Certain provisions of the 1991 Act apply to works carried out under this article.
- 6.23 Article 8 is based on article 8 of the model provisions. It departs from the model provisions in that it authorises interference with any street within the Order limits, rather than just those specified in a schedule. The definition of ‘apparatus’ that was included as paragraph (4) in the model provisions is omitted because that term is already defined in article 2.

Article 9 – Power to alter layout, etc., of streets

- 6.24 Article 9 allows the undertakers to alter the layout of or carry out any works in a street. Schedule 3 sets out the temporary and permanent alteration works to streets.
- 6.25 This article is necessary because, to construct, operate, maintain and decommission the Authorised Development, the Undertaker will need to alter street layouts for access to minimise disruption to the local highway network.
- 6.26 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.

Article 10 – Access to works

- 6.27 Article 10 gives the Undertaker powers to form new or to improve existing means of access, set out in Schedule 4 of the Order, for the purposes of the Authorised Development.
- 6.28 This article also provides that other means of access or works can be provided in alternative locations where reasonably required subject to the prior approval of the relevant planning authority, after consultation with the highway authority.
- 6.29 Article 10 is included in the model provisions at article 12.

Article 11 – Temporary stopping up of public rights of way

- 6.30 This article allows for the temporary stopping up, alteration, diversion or restriction of public rights of way for the purposes of the Authorised Development, whilst ensuring that

essential pedestrian access to and from premises along those streets and public rights of way is maintained if necessary (paragraph (3)).

- 6.31 Paragraph (2) confers a power on the Undertaker where a street or public right of way has been temporarily stopped up under this article to use it as a temporary working site.
- 6.32 Under paragraph (5) the consent of the street authority is required where the Undertaker is not the street authority. The street authority may attach reasonable conditions to any consent but must not unreasonably withhold or delay consent.
- 6.33 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.
- 6.34 Paragraph (7) states that a street authority which fails to notify the Undertaker of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the Authorised Development can be delivered by the Applicant in a timely fashion. As an NSIP, the Scheme should not be at risk of being held up due to a failure to respond to an application for consent.
- 6.35 Article 11 is included in the model provisions at article 11.

Article 12 – Agreements with street authorities

- 6.36 Article 12 allows the Undertaker to enter into agreement with the street authority in respect of the temporary stopping up of a street authorised by the Order, and the carrying out of any street works.
- 6.37 Article 12 is included in the model provisions at article 13.

Article 13 – Traffic regulation measures

- 6.38 Article 13 allows the Undertaker to temporarily place traffic signs and signals in the extents of the road specified in column 2 of Schedule 3 for the purposes of, or in connection with, the construction of the Authorised Development.
- 6.39 This approach has been adopted in The Longfield Solar Farm Order 2023.

Part 4 – Supplemental Powers

Article 14 – Discharge of water

- 6.40 Article 14 is a model provision which enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public

sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions.

- 6.41 The reference in the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has been repealed and replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 6.42 Paragraph (9) has been updated from the model provisions to reflect the current approach to the drafting of statutory instruments and so that if the Undertaker makes an application for consent under the provisions of the article but the relevant party does not provide notification of its decision within 28 days of the Undertaker's application then consent will have been deemed to have been given.

Article 15 – Protective works to buildings

- 6.43 The purpose of this article is to allow the Undertaker to carry out protective works to any building affected by the Authorised Development. It was included in the model provisions at article 15.

Article 16 – Authority to survey and investigate the land

- 6.44 This article gives the Undertaker the power to enter land for the purpose of surveying and investigating. It provides that the Undertaker must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused.
- 6.45 Paragraphs (1) to (5) were included in the model provisions as article 16. The model provision has been modified so that trial holes may not be made in a highway or private street without the consent of the highway authority or street authority.
- 6.46 Paragraph (6) provides that if a highway authority or street authority after having received an application to make trial holes within a highway fails to notify the Undertaker of its decision within 28 days of having received the application it will have been deemed to have provided consent.
- 6.47 This approach has been adopted in The Walney Extension Offshore Wind Farm Order 2014, The Hornsea One Offshore Wind Farm 2014, The Hornsea Two Offshore Wind Farm Order 2016, The East Anglia THREE Offshore Wind Farm Order 2017, The Cleve Hill Solar Farm Order 2020 and The Little Crow Solar Park Order 2022.

Part 5 – Powers of Acquisition

Article 17 – Compulsory acquisition of land

- 6.48 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Authorised Development. This is subject to

articles 19 (compulsory acquisition of rights) and 26 (temporary use of land for carrying out the authorised development), which are explained below.

6.49 Article 17 is based on article 18 of the model provisions, with the following differences:

- (a) Paragraph (2) of the model provisions is omitted as the vesting of land is governed by the Compulsory Purchase (Vesting Declarations) Act 1981, which applies as though the Order were a compulsory purchase order by virtue of article 21 (application of the 1981 Act). Article 20 (private rights) also provides for all private rights over land subject to compulsory acquisition to be extinguished.
- (b) Paragraph (3) relating to compensation for loss arising due to the extinguishment or suspension of a private right of way is omitted because that is dealt with separately in article 20(4) and (5).
- (c) Paragraph (2) refers to article 19 (compulsory acquisition of rights) of the draft Order rather than article 25 of the model provisions, which related to the acquisition of land limited to subsoil lying more than 9 metres beneath the surface and is not included in the draft Order.

Article 18 – Time limit for exercise of authority to acquire land compulsorily

6.50 This article gives the Undertaker five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the made Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be implemented should the draft Order be made.

6.51 The article also sets a five-year time limit on the power to take temporary possession of land under article 26, although it does not prevent the Undertaker from remaining in possession of land after that time if it took possession within the five-year limit.

6.52 This article was included in the model provisions at article 20.

Article 19 – Compulsory acquisition of rights

6.53 This article allows for rights over land to be acquired as well as the land itself, and for new rights to be created over land. This includes the power to impose restrictive covenants.

6.54 It provides for such rights as may be required to be acquired by the Undertaker over land which it is authorised to acquire under article 17. The public benefit of this is that it would allow the Undertaker to reduce the area of outright acquisition if possible and rely on rights instead.

- 6.55 Paragraph (2) provides that for the land described in Schedule 6, the Undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes set out in that Schedule.
- 6.56 The power to impose restrictive covenants will allow for the possibility of reducing the area of outright acquisition and thus enable a more proportionate exercise of compulsory powers.
- 6.57 Paragraph (3) provides that where the Undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
- 6.58 Paragraph (4) applies Schedule 7, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the draft Order and the creation of new rights and the imposition of restrictive covenants. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).
- 6.59 For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition/creation of rights and the imposition of restrictive covenants, and not to affect the amount of compensation to which landowners would be entitled.

Article 20 – Private rights

- 6.60 This article provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the draft Order. In so far as the Undertaker acquires land or create new rights over land under the draft Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
- 6.61 Paragraph (3) provides that all private rights over land which the Undertaker takes temporary possession of under the draft Order will be suspended and unenforceable for as long as the Undertaker remains in lawful possession of the land.
- 6.62 Paragraphs (4) to (7) make provision for compensation and for circumstances where rights are preserved.
- 6.63 Article 20 is based on article 22 of the model provisions. It differs from the model provisions in the following respects:
- (a) it applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land;

- (b) paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the Undertaker;
- (c) paragraph (3) is included to clarify the position where the Undertaker takes temporary possession of land;
- (d) paragraph (4) (paragraph 4 of the model provisions) is modified to include a reference to section 152 of the Planning Act 2008;
- (e) sub-paragraph (6)(a)(i) is amended to also refer to the acquisition of rights or imposition of restrictive covenants; and
- (f) paragraph (8) sets out what are considered to be 'private rights over land'. This is necessary to clarify the nature of the private rights to which this article applies.

Article 21 – Application of the 1981 Act

- 6.64 This article applies (with minor modifications to ensure consistency between the terms of the Order and the Act) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the draft Order so the Undertaker has the option to acquire land via the vesting declarations procedure.
- 6.65 The modifications to the 1981 Act contained in this article can be summarised as follows:
 - (a) Paragraph (3) modifies section 1(2) so that section 1 applies to the Undertaker.
 - (b) Paragraph (4) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
 - (c) Paragraph (5) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 18.
 - (d) Paragraph (6) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders. The cross-reference to section 5A is also modified, to reflect that the time limit is set out in article 18.
 - (e) Paragraph (7) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders.
 - (f) Paragraph (8) modifies section 7(1)(a) to omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

- (g) Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure to article 22(3), which has the same effect in relation to the acquisition of subsoil only.
- (h) Paragraph (10) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 24, on the basis that both section 125 and article 24 modify the provisions of the 1965 Act.

6.66 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.

6.67 Article 21 is based on article 23 of the model provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the model provisions came into force, the wording of this article departs significantly from the model provisions and the Undertaker has instead sought to follow the precedent established by recent orders.

Article 22 – Acquisition of subsoil only

6.68 This article allows the Undertaker to acquire, or acquire or create rights in, the subsoil below the land, rather than having to acquire the land itself.

6.69 The purpose of article 22 is to give the Undertaker the flexibility to minimise so far as possible the extent of interest to be acquired, with consequently less impact on landowners and lower payments of compensation, both of which are in the public interest.

6.70 This article is based on article 24 of the model provisions.

Article 23 – Power to override easements and other rights

6.71 Article 23 provides the Undertaker with the power to override easements and other rights and is supplementary to article 17 (compulsory acquisition of land) and article 19 (compulsory acquisition of rights). This article is necessary to give full effect to the Authorised Development.

6.72 Paragraph (2) defines the meaning of “authorised activity” for the purposes of this article and any authorised activity is authorised notwithstanding it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.

- 6.73 Paragraph (4) provides that compensation is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the Compulsory Purchase Act 1965 for any such interference or breach.

Article 24 – Modification of Part 1 of the Compulsory Purchase Act 1965

- 6.74 The purpose of this article is to ensure consistency between the terms of the draft Order and the Compulsory Purchase Act 1965, as applied by section 125 of the 2008 Act.

Article 25 – Rights under or over streets

- 6.75 The purpose of this article is to allow the Undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3).

- 6.76 Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place as set out in paragraphs (4) and (5).

- 6.77 This article was included in the model provisions as article 27.

Article 26 – Temporary use of land for carrying out the authorised development

- 6.78 The purpose of this article is to allow the any of the Order Land be occupied temporarily while the works are carried out. This is land which is required during construction of the Authorised Development but which is not required permanently. Article 26 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.

- 6.79 The article is based on article 28 of the model provisions, with the exception of paragraph (8) of article 28, which has been removed as any permanent acquisition of rights and subsoil permitted by that paragraph is dealt with separately in the draft Order by way of article 19 (compulsory acquisition of rights) and article 22 (acquisition of subsoil only).

- 6.80 Paragraphs (6) to (8) make provision for compensation.

Article 27 – Temporary use of land for maintaining authorised development

- 6.81 This article provides that the Undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the Authorised Development, at any time within a period of five years from the date on which that part of the Authorised Development is first used.

6.82 Paragraphs (6) to (8) make provision for compensation.

6.83 This article was included in the model provisions as article 29.

Article 28 – Statutory undertakers

6.84 This article allows the Undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans and described in the Book of Reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.

6.85 This article is based on article 31 of the model provisions. It differs from the model provisions in that sub-paragraph (c) is omitted as rights are referred to in sub-paragraph (a).

Article 29 – Apparatus and rights of statutory undertakers in stopped up streets

6.86 Article 29 provides that where a street is diverted or its use is temporarily prohibited or restricted under the made Order, any statutory undertaker whose apparatus is under, in, on, along or across the affected street has the same powers as if the Order had not been made, subject to Schedule 10 (protective provisions).

6.87 Article 29 is included in the model provisions as article 32, which has been amended to remove paragraphs (2) onwards to avoid duplication with Schedule 10 (protective provisions).

Article 30 – Recovery of costs of new connections

6.88 This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the Undertaker.

Article 31 – Compulsory acquisition of land – incorporation of the mineral code

6.89 Article 31 incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 to any land acquired by the Undertaker that may contain mines and minerals.

6.90 The effect of this provision is that the Undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions.

6.91 Article 31 is based on the model provisions.

Part 6 – Operations

Article 32 – Operation of generating stations

6.92 Article 32 authorises the Undertaker to operate and use the solar generating station comprising the Authorised Development. Article 32(2) specifically preserves the need for the Undertaker to obtain any other operation consent that may be needed, in addition to the made Order.

6.93 This article was not included in the model provisions but it is considered to be a sensible addition to avoid any potential disagreement about whether the undertaker is authorised to operate, as well as construct, the Authorised Development. It has become common wording in development consent orders including The Kemsley Paper Mill K4 Combined Heat and Power Generating Station Order 2019, The Cleve Hill Solar Park Order 2020 and The Little Crow Solar Park Order 2022.

Part 7 – Miscellaneous and General

Article 33 – Removal of human remains

6.94 This article prescribes a process for the removal and re-interment or cremation of any human remains present within the Order limits. It is necessary to cater for circumstances where previously unidentified remains may be identified during the construction of the Authorised Development.

6.95 Under paragraph (2) the Undertaker is required to publish public notices of the intended removal of the remains. There is then a period of 56 days for any personal representative or relative of the deceased person to give notice to the Undertaker that they intend themselves to carry out the removal, which if accepted by the Undertaker will be carried out at the Undertaker's cost.

6.96 Paragraph (13) confirms that the removal of any remains under this article must be carried out in accordance with any directions given by the Secretary of State.

6.97 Paragraph (15) confirms that section 25 of the Burial Act 1857 (which makes it an offence to remove human remains unless the conditions in that section are complied with) does not apply to a removal carried out in accordance with this article.

6.98 Article 33 was included in the model provisions as article 17.

Article 34 – Operational land for the purposes of the 1990 Act

- 6.99 Article 34 is a model provision which confirms that the consent granted by the made Order is to be treated as a planning permission for the purposes of section 264(3)(a) of the 1990 Act.

Article 35 – Certification of plans, etc.

- 6.100 Article 35 is a model provision which lists various plans and other documents that are to be certified by the Secretary of State as true copied of those documents referred to in the made Order.

Article 36 – Service of notices

- 6.101 This article governs the proper services of notices under the made Order and is considered necessary by the Undertaker because it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner.

- 6.102 This article was not included in the model provisions but it is based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006. This is now a common article in development consent orders, including The Brechfa Forest Wind Farm Connection Order 2016, The Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order 2019 and The Little Crow Solar Park Order 2022.

Article 37 – Felling or lopping of trees or removal of hedgerows

- 6.103 This article allows any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Authorised Development or endanger anyone using it. Compensation is payable for any loss or damage caused.

- 6.104 Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997.

- 6.105 This article is based on article 39 of the model provisions. It differs from the model provisions in that paragraphs (4) and (5) are added to extend the powers of the undertaker to also apply to hedgerows, since these may also need to be removed in order for the authorised development to be carried out.

Article 38 – Trees subject to tree preservation orders

- 6.106 This article provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a tree preservation order or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the Authorised Development. Compensation is provided for any loss or damage caused. This article is a model provision

save for that the article applies generally to any tree subject to a tree preservation order made before and after the date of the made Order coming into effect and encroaching upon or overhanging the Order limits.

Article 39 – Arbitration

- 6.107 The article is an arbitration provision and is a departure from the model provision. This drafting, and that in the associated Schedule 11, is preceded in The Little Crow Solar Park Order 2022 and The Longfield Solar Farm Order 2023. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 6.108 The article provides that differences under the made Order should be settled by arbitration unless another means of resolving a dispute is provided for in the made Order, in accordance with the drafting presented in the draft Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this time period then by the Secretary of State following an application by one of the parties. If the Secretary of State fails to make an appointment within 14 days of referral the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.
- 6.109 Where the referral to arbitration relates to a difference with the Secretary of State and the parties cannot agree an arbitrator then either party may refer the matter to the Centre for Effective Dispute Resolution for appointment of an arbitrator.
- 6.110 It applies Schedule 11 to the draft Order which sets out further detail of the arbitration process. The detail of Schedule 11 is included in this Explanatory Memorandum below.

Article 40 – Requirements, appeals, etc.

- 6.111 This article has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Part 2 to Schedule 1 of the Order. This means that the Undertaker has a right of appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or not determined.
- 6.112 This approach has precedent in The Cleve Hill Solar Park Order 2020 and The Little Crow Solar Park Order 2022.

Article 41 – Application of landlord and tenant law

- 6.113 This article governs the leasing of land by the Undertaker to any other person. Essentially it allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

6.114 This article was included in the model provisions as article 35.

Article 42 – Protective provisions

6.115 This article gives effect to Schedule 10, which contains provisions protecting the interests of third parties. It was not included in the model provisions but is a standard article in development consent orders that include protective provisions.

Article 43 – Funding

6.116 Article 43 provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions (such sum to be approved by the Secretary of State) or an alternative form of security approved by the Secretary of State.

6.117 The relevant powers are article 17 (compulsory acquisition of land), article 19 (compulsory acquisition of rights), article 20 (private rights), article 22 (acquisition of subsoil only), article 25 (rights under or over streets), article 26 (temporary use of land for carrying out the authorised development), article 27 (temporary use of land for maintain the authorised development) and article 28 (statutory undertakers).

6.118 This article provides that the funding guarantee or alternative form of security must be in a form which enables a person entitled to compensation to be able to enforce the guarantee or alternative form of security. The guarantee or alternative form of security is required to be in place for a maximum of 15 years from the date that the relevant power has been exercised.

7 THE SCHEDULES

Schedule 1

Part 1 – Authorised Development

7.29 Part 1 of Schedule 1 to the draft Order, with reference to individual work numbers (Work Nos.), which represent a different part of the Authorised Development, describes the Authorised Development in detail.

7.30 The Authorised Development has been separated into Work Nos. to enable the draft Order to refer to specific elements of the Authorised Development by citing the relevant Work No.

7.31 A summary of the individual Work Nos. can be found at paragraph 4.1 above.

Part 2 – Requirements

7.32 Part 2 of Schedule 1 to the draft Order places requirements upon the Undertaker to ensure the Authorised Development, comprising each of the Principal Development and the Associated Development, is implemented within the parameters assessed in the ES and obliges the Undertaker to deliver the mitigation measures identified within the ES. In doing so, Part 2 of Schedule 1 to the draft Order secures this mitigation and other measures outlined within the Application Documents.

7.33 The Applicant is of the view that each of the requirements in Part 2 of Schedule 1 are necessary and relevant to the implementation of the Authorised Development as they have been identified as a result of the findings within the ES and are enforceable and reasonable in all respects.

7.34 Where requirements are identified in the following paragraphs as requiring the submission of details post-consent for approval by the local planning authority, either alone or in consultation with a third party, this is a departure from the model provisions. The obligation to approve details in consultation with a third party rests with the local planning authority.

7.35 The requirements within Part 2 of Schedule 1 to the draft Order can be summarised as follows:

(a) **Requirement 3 – Time Limits:** This requirement provides that the Authorised Development must not commence later than five (5) years from the date the made Order comes into force;

(b) **Requirement 4 – Phases of authorised development:** This requirement requires the Undertaker to submit a written scheme setting out the phases of construction of the Authorised Development to the local planning authority prior to commencement of development. The Undertaker is obliged to implement the written scheme as approved by the local planning authority.

(c) **Requirement 5 – Detailed design approval:** This requirement provides that no phase of the Authorised Development may commence until the details contained within that requirement relating to each phase of the Authorised Development have been submitted to and approved in writing by the local planning authority.

In accordance with paragraph (2) of requirement 5, the detailed designs submitted for approval must accord with the Land Plans, Works Plans, the principles and assessments set out in the ES and the outline design principles.

(d) **Requirement 6 – Implementation and maintenance of landscaping:** This requirement obliges the Undertaker to carry out all landscaping works in accordance with the LEMP and appropriate British Standards. Paragraph (2)

provides that any tree or shrub that is planted as part of an approved landscaping management scheme that within five years of planting is removed, dies or, in the opinion of the local planning authority, becomes seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

- (e) **Requirement 7 – Arboricultural method statement (AMS):** This requirement provides that no phase of the Authorised Development may commence until an AMS for that phase has been submitted to and approved in writing by the local planning authority.
- (f) **Requirement 8 – Landscape and ecological management plan (LEMP):** This requirement provides that no phase of the Authorised Development can commence until a LEMP for that phase, prepared in accordance with the outline LEMP, which forms part of the Application Documents, has been submitted to and approved by the local planning authority. The requirement at paragraph (2) prescribes the detail that the LEMP must include. Paragraph (3) of requirement 8 requires the LEMP to be implemented by the Undertaker as approved by the local planning authority.
- (g) **Requirement 9 – Construction environmental management plans (CEMP):** This requirement prevents the Undertaker from commencing any phase of the Authorised Development until a CEMP for that phase has been submitted to and approved by the local planning authority. The requirement obliges the CEMP to be submitted for the local planning authority's approval must be in accordance with the outline CEMP submitted as part of the Application Documents.

As set out in paragraph (2)(i) of requirement 9, the CEMP must include a protocol, prepared in consultation with the Environment Agency, for the event that unexpected, contaminated land is identified during ground investigation or construction of the Authorised Development.
- (h) **Requirement 10 – Construction traffic management plan (CTMP):** This requirement provides that no phase of the Authorised Development can commence until a CTMP for that phase, prepared in accordance with the outline CTMP, has been submitted to and approved by the local planning authority, in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates. Paragraph (3) of requirement 10 requires the CTMP to be implemented by the Undertaker as approved by the local planning authority.
- (i) **Requirement 11 – Operational Environmental Management Plan (OEMP):** This requirement provides that no phase of the Authorised Development may

commence until an OEMP, which accords with the outline OEMP submitted as part of the Application Documents, has been submitted to and approved by the local planning authority. Paragraph (2) sets out the prescribed detail of the OEMP, including nuisance management. Paragraph (3) requires the OEMP to be implemented as approved.

- (j) **Requirement 12 – Battery safety management plan (BSMP):** This requirement provides that prior to the commencement of Work No. 2, being the battery energy storage system, the BSMP must be submitted to and approved by the local planning authority.

In submitting the BSMP, the Undertaker is obliged to submit a BSMP that is either in accordance with the outline BSMP, which forms part of the Application Documents, or detail such changes as are considered required. In the event changes are proposed to the submitted BSMP that divert from the strategy in the outline BSMP, the local planning authority is required to consult with the Health and Safety Executive and Derbyshire Fire and Rescue Service prior to approving the submitted BSMP.

- (k) **Requirement 13 – Land contamination:** This requirement provides that no part of the Authorised Development may commence until a contamination risk assessment in respect of soils has been produced. Paragraph (2) provides that the steps and measures that are identified as necessary for the purposes of carrying out the Authorised Development are implemented as referred to in the assessment.

Paragraphs (3) and (4) set out the procedure where the Undertaker determines that remediation is necessary.

- (l) **Requirement 14 – Public rights of way diversions:** This requirement provides that no phase of the Authorised Development can commence or decommissioning undertaken until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that phase has been submitted to and approved by the local planning authority in consultation with the highway authority. Paragraph (3) requires the public rights of way management plan to be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

- (m) **Requirement 15 – Operational noise:** This requirement provides that no phase of the Authorised Development can commence until an operational noise assessment is submitted to and approved by the local planning authority. The

Undertaker must ensure the operational noise assessment includes details of the noise mitigation measures incorporated into the design of the Authorised Development to ensure the operational noise rating levels are compliant with those assessed within the ES.

- (n) **Requirement 16 – Fencing and other means of enclosure:** This requirement provides that no phase of the Authorised Development can commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1). “Commence” for the purposes of requirement 16(1), includes any site preparation works.
- (o) **Requirement 17 – Surface and foul water drainage:** This requirement provides that no phase of the Authorised Development can commence until written details of the surface and foul water drainage system for that phase has been submitted to and approved by the local planning authority. Paragraph (3) requires the Authorised Development to be constructed in accordance with the approved details.
- (p) **Requirement 18 – Archaeology:** This requirement provides that no phase of the Authorised Development can commence until a written scheme for the investigation of areas of archaeological interest within that phase has been submitted to and approved by the local planning authority. Paragraph (2) requires any archaeological works or programme of archaeological investigation carried out under the approved scheme for investigation to be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of the Chartered Institute for Archaeologists. Paragraph (3) requires any archaeological works or programme of archaeological investigation to be carried out in accordance with the scheme approved under paragraph (1) of requirement 18.
- (q) **Requirement 19 – Permissive path:** This requirement provides that where a phase of the Authorised Development includes a permissive path, the permissive path must be provided and open to the public within 12 months of final commissioning in respect of that phase. Paragraph (2) of Requirement 19 obliges the Undertaker to maintain the permissive path(s) and ensure access to the public is permitted for 264 days a year until the commencement of decommissioning of the Authorised Development, save for closures due to maintenance or emergency.

- (r) **Requirement 20 – Construction hours:** This requirement prohibits construction works except between the hours specified in paragraph (1), save for emergency works and works which do not cause noise audible at the boundary of the Order limits. Paragraph (3) requires the Undertaker to notify the local planning authority of any emergency works carried out within 72 hours of commencing the emergency works.
- (s) **Requirement 21 – Decommissioning and restoration:** This requirement provides that within 3 months of the date the Undertaker decides to decommission any part of the Authorised Development, the Undertaker must submit to the relevant local planning authority for that part a decommissioning environmental management plan and a decommissioning traffic management plan for that part.
- Paragraph (1) of requirement 21 also provides that decommissioning of the Authorised Development will commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1.
- (t) **Requirement 22 – Requirement for written approval:** This requirement provides that where the approval, agreement or confirmation of a third party, including the Secretary of State, local planning authority or another person, is required under a requirement within Part 2 of Schedule 1, that approval, agreement or confirmation must be given to the Undertaker in writing.
- (u) **Requirement 23 – Amendments to approved details:** This requirement provides that any details submitted to and approved by the local planning authority under the requirements must be carried out in accordance with the approval, unless an amendment or variation has been approved in writing by the local planning authority provided that such agreement is only given in relation to immaterial changes. Paragraph (2) provides that any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Paragraph (3) provides that the approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.
- (v) **Requirement 24 – Consultation:** This requirement provides that where the local planning authority is required by the made Order or other statute to consult with another person or body before discharging a requirement, the Undertaker is obliged to consult with such person or body prior to making an application to discharge the requirement.

Part 3 – Procedure for Discharge of Requirements

- 7.36 Part 3 of Schedule 1 to the draft Order provides the procedure for the discharge of requirements.
- 7.37 Paragraph 26 (Applications made under requirements) of Part 3 provides that applications made to the discharging authority must be determined by the discharging authority within eight weeks begin with either the day immediately following that on which the application is received by the discharging authority or where further information is requested under paragraph 27, the day immediately following that on which the further information is supplied by the Undertaker. Sub-paragraph (1)(b) allows for a longer period to be agreed in writing between the Undertaker and the discharging authority.
- 7.38 Paragraph 27 (Further information regarding requirements) provides that a discharging authority can request further information from an Undertaker it considers necessary to determine an application to discharge a requirement.
- 7.39 Paragraph 28 (Appeals) sets out the circumstances in which an applicant who has submitted an application to a discharging authority may appeal to the Secretary of State including where the discharging authority grants such an application subject to conditions and the discharging authority refuses an application for any consent. The remaining sub-paragraphs set out the appeals procedure.
- 7.40 Paragraph 29 (Fees) provides that where an application to discharge a requirement is made to the discharging authority, the applicant submitting such an application must pay the requisite fee to the local planning authority.

Schedule 2 – Streets Subject to Street Works

- 7.41 Schedule 2 to the draft Order sets out the streets subject to street works as part of the Authorised Development. Column (1) identifies the extent of the street works. Column (2) identifies the streets subject to street works. Column (3) provides a description of those street works. Schedule 2 relates to Article 8 (street works).

Schedule 3 – Alteration of Streets

- 7.42 Schedule 3 to the draft Order sets out the streets subject to alteration as part of the Authorised Development. Part 1 to Schedule 3 identifies the streets subject to permanent alteration to their layout and Part 2 to Schedule 3 identifies the streets subject to temporary alteration to their layout. Column (1) of each table in each part to Schedule 3 identifies the extent of the street works. Column (2) of each table in each part to Schedule 3 identifies the streets subject to alteration. Column (3) of each table in each part to Schedule 3 sets out the extent of those alterations. Schedule 3 relates to Article 9 (power to alter layout, etc., of streets).

Schedule 4 – Access to Works

7.43 Schedule 4 to the draft Order sets out the private means of access to the Works comprising the Authorised Development. Part 1 to Schedule 4 identifies the permanent private means of access to Works and Part 2 to Schedule 4 identifies the temporary private means of access to Works. Column (1) of each table in each part to Schedule 4 identifies the area of the accesses. Column (2) of each table in each part to Schedule 4 identifies the accesses by reference to the streets, access and rights of way plan. Column (3) of each table in each part to Schedule 4 provides a description of the access required. Schedule 4 relates to Article 10 (access to works).

Schedule 5 – Public Rights of Way to be Temporarily Stopped Up

7.44 Schedule 5 to the draft Order sets out the public rights of way to be temporarily stopped up as part of the Authorised Development. Column (1) of the table in Schedule 5 identifies the area of the temporary stopping up works, column (2) of the table identifies the public rights of way to be temporarily stopped up and column (3) identifies the extent of the temporary stopping up. Schedule 5 relates to Article 11 (temporary stopping up of streets and public rights of way).

Schedule 6 – Land in which only new rights etc. may be acquired

7.45 Schedule 6 to the draft Order sets out the land in which only new rights etc. may be acquired as identified in the Book of Reference, with the plot number(s) in column (1) of the table in Schedule 6 mirroring those in the Book of Reference.

7.46 Column (2) of the table in Schedule 6 identifies the Work No. requiring the acquisition of new rights in the plot number(s) and column (3) sets out the purpose for which rights may be acquired.

Schedule 7 – Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants

7.47 Schedule 7 to the draft Order modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.

7.48 It is commonly included in DCOs, including The Cleve Hill Solar Park Order 2020 and The Longfield Solar Farm Order 2023, and reflects any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to article 19 (compulsory acquisition of rights).

Schedule 8 – Land of which temporary possession may be taken

7.49 Schedule 8 to the draft Order sets out the land of which temporary possession may be taken as identified in the Book of Reference, with plot number(s) in column (1) of the table in Schedule 8 mirroring those in the Book of Reference.

- 7.50 Column (2) of the table in Schedule 8 sets out the purpose for which land may be temporarily possessed.

Schedule 9 – Hedgerows

Part 1 – Removal of important hedgerows

- 7.51 Part 1 of Schedule 9 to the draft Order identifies the important hedgerows to be removed in order for the Authorised Development to be implemented and identifies the effected important hedgerows by reference to the location of the important hedgerows on the Hedgerow Plan, as submitted as part of the Application Documents, at column (1) of the table in Part 1 of Schedule 9, the reference number of the important hedgerow at column (2) and the extent of the removal works in column (3).

Part 2 – Removal of hedgerows

- 7.52 Part 2 of Schedule 9 to the draft Order identifies the hedgerows to be removed in order for the Authorised Development to be implemented and identifies the effected hedgerows by reference to the location of the hedgerows on the Hedgerow Plan, as submitted as part of the Application Documents, at column (1) of the table in Part 2 of Schedule 9, the reference number of the hedgerow at column (2) and the extent of the removal works in column (3).

Schedule 10 – Protective provisions

- 7.53 Schedule 10 sets out the protective provisions for the benefit of statutory undertakers whose equipment may be affected by the implementation of the Authorised Development. Schedule 10 relates to article 43 (protective provisions) and contains protective provisions for the benefit of defined classes of service undertakers:
- (a) Part 1 of Schedule 10 sets out the protective provisions for electricity, gas, water and sewerage undertakers save for National Grid Electricity Transmission plc and South Staffordshire Water plc;
 - (b) Part 2 of Schedule 10 sets out the protective provisions for National Grid Electricity Transmission plc as electricity undertaker;
 - (c) Part 3 of Schedule 10 sets out the protective provisions for National Grid Electricity Distribution (East Midlands) plc as electricity undertaker;
 - (d) Part 4 of Schedule 10 sets out the protective provisions for Cadent Gas Limited as gas undertaker;
 - (e) Part 5 of Schedule 10 sets out the protective provisions for South Staffordshire Water plc as water and sewerage undertaker;

- (f) Part 6 of Schedule 10 sets out the protective provisions for operators of electronic communications code networks; and
- (g) Part 7 of Schedule 10 sets out the protective provisions for drainage authorities.

7.54 The Applicant's engagement with statutory undertakers to agree protective provisions for their benefit are ongoing. The Applicant will keep the Examining Authority informed of agreed updates to the set of protective provisions included within the draft Order throughout the course of Examination.

Schedule 11 – Arbitration Rules

7.55 Schedule 11 relates to Article 39 (arbitration) and has precedent in The Longfield Solar Farm Order 2023. The intention of the drafting is to achieve a fair, impartial, final and binding award on substantive differences between the parties within 4 months from the date an arbitrator is appointed in accordance with Article 39 (arbitration) of the draft Order.

7.56 Paragraph 3 of Schedule 11 sets out the timetable for the arbitration as follows:

- (2) Within 14 days of the arbitrator being appointed, the Claimant will provide both the Respondent and arbitrator with a written Statement of Claim and all statement of evidence;
- (3) Within 14 days of receipt of the Claimant's statements by the arbitrator and Respondent, the Respondent will provide the Claimant and the arbitrator with a written Statement of Defence responding to the Claimant's Statement of Claim, all supporting statements of evidence and any objections it wishes to make to the Claimant's statements;
- (4) Within 7 days of receipt of the Respondent's statements by the arbitrator and Claimant, the Claimant may provide the Respondent and the arbitrator with a written statement responding to the Respondent's submissions, all supporting statements of evidence, any expert report in response to the Respondent's submissions, any objections to the statements of evidence and its written submissions in response to the legal and factual issues involved.

7.57 Paragraph 4 sets out the procedure for any arbitration carried out under Schedule 11 and paragraph 5 details the role and powers of the arbitrator. Paragraph 6 provides that the costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonably legal and other costs incurred by the parties. The arbitrator will determine the final costs award and in what proportion parties are to bear their own costs. Paragraph 7 provides that any hearings held in the carrying out of arbitration under Schedule 11 are to be private.