

# Heckington Fen Solar Park

EN010123

## Explanatory Memorandum

Applicant: Ecotricity (Heck Fen Solar) Limited

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## EXPLANATORY MEMORANDUM

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## **1 GLOSSARY**

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended).

**"2008 Act"** means the Planning Act 2008 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"** means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for NSIPs.

**"Applicant"** means Ecotricity (Heck Fen Solar) Limited.

**"Application"** means the application for a DCO 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 falls within the definition of an NSIP under Section 14(1)(a) and Section 15 of the 2008 Act by virtue of it being a generating station in England of more than 50 MW electrical capacity.

**"Associated Development"** has the meaning under Section 115(2) of the 2008 Act as development which is associated with development for which development consent is required (ie the principal development) 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.

**"Authorised Development"** means the development to which the Application relates and which refers to the development that requires a DCO, all of which is described in Schedule 1 to the Order (including the Associated Development).

**"Book of Reference"** means the Book of Reference, accompanying the Application (document reference 4.3), which is a reference document providing details of all land ownership interests within the Order Limits with reference to the Land and Crown Land Plan (document reference 2.1).

**"Change Application Consultation Report"** means the Consultation Report accompanying the NGET Change Application (document reference Pre-ExA.ChangeApp.CCR.V1) and explains the additional consultation process undertaken by the Applicant in accordance with the 2008 Act and to support the submission of the NGET Change Application.

**"Consultation Report"** means the Consultation Report accompanying the Application (document reference 5.1) and explains the consultation process undertaken by the Applicant in accordance with the 2008 Act.

**"County Authority"** means Lincolnshire County Council.

**"DCO"** means a development consent order made by the relevant secretary of state pursuant to 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. A DCO can also include powers of compulsory acquisition.

**"EIA"** means an environmental impact assessment, which assesses the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations.

**"EIA Regulations"** means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, which outline how the EIA for NSIPs must be carried out and the procedures that must be followed.

**"ES"** means the Environmental Statement accompanying the Application (document references 6.1 – 6.3), which documents the conclusions of the EIA.

**"Existing Substation"** means the existing substation at Bicker Fen, Bicker, Lincolnshire, PE20 3BQ, owned and operated by NGET.

**"Explanatory Memorandum"** means a document which explains the intended purpose and effect of a DCO and the authorisations and powers that it seeks.

**"Flood Risk Assessment"** means the Flood Risk Assessment accompanying the Application as part of the ES (document reference 6.3.9.1) and which provides an overview of flood risk over the part of the Order Land which comprises the main project site for the Authorised Development, focusing on residual flood risk arising from failure/breaching of the flood defence embankments and the management of surface water run-off.

**"Further Associated Development"** has the meaning given to it in paragraph 2.1.13 of this Explanatory Memorandum.

**"Funding Statement"** means the Funding Statement, accompanying the Application (document reference 4.2) and explains how the Authorised Development will be funded.

**"Land and Crown Land Plans"** means the plans accompanying the Application (document reference 2.1) and which show all of the land that is required for the Authorised Development and / or over which rights are to be sought as part of the DCO.

**"MW"** means megawatt.

**"NGET"** means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH.

**"NGET Change Application"** means an application submitted to PINS post-submission of the Application and prior to commencement of the examination requesting additional infrastructure and works (namely Work No 6B and 6C) at the NGET Existing Substation.

**"NSIP"** means a nationally significant infrastructure project that must be authorised by the making of a DCO under 2008 Act.

**"Onsite Substation"** means electrical infrastructure such as the transformers, switchgear, and metering equipment required to facilitate the export of electricity to the Existing Substation. The Onsite Substation will convert the electricity to 400kV for onward transmission to the Bicker Fen Substation via an underground cable.

**"Order"** means the Heckington Fen Solar Park Order, being the DCO that would be made by the Secretary of State authorising the Authorised Development, a draft of which has been submitted as part of the Application.

**"Order Land"** means the land on which the Authorised Development will be built as shown on the Land and Crown Land Plans.

**"Order Limits"** means the limits of the land to which the Application for the DCO relates and shown on the Works Plans, and within which the Authorised Development must be carried out and which is required for its construction and operation.

**"Outline Design Principles"** means the design principles accompanying the Application (document reference 7.1) and which set out the design parameters for the Authorised Development.

**"PINS"** means the Planning Inspectorate, being the government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State.

**"Statement of Need and Planning Statement"** means the Statement of Need and Planning Statement, accompanying the Application (document reference 7.3) and explains the national and local policy support for the Authorised Development, as well as explaining the national need for the Authorised Development.

**"Relevant Planning Authority"** means North Kesteven District Council and Boston Borough Council as the relevant local planning authority for those parts of the Authorised Development that are in their respective administrative areas. Referred to together, these are the **"Relevant Planning Authorities"**.

**"Rights of Way Plan"** means the plan accompanying the Application (document reference 2.3) and which shows the rights of way required to be interfered with as part of the Authorised Development.

**"Secretary of State"** means the Secretary of State for the Department for Energy, Security and Net Zero (or any successor body) who will determine the Application.

**"Statement of Reasons"** means the Statement of Reasons accompanying the Application (document reference 4.1) and which sets out the justification for the acquisition or interference with the Order Land.

**"Streets and Access Plan"** means the plan accompanying the Application (document reference 2.7) and which shows the accesses required for Authorised Development.

**"Undertaker"** means the Applicant or such other person who takes benefit of the DCO following the procedure within Article 33 of the Order.

**"Works Plans"** means the plans, accompanying the Application (document reference 2.1) which show the numbered works referred to at Schedule 1 to the Order.

The definitions included in Article 2 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 that Article.

## **2 INTRODUCTION**

### **Overview**

2.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant. 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.

2.1.2 The Applicant is seeking development consent for the Authorised Development, which in summary comprises the construction, operation, maintenance and

decommissioning of a solar generating facility, an energy storage facility, electricity cables and all infrastructure required to transmit the energy generated to the Existing Substation. It will be located on an area of land approximately 3.7km east of Heckington and 8.9km west of Boston within the county of Lincolnshire.

2.1.3 A DCO is required for the Authorised Development as it falls within the definition and thresholds for a NSIP under Sections 14(1) and 15(2) of the 2008 Act and consists of a generating station, being a ground mounted solar photovoltaic generating station with a capacity of over 50 MW.

2.1.4 The DCO, if made by the Secretary of State, would be known as the Heckington Fen Solar Park Order 202\*, a draft of which has been submitted with the Application.

2.1.5 This Explanatory Memorandum should be read in conjunction with the suite of documents that accompanied the Application, in particular the ES, Works Plans, Land and Crown Land Plans, Book of Reference, Statement of Reasons, Consultation Report, Statement of Need and Planning Statement and the Change Application Consultation Report.

### **Ecotricity (Heck Fen Solar) Limited**

2.1.6 The Applicant is a limited company registered at Companies House under company number 13225224 and whose registered office is at Lion House, Rowcroft, Stroud, England, GL5 3BY.

2.1.7 The Applicant is an Ecotricity group company, which has been formed for the purpose of developing the Heckington Fen Solar Park.

2.1.8 More information on the Applicant, its ownership and corporate structure is set out in the Statement of Reasons and Funding Statement.

2.1.9 The Applicant will be submitting an application for a licence to generate electricity under Section 6(1)(a) of the Electricity Act 1989. Once granted, the Applicant will be a statutory undertaker for the purposes of the Electricity Act 1989 and the 2008 Act.

### **The Authorised Development**

2.1.10 A more detailed description of the Authorised Development can be found in Chapter 4 of the ES.

2.1.11 **Work No 1** consists of a NSIP, being the ground mounted solar photovoltaic (PV) generating station with a gross electrical output capacity of over 50 MW comprising panels fitted to mounting structures fixed to the ground by piles, inverters, transformers, switchgear and a network of underground cables. This package is broken down into Work No. 1A and Work No. 1B in order to distinguish between the solar PV panel areas and the cables connecting the solar PV to the Onsite Substation and energy storage.

2.1.12 The Associated Development for the purposes of Section 115 of the 2008 Act comprises Work Nos. 2 – 10 of the Authorised Development. They are as follows:

2.1.12.1 **Work No. 2** – an energy storage facility with cable connections to Work Nos. 1 and 4, flood protection measures and storage structures comprising containment tanks or a concrete water storage basin or lagoon for the purpose of firefighting;

- 2.1.12.2 **Work No. 3** – reception areas, temporary cabins and construction compounds, gatehouses and hardstanding service areas relating to Work No. 1, Work No. 2, Work No. 4, and Work No. 5.
- 2.1.12.3 **Work No. 4** – an Onsite Substation and associated works in connection with the substation including welfare facilities and hardstanding areas, flood protection measures and works to lay electricity cables between Work No. 1 and Work No. 2;
- 2.1.12.4 **Work No. 5** – works to lay electricity cables between Work No. 4 and Work No. 6A. At the southern end of the cable route, this package is broken down into Work No. 5A and Work No. 5B to reflect alternative route options for laying the electricity cables across a short section of land near to the Existing Substation. This optionality is required due to ongoing discussions with NGET, and the landowner/wind farm operator. As outlined within paragraph 8.1.9.3 of this Explanatory Memorandum, the Applicant can only install either Work No. 5A or Work No. 5B.
- 2.1.12.5 **Work No. 6A** – works to create a new generation bay at the Existing Substation;
- 2.1.12.6 **Work No. 6B** – works to extend the Existing Substation;
- 2.1.12.7 **Work No. 6C** – works to facilitate the extension to the Existing Substation including a cable sealing end compound and construction of a new circuit bay;
- 2.1.12.8 **Work No. 7** – two temporary laydown areas relating to Work No. 5 and Work Nos. 6A, 6B, and 6C;
- 2.1.12.9 **Work No. 8** – the creation and maintenance of a permanent access from the A17 to Work No. 1, Work No. 2, Work No. 3 and Work No. 4;
- 2.1.12.10 **Work No. 9A** – the creation, enhancement and maintenance of green infrastructure and the creation of biodiversity net gain areas;
- 2.1.12.11 **Work No. 9B** – the creation of a permissive path (including installation of up to two footbridges) and other boundary treatment;
- 2.1.12.12 **Work No. 9C** – the creation of a new community orchard; and
- 2.1.12.13 **Work No. 10** – works to existing streets to facilitate access to Work Nos. 1 to 9B.
- 2.1.13 There are also other works or operations (referred to in the Order as "**Further Associated Development**") included within Schedule 1 of the Order. The Further Associated Development are works that may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Authorised Development. These works or operations are listed within Schedule 1 of the Order and include—
- 2.1.13.1 works within highways, including—
- 2.1.13.1.1 alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation; and altering the level or increasing the width of any kerb, footway, cycleway, or verge within the street including



- removal of any vegetation; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
- 2.1.13.1.2 street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- 2.1.13.1.3 relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
- 2.1.13.1.4 works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments; and
- 2.1.13.1.5 works to facilitate traffic management and to deliver information relating to the authorised development; and
- 2.1.13.2 other works including—
- 2.1.13.2.1 works for the provision of fencing and security measures such as CCTV, lighting, communication boxes and access control booths;
- 2.1.13.2.2 laying down of internal access tracks, ramps, means of access, footpaths, and roads;
- 2.1.13.2.3 bunds, embankments, trenching and swales;
- 2.1.13.2.4 boundary treatments, including means of enclosure;
- 2.1.13.2.5 laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;
- 2.1.13.2.6 foundations for structures of buildings being reinforced concrete pad foundations with piled foundations employed in locations where the ground is not sufficiently stiff to allow for pad foundations;
- 2.1.13.2.7 works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- 2.1.13.2.8 electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- 2.1.13.2.9 works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- 2.1.13.2.10 surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- 2.1.13.2.11 site establishment and preparation works including site clearance; earthworks and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- 2.1.13.2.12 landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the Authorised Development; and

2.1.13.2.13 tunnelling, boring and drilling works.

2.1.14 In the event that the works are not specified in the list of Further Associated Development, such further works or operations can be carried out so long as the works are within the Order Limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the ES.

2.1.15 Work No. 2 consists of an energy storage system with a gross storage capacity of over 50 MW and related infrastructure. In previous DCO applications which contained an 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; this is because an energy storage facility with a gross storage capacity of over 50 MW previously fell within the definition of an onshore generating station under Sections 14(1) and 15 of the 2008 Act. However, the legislative position has now 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, and therefore where they form part of a DCO application 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.

2.1.16 Work No. 2 has a direct relationship with Work No. 1 because it will take any excess electricity produced in times of peak capacity and store it until it needs to be released. This increases the efficiency of the solar park 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 energy storage system would not be constructed without the solar park. It also provides the most economic and efficient utilisation of the grid connection capacity, therefore maximising the contribution of the Authorised Development to meeting the needs of energy security in the UK.

2.1.17 The description of Work No. 1 and Work No. 2 do not refer to an upper limit on the capacity of the generating station and energy storage facility for which development consent is being sought. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes reference to the means by which the parameters of the Authorised Development will be constrained (for example, the areas in which Work No. 1 and Work No. 2 are to be located are clearly identified on the Works Plans and the Order will require those works to be constructed only in those areas) and it is on this basis which the EIA has been undertaken, as is set out in the ES. There is no reason to limit the electrical output capacity of the Authorised Development provided those parameters are adequately captured in the Order. Based on the extensive pre-application consultation undertaken, which is explained in detail in the Consultation Report, the Applicant is confident that those parameters are adequately secured in the Order.

2.1.18 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 Authorised Development 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 and Planning Statement. This approach taken has precedent in **the Cleve Hill Solar Park Order 2020**, **the Little Crow Solar Park Order 2022**, and **the Longfield Solar Farm Order 2023** as well as other energy generation DCOs including offshore wind projects such as **the Hornsea Three Offshore Wind Park 2020**.

**Phasing**

2.1.19 The Applicant requires flexibility to construct the Authorised Development in phases. The proposed approach to phasing is described in Chapter 4 of the ES.

2.1.20 The number of phases will be determined by the undertaker prior to commencement of the Order and notified to the relevant planning authority under Requirement 3 of Schedule 2 of the Order; therefore, the Requirements allow for phasing of the Authorised Development, by way of allowing phased discharge of the requirements.

2.1.21 At this stage it is expected that the NGET extension works (Work No. 6B and Work No. 6C) will be a standalone phase meaning that NGET will submit the final control plans to discharge the Requirements for their respective works.

**Parameters in the Order and "Rochdale Envelope"**

2.1.22 The design parameters of the Authorised Development are set out in the Outline Design Principles. These Outline Design Principles are the basis on which the assessment set out in the ES has been undertaken. The Outline Design Principles capture the important parameters that are necessary to ensure that the Authorised Development is constructed in such a way that the impacts and effects would not exceed the likely worst-case scenario assessed in the ES.

2.1.23 The detailed design of the Authorised Development, in accordance with the Outline Design Principles, is secured in Requirement 6 of the Order. This approach is taken to ensure suitable flexibility in the design of the Authorised Development, such that new technology can be used, while ensuring that the development will always comply with the ES. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs (including **the Cleve Hill Solar Park Order 2020** and **the Longfield Solar Farm Order 2023**) and is described in the Planning Inspectorate’s Advice Note 9: Rochdale Envelope (July 2018).

2.1.24 Solar photovoltaic and energy storage systems are rapidly evolving and as a result the Order and Works Plans propose a degree of flexibility to allow the latest technology to be utilised at the time of construction. The Order and Works Plans also allow for a flexible use of space within the Sites both in terms of the type of activity that can be undertaken in a given area and in temporal terms. The flexibility sought, and how this has been accounted for in the assessment in the ES, is set out in the table below.

Flexibility Sought	Assessment Approach
Certain areas of land will be able to be used as combination of solar PV and/or in some instances an operational compound	Where this is sought the Works Plans (document reference 2.2) and the technical assessments within the ES will have all taken a consistent worst-case approach of assuming the maximum spatial parameters for these infrastructure elements, these areas assumed as the worst case for all disciplines.
Land use for temporary construction compounds during construction will be able to be used for solar PV once its construction use is completed	The temporarily used compounds during construction will be assessed as part of the construction phase assessment. Solar panels, gatehouses or spare containers have been assumed to be in place at these

	<p>locations in the operational assessments (for the use which is worst case by the technical authors).</p>
<p>Cabling will take place across the Proposed Development, including underneath landscaping and other construction and operational areas.</p>	<p>Underground works have been assumed in all areas where this is permitted on the Works Plans (document reference 2.2) and above ground works have been assumed in all areas where they are permitted on the Works Plans (document reference 2.2)</p>
<p>Cabling which connects the Onsite Substation to the National Grid Bicker Fen Substation will be laid underground in land shown within the onsite and offsite cable route corridors (as part of Work No.5).</p>	<p>The extent of the Cable Route Corridor is wider than needed for the laying of this cable. The extent is wider to allow for some flexibility on the final location within this area, and a sufficient working swathe to construct within. Flexibility is needed to allow for ground conditions when the work takes place. The assessments have assumed that the cable could be placed anywhere within the Onsite and Offsite Cable Route Corridor.</p>
<p>Land Use for the Offsite Cable Route Corridor from Heckington Fen to Bicker Fen Substation.</p>	<p>There is one main Offsite Cable Route Corridor which runs from the Energy Park site to the National Grid Bicker Fen Substation. When the Offsite Cable Route Corridor reaches the fields to the immediate north of Bicker Fen Substation, it deviates into two options. Only one will be used.</p> <p>The two options remain as legal discussions are ongoing with landowners of the approved but not yet built Vicarage Drove Solar Farm to the immediate west of Bicker Fen substation for access to lay the necessary underground cable through the development. If legal agreements can be progressed the western route would be chosen. If not, the eastern route would be used which brings the underground cabling around the approved solar farm and takes a more direct route into the Bicker Fen substation over National Grid owned land.</p> <p>The physical area needed for the laying of the grid route is a swathe 25m wide. An area wider than this 25m swathe is included in places in the Order Limits (up to 406m in one location<sup>1</sup>) to provide</p>

<sup>1</sup> This is the widest extent of the Offsite Grid Connection Route Corridor. This area is where the cable route leaves the Energy Park site. The extent remains wide to allow flexibility in the location of joint pits and directional drills around road crossings, drainage ditches and the crossing of existing underground high voltage cables

	flexibility for the final grid route design and allow micro siting of the cable within the corridor to account for constraints such as ground conditions and environmental factors including any potential features of archaeological interest (if relevant based on desk-based assessments and Geophys).
Land use for the Applicant's generation bay and the NGET extension works	As the exact location of the Applicant's generation bay will only be determined at detailed design stage, there are overlapping areas between Work No. 6A (for the Applicant's generation bay) and Work No. 6B (for the NGET extension works) at the Existing Substation.

2.1.25 Given the flexibility applied for and in order to ensure a robust assessment of the likely significant environmental effects of the Authorised Development, the EIA has been undertaken adopting the principles of the 'Rochdale Envelope' where appropriate, as described in the Planning Inspectorate Advice Note 9. This involves assessing the maximum (and where relevant, minimum) parameters for the Authorised Development where flexibility needs to be retained, as set out above. This approach is outlined further in Chapter 2 and Chapter 4 of the ES.

2.1.26 Where specific elements of flexibility have needed to be considered by a technical discipline in the context of the parameters set out in Chapter 2 of the ES, this has been confirmed within the relevant topic chapters of this ES. This approach sets worst case parameters for the purpose of the assessment but does not constrain the Authorised Development from being built in a manner that would lead to lower environmental impacts. The Order secures the likely worst case parameters, providing certainty that the impacts of the Authorised Development will be no worse than those assessed as part of this environmental assessment.

### **3 PURPOSE AND STRUCTURE OF THIS EXPLANATORY MEMORANDUM**

3.1.1 This Explanatory Memorandum is 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 Authorised Development.

3.1.2 In the relevant instances below this Explanatory Memorandum seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ("**the model provisions**"). Whilst the Applicant recognises that the model provisions were only intended as a guide for developers in drafting orders (as recognised by Advice Note 13, paragraph 2.12) and that the power for the Secretary of State to designate, and have regard to, model provisions have been removed by the

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(e.g. Triton Knoll and Viking Link north of the A17). There is also a need to allow flexibility for the appropriate allowances for cable bending radius.

Localism Act 2011, the Applicant considers that it can be helpful to draw on model provisions to explain the origin of a power as well as reasons for departing from those previous provisions.

3.1.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Authorised Development. 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 Authorised Development.

3.1.4 The provisions contained in the Order are briefly described below and then considered in more detail in paragraph 7 of this Explanatory Memorandum:

3.1.4.1 **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;

3.1.4.2 **Part 2 (Principal Powers):** Articles 3 to 7 provide development consent for the Authorised Development, 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;

3.1.4.3 **Part 3 (Streets):** Articles 8 to 13 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 place and retain apparatus within streets; to alter the layout of streets temporarily; to construct and maintain new or altered means of access; to temporarily stop up or divert public rights of way and to enter into agreements with street authorities;

3.1.4.4 **Part 4 (Supplemental Powers):** Articles 14 to 17 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;

3.1.4.5 **Part 5 (Powers of Acquisition):** Articles 18 to 31 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 Authorised Development. Article 19 sets out a time limit for the exercise of the compulsory acquisition powers and Article 21 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 27 and 28 also provide for the temporary use of land for constructing and maintaining the Authorised Development. Article 29 and 30 also provides for powers in relation to the land and apparatus of statutory undertakers;

3.1.4.6 **Part 6 (Miscellaneous and General):** Articles 32 to 45 include various general provisions in relation to the Order:-

3.1.4.6.1 Article 32 sets out who has the benefit of the powers contained in the Order and Article 33 sets out how those powers can be transferred.

3.1.4.6.2 Articles 34 and 35 provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";

- 3.1.4.6.3 Articles 36 and 37 provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Authorised Development and in relation to trees subject to tree preservation orders;
- 3.1.4.6.4 Articles 38 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 13); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; protection of Crown rights; and provision in respect of the NGET Existing Substation extension works.
- 3.1.5 There are then 14 schedules to the Order, providing for:
- 3.1.5.1 **Schedule 1** – the description of the Authorised Development;
- 3.1.5.2 **Schedule 2** – the requirements that apply to the Authorised Development (i.e. the controls that apply to how the Authorised Development is constructed, operated, maintained and decommissioned, similar to planning conditions). Schedule 14 then contains details of the procedure for discharge of requirements and other consents, agreements or approvals required under the Order;
- 3.1.5.3 **Schedule 3** – a list of the local legislation relating to rivers, watercourses, railways, and water supply infrastructure that the Order will disapply insofar as any provisions are inconsistent with the powers contained in the Order;
- 3.1.5.4 **Schedules 4 to 7** – matters in relation to street works and temporary alterations, accesses and rights of way;
- 3.1.5.5 **Schedule 8** – details of land in which only new rights may be acquired;
- 3.1.5.6 **Schedule 9** – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- 3.1.5.7 **Schedule 10** – hedgerows to be removed as a result of the Authorised Development;
- 3.1.5.8 **Schedule 11** – the documents and plans to be certified by the Secretary of State;
- 3.1.5.9 **Schedule 12** – arbitration rules that apply to most arbitrations in connection with the Order;
- 3.1.5.10 **Schedule 13** – provisions for the protection of statutory undertakers and their apparatus; and
- 3.1.5.11 **Schedule 14** – provisions relating to the discharge of requirements contained within the Order.

## **4 PURPOSE OF THE ORDER**

4.1.1 As the Authorised Development is a generating station with a capacity of over 50 MW, in England, it is a NSIP under Sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act in order to construct and operate the Authorised Development. Development consent may only be granted by order, following an application to the Secretary of State (Section 37 of the 2008 Act).

4.1.2 The Applicant is therefore making the Application to the Secretary of State for a DCO for the construction, maintenance, operation and decommissioning of a solar generating station, referred to as the "**authorised development**" in the Order.

4.1.3 The Order refers to the person authorised to exercise the powers in the Order as "**the undertaker**", and defines the undertaker as Ecotricity (Heck Fen Solar) Limited.

4.1.4 In addition to providing for the construction, maintenance, operation and decommissioning of the Authorised Development, the Order will, in accordance with Section 122 and Section 120(3) / Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land (including imposition of restrictive covenants), and the extinguishment of, or interference with, interests in or rights over land.

4.1.5 The Book of Reference sets out a description of the land and interests included in the Order, and this is shown on the Land and Crown Land Plans. The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Land and Crown Land Plans and the Statement of Reasons, which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

4.1.6 The matters for which development consent is sought are summarised in paragraph 4.1.8 of this Explanatory Memorandum below and described more formally in Schedule 1 to the Order.

4.1.7 Section 115(1) of the 2008 Act provides that development consent may be granted for "*(a) development for which development consent is required, or (b) associated development*". The Secretary of State must therefore be satisfied that all the elements included within the Authorised Development are either part of the NSIP or are associated development, in order to include them in the Order pursuant to Section 115 of the 2008 Act.

4.1.8 The solar generating station and related development within Work No.1 constitute "development for which development consent is required". The Order also includes other development which is Associated Development, and which is included at Work Nos. 2 to 10. 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 the 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.

4.1.9 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** and **the Longfield Solar Farm Order 2023**, which both comprised ground mounted solar PV panel arrays, an energy storage system and ancillary development (although it should be noted that at the time **the Cleve Hill Solar Park Order 2020** was made, energy storage over 50MW was classed as a NSIP in its own right). This position has now changed, as summarised above in paragraph 2.1.15 of this Explanatory Memorandum).

4.1.10 In particular, Work Nos. 2 to 10 are all:

4.1.10.1 directly associated with the NSIP, as they are all required to support the construction, maintenance, operation or decommissioning of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);



- 4.1.10.2 subordinate to the NSIP, as none of the works are an aim in themselves (paragraph 5(ii));
- 4.1.10.3 not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (although noting that the Guidance does authorise applicants to cross-subsidise, but with the qualification that if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development) (paragraph 5(iii));
- 4.1.10.4 proportionate to the nature and scale of the NSIP (paragraph 5(iv));
- 4.1.10.5 of a nature which is typically brought forward alongside a solar generating station (paragraph 6);
- 4.1.10.6 listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention:
- 4.1.10.6.1 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, 4, 5, 6A, 6B, 6C, 7);
- 4.1.10.6.2 In Annex A, "*Emergency response facilities*" would include fire safety infrastructure in connection with the energy storage facility (Work No. 2);
- 4.1.10.6.3 In Annex A, "*Monitoring apparatus*" (Work No. 2);
- 4.1.10.6.4 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. 3, 7, 8, 9B and 10);
- 4.1.10.6.5 In Annex A, "*Hard and soft landscaping*" would include landscaping and other works to mitigate adverse impacts (Work No. 9A); and
- 4.1.10.6.6 In Annex A, "*Security measures*" and "*Working sites, site offices and laydown areas*" (Work Nos. 3, 4, 7 and 9A).
- 4.1.11 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.

## **5 COMPULSORY ACQUISITION**

5.1.1 In addition to providing for the construction, operation and decommissioning of the Authorised Development, the Order will, in accordance with Section 122 and Section 120(3) / 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.

5.1.2 The Book of Reference sets out a description of the land and interests in the Order split by "plots." The plots are shown on the Land and Crown Land Plans. The Book of Reference is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests (or comprise of specific category interests, such as Crown interests). The identification of those interests is explained in both the Book of Reference and Statement of Reasons.

5.1.3 The Order provides for the area which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and Book of Reference should be read together with the Statement of Reasons which accompanies the Application and sets out the justification for the acquisition or interference with the Order Land. Further information on the compulsory acquisition powers sought is provided below.

## **6 STATUTORY UNDERTAKERS' LAND AND APPARATUS**

6.1.1 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.

6.1.2 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:

6.1.2.1 the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or

6.1.2.2 the land can be replaced by other land belonging to or available for acquisition by the statutory undertakers without serious detriment to the carrying on of the undertaking.

6.1.3 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:

6.1.3.1 the land can be purchased without serious detriment to the carrying on of the undertaking; or

6.1.3.2 any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the statutory undertakers by the use of other land belonging to or available for acquisition by them.

6.1.4 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.

6.1.5 The Order includes protective provisions in respect of statutory undertakers (see Article 40 and Schedule 13). The Applicant is currently seeking to agree the form of protective provisions with a number of affected statutory undertakers (although, as at Deadline 2 (7 November 2023) the form of provisions has now been agreed with National Grid Electricity Transmission, National Grid Gas, Anglian Water, Black Sluice Internal Drainage Board as the relevant drainage authority, Lincolnshire Fire and Rescue, and the Environment Agency). 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.

## **7 PROVISIONS OF THE ORDER**

7.1.1 As summarised above, the Order consists of 45 operative provisions, each referred to as Articles, and 14 Schedules. The Articles are considered below in numerical order (split between the '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.

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

7.1.2 Articles 1 (*Citation and commencement*) and 2 (*Interpretation*) are preliminary provisions.

### **Article 1**

7.1.3 Article 1 provides for the way in which the Order should be cited and when it takes effect.

### **Article 2**

7.1.4 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 the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:

7.1.4.1 Definitions of documents submitted as part of the Application and which are referred to in the Order ("**certified documents**") have been added. These documents are more fully identified in the table in Schedule 11 of the Order;

7.1.4.2 The definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. 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 based on engineering experience of these types of projects and 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**;

7.1.4.3 The definition of "authorised development" means the development and associated development described in Schedule 1 of the Order and includes 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;

7.1.4.4 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. This has precedent in **the Drax Power (Generating Stations) Order 2019** and the **Longfield Solar Farm**

**Order 2023.** 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 – for example, details of any fencing associated with the permitted preliminary works must be approved by the Relevant Planning Authority under Requirement 10(5) prior to carrying out the permitted preliminary works; equally, no pre-commencement surveys, site preparation works and archaeological investigations may take place until a specific scheme of investigation has been approved by the Relevant Planning Authority under Requirement 12(5).

- 7.1.4.5 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 ES, see further below in relation to Article 3;
- 7.1.4.6 A definition of "maintain" has been added to make clear what activities are authorised under Article 5 (see paragraph 7.1.12 of this Explanatory Memorandum) during the operation of the Authorised Development:
- 7.1.4.6.1 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;
- 7.1.4.6.2 For the purposes of the Authorised Development, examples of the activities anticipated to be covered are listed below:
- 7.1.4.6.2.1 **Maintenance and inspection:** Throughout the life of the Authorised Development there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to failures. It is anticipated that there will be up to 5 permanent staff onsite during the operational phase;
- 7.1.4.6.2.2 **Repair / Refurbish / Replaced:** Through the planned maintenance regime and through any unplanned maintenance required due to failures, it is likely that some plant and equipment will need to be repaired or refurbished or indeed replaced;
- 7.1.4.6.2.3 **Adjust and alter:** Through the planned maintenance regime, and outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the Authorised Development to respond to changing conditions;
- 7.1.4.6.2.4 **Remove:** Repair, refurbish, replacement and adjustment activities will require plant, equipment and material to be removed;
- 7.1.4.6.2.5 **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;

7.1.4.6.2.6 **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;

7.1.4.6.2.7 While the definition allows some flexibility as to what maintenance of the Authorised Development will comprise, the ability to carry out those activities listed under 7.1.4.6.2 (crucially to 'improve' the Authorised Development) remains subject to restrictions in the drafting that such activities must not give rise to materially new or different environmental effects beyond those identified and assessed in the ES.

7.1.4.6.3 The definition of "Order land" means the land shown on the Land and Crown 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 to indicate where the Undertaker can create and acquire new rights. In addition, the Land and Crown Land Plans show the land over which temporary possession may be taken and land that is excluded from both the Order itself and the compulsory acquisition powers in the Order;

7.1.4.6.4 The definition of "Order limits" means the limits shown on the Land and Crown Land Plans and Works Plans within which the Authorised Development may be carried out and land acquired or used;

7.1.4.6.5 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

7.1.4.6.6 The "undertaker" is defined as Ecotricity (Heck Fen Solar) Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 32 (see paragraph 7.1.64 of this Explanatory Memorandum).

7.1.5 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.

7.1.6 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.

### **Article 3**

7.1.7 Article 3 (*Development consent etc. granted by this Order*) grants development consent for the Authorised Development. 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 paragraphs 2.1.11 and 2.1.12 of this Explanatory Memorandum.

7.1.8 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 land areas and that which has been assessed in the ES.

7.1.9 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. A proportionate amount of flexibility is also required for the grid route corridor to allow for micro-siting the cable around any operational assets (such as Viking Link and Triton Knoll) and any unforeseen obstacles, and to assist with any mitigation / avoidance of archaeological potential.

7.1.10 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 ES 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 ES.

#### **Article 4**

7.1.11 Article 4 (*Operation of generating stations*) 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.

#### **Article 5**

7.1.12 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 ES 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 materially different environmental effects to those identified in the ES.

#### **Article 6**

7.1.13 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, that 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 under this article for this Order can be found in **the Great Yarmouth Third River Crossing Development Consent Order 2020 and the Longfield Solar Farm Order 2023**.

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

7.1.14.1 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 or the appropriate Internal Drainage Board;

7.1.14.2 Section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;

7.1.14.3 byelaws made by drainage bodies under Section 66 of the Land Drainage Act 1991;

7.1.14.4 Environment Agency byelaws made, or having effect, under paragraphs 5, 6 and 6A to Schedule 25 of the Water Resources Act 1991;

7.1.14.5 Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as it requires an environmental permit for flood risk activities; and

7.1.14.6 the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under Articles 27 and 28 of the 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 27 and 28. This approach has precedent and has been accepted by the Secretary of State in **the Drax Power (Generating Stations) Order 2019, the Millbrook Gas Fired Generating Station Order 2019, the Cleve Hill Solar Park Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, and the Longfield Solar Farm Order 2023**.

7.1.15 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, Water Resources 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 (Part 5 and Part 7 of Schedule 13 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 Authorised Development.

7.1.16 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, are being 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.

7.1.17 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 therefore extends the exception to the context of the DCO and any trees felled as a result of the Authorised Development. Similar amendments are made in Article 6 to the Hedgerows Regulations 1997. These amendments bring the position for DCO development in line with the position under other planning permissions or deemed permissions (such as under the Transport and Works Act 1992). With the controls included in the Requirements, the Relevant Planning Authorities have the ability to consider the impacts of such works before providing approval; the provisions of Article 6 simply mean that separate consents are not required. This is considered appropriate for a DCO project with national importance. This approach has precedent in **the Great Yarmouth Third River Crossing Development Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, and the Longfield Solar Farm Order 2023.**

7.1.18 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 rivers, watercourses, railways, water supply infrastructure and highways 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 the majority of the Acts considered did not append plans making it clear to which relevant rivers, watercourses, highways, railways or infrastructure they related. Article 6 disapplies the legislation listed in Schedule 3 in so far as any provisions are inconsistent with how the powers in the Order can be exercised. This is needed in the same manner as those amendments explained above - in order to provide the Undertaker and relevant statutory bodies with certainty as to what is consented within the Order and that such matters would not be subject to unnecessary further regulatory control.

### **Article 7**

7.1.19 Article 7 (*Defence to proceedings in respect of statutory nuisance*) 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 or 65 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 Authorised Development and for this reason it is necessary to include the Article in the Order.

### **Part 3 (Streets)**

#### **Article 8**

7.1.20 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 by Article 8(4) 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. This Article 8(4) wording is



based on Article 9 of **the Immingham Open Cycle Gas Turbine Order 2020** and Article 8(3) of **the Longfield Solar Farm Order 2023**.

### **Article 9**

7.1.21 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 permanent and temporary works. This Article is necessary because, in order to construct, operate, maintain and decommission the Authorised Development, the Undertaker will need to alter some 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 power conferred by paragraph (1) does not require the secondary consent of the street authority beyond the mechanisms set out in the DCO. The rationale being that the DCO is a 'one-stop-shop' and if the work and street is specified in the corresponding Schedule 5 of the Order then the intention is that the principle of the work to streets is consented through the DCO. The exact details for the works will then flow through the Requirements (ie the design principles under Requirement 6), in which the Relevant Planning Authorities (in consultation with the County Authority) have final approval powers.

7.1.22 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 (in a form reasonably required by the street authority) before they can be exercised, and this is subject to the provisions of Article 42, which seeks to ensure that the consenting process does not inappropriately delay the implementation of the Authorised Development. The consent of the street authority is not required (pursuant to paragraph (6)) under Article 9 where the street authority has already provided approval of the details submitted in accordance with the requirements contained in Schedule 2 of the Order.

7.1.23 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**. However, it has been amended here to reflect the requirements of the Authorised Development and to reflect engagement with County Authority. The addition of paragraph (6) reflects the recent approach taken in the application for the draft Mallard Pass Solar Farm Order.

### **Article 10**

7.1.24 Article 10 (*Construction and maintenance of altered streets*) provides that the undertaker must maintain the permanent alterations to the street for a period of 12 months from completion, and Article 10(2) provides that the temporary alterations to streets are to be made to an appropriate standard and maintained initially at the expense of the Undertaker for the duration that the temporary alterations are used by the Undertaker for the purpose of constructing/decommissioning the Authorised Development. Its purpose 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. The temporary alteration(s) set out in Schedule 5 are to be maintained by the Undertaker for the duration of the alterations and, once restoration works are completed, for one year thereafter after which the highway authority will become responsible for the maintenance of the restored alterations. Paragraphs (3) and (4) mirror the defence in Section 58 of the Highways Act 1980 where the Undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This Article (and the incorporation of the defences in particular) is similar to Article 19 in **the Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in **the Drax Power (Generating Stations) Order 2019**. Additional drafting has been

included at paragraph (1) and (2) to clarify the period of time that the Undertaker will be responsible for maintenance and expense. This reflects discussions with the Relevant Planning Authorities and the County Authority as well as the recent approach taken in the ongoing application for the Mallard Pass Solar Farm Order.

### **Article 11**

7.1.25 Article 11 (*Temporary stopping up of public rights of way*) allows the temporary stopping up of public rights of way during the carrying out of the authorised development. It refers to Schedule 6 which lists those rights of way which may be stopped up temporarily. This is necessary for the construction of the permissive path. However, prior to any temporary stopping up taking place, the Undertaker is required to notify the Relevant Planning Authority and the County Authority. This is not based on the Model Provisions but does follow the approach taken in a number of energy projects – notably offshore wind farm development consent orders, most recently in **the Norfolk Vanguard Offshore Wind Farm Order 2022** and **the Norfolk Boreas Offshore Wind Farm Order 2021**.

### **Article 12**

7.1.26 Article 12 (*Access to works*) is a model provision with some minor amendments through the additions of paragraph (2), (3) and (4). It 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 to works). As with Article 9, the power conferred by paragraph (1)(a) and (1)(b) does not require the secondary consent of the street authority beyond the approvals under the DCO. The rationale being that the DCO is a 'one-stop-shop' and if the access is specified in the corresponding Schedule 7 of the Order then the intention is that the principle of the access is consented through the DCO. The exact details for the works will then flow through the Requirements (ie the design principles under Requirement 6), in which the Relevant Planning Authorities (in consultation with the County Authority) have final approval powers.

7.1.27 The Article (at paragraph (1)(c)) 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. However, paragraph (4) clarifies that such approval under this article will not be required where the Relevant Planning Authority has already given approval of the necessary details submitted in accordance with the Requirements contained in Schedule 2 of the Order. Additionally, paragraph (3) requires the Undertaker to restore any access temporarily created by the Undertaker to the reasonable satisfaction of the Relevant Planning Authority. Paragraph (2) provides that, where the Relevant Planning Authority fails to make a decision on an application for approval within 28 days of receipt, it is deemed to have granted approval. Paragraph (2) has recent precedent in **the Norfolk Vanguard Offshore Wind Farm Order 2022** and **the Norfolk Boreas Offshore Wind Farm Order 2021**.

### **Article 13**

7.1.28 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.

#### **Part 4 (Supplemental Powers)**

##### **Article 14**

7.1.29 Article 14 (*Discharge of water*) is a model provision which enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to Section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. References to the harbour authority, the Homes and Communities Agency (now Homes England) and a National Park Authority have been removed as they are not relevant to the Order. In relation to the Black Sluice Internal Drainage Board, these provisions are disapplied as sufficiently detailed provision will be made by the protective provisions which are agreed with Black Sluice Internal Drainage Board (see Part 7 of Schedule 13).

##### **Article 15**

7.1.30 Article 15 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order Land 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 Land 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.

##### **Article 16**

7.1.31 Article 16 (*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 Limits, 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.

7.1.32 Protective works can also be undertaken after the carrying out of the works forming part of the Authorised Development for a period of five (5) years from the date of final commissioning of the phase 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 in close proximity to the Order Limits that might feasibly require surveys and protective works as a result of the Authorised Development.

7.1.33 The Article includes compensation provisions both in relation to the consequences of the protective works being undertaken, but also where protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of five (5) years from the date that part of the development is completed).

### **Article 17**

7.1.34 Article 17 (*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 survey, 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.

7.1.35 The model provision has been modified so that no trial holes are to be made:

7.1.35.1 in land located within the highway boundary without the consent of the highway authority; or

7.1.35.2 in a private street without the consent of the street authority.

7.1.36 If a highway or street authority after having received an application to make trial holes within a highway or private street fails to notify the Undertaker within 28 days of having received the application it will have been deemed to have provided consent. This approach has been adopted in **the Hornsea Two Offshore Wind Farm Order 2016, the East Anglia Three Offshore Wind Farm Order 2017, the Norfolk Boreas Offshore Wind Farm Order 2021** and **the Cleve Hill Solar Park Order 2020**.

7.1.37 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** and **the Norfolk Boreas Offshore Wind Farm Order 2021**.

## **Part 5 (Powers of Acquisition)**

### **Article 18**

7.1.38 Article 18 (*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 21 (*Private rights*).

Similarly, Article 20 (*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**.

### **Article 19**

7.1.39 Article 19 (*Time limit for exercise of authority to acquire land compulsorily*) is adapted from the 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 ("**GVDs**"). This Article 19 differs from the model provisions and other made DCOs as it sets out that the 5 year period starts to run from the later of the expiry of the legal challenge period under section 118 of the Planning Act 2008, or the final determination of any legal challenge under that provision. This is necessary following recent legal challenges to made DCOs (for example, to the Norfolk Vanguard Offshore Wind Farm project), which may delay the ability to exercise compulsory acquisition powers and in so doing reduce the length of time within which those notices to treat or GVDs may be exercised, if the period relates (as it does usually) to the date on which the Order is made. In the context of increasing opposition and formal challenges to projects which are similar to the Authorised Development, the Applicant considers this amendment necessary to ensure that, in the event of a legal challenge which is ultimately unsuccessful, then the compulsory purchase powers granted to the Undertaker under the Order will not have expired or that the Applicant will not have lost time in which to exercise those powers particularly as it may not be considered feasible or appropriate for the Applicant to undertake development "at risk" whilst any judicial review challenge is live. It is therefore considered appropriate that the time period for the 5 year exercise of compulsory acquisition powers should begin once the legal challenge period has expired or (if later) a legal challenge has been determined. This approach (but with an 8 year timeframe) has also been proposed in **the draft Lower Thames Crossing Development Consent Order**.

### **Article 20**

7.1.40 Article 20 (*Compulsory acquisition of rights*) entitles the Undertaker to acquire rights over land and impose restrictive covenants over the Order Land which may be compulsorily acquired under Article 18, including rights already in existence, or to create new rights.

7.1.41 The article provides that in respect of the Order land specified in Schedule 8 of the Order the Undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes specified in that same schedule. The ability to acquire new rights is required in order that the Undertaker can construct 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 8 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.

7.1.42 Paragraphs (5) and (6) provide, where the acquisition of new rights or the imposition of a restriction under the Order is required 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 statutory undertaker.

7.1.43 This article is a departure from the model provisions, but it has precedent in 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**.

#### **Article 21**

7.1.44 Article 21 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition under article 18 of the Order; or (2) land is subject to compulsory acquisition of rights or the imposition of restrictive covenants under article 20. The article also 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.

7.1.45 In paragraph (4), reference is made to section 152 of the 2008 Act to make it clear that compensation is payable and that such compensation would be payable under this section of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.

#### **Article 22**

7.1.46 Article 22 (*Application of the 1981 Act*) is a model provision which applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Undertaker the option to acquire land (including rights in land) via the process set out under this 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.

7.1.47 This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. This has precedence in other DCOs including **the Drax Power (Generating Stations) Order 2019** and **the Cleve Hill Solar Park Order 2020**.

#### **Article 23**

7.1.48 Article 23 (*Acquisition of subsoil only*) permits the Undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to article 18 or 20), and gives the Undertaker the ability to minimise the extent of interests acquired from owners, thereby reducing the impact on landowners. This article is appropriate in the context of cables or pipes to be laid underground as part of the Authorised Development, where acquisition of the 'entire' freehold may not be required. This is a model provision.

#### **Article 24**

7.1.49 Article 25 (*Power to override easements and other rights*) provides the Undertaker with the power to override easements and other rights and reflects the terms of section 120(3) and (4) and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 24 of **the Silvertown Tunnel Order 2018** and Article 27 of **the Riverside Energy Park Order 2020**. The Article is supplementary to Article 20 (Compulsory acquisition of land) and Article 21 (Compulsory acquisition of rights) and is considered necessary and expedient to give full effect to development consent under Article 3. The Article makes it clear that any "authorised activity", as defined

in paragraph (2), is authorised notwithstanding that it 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 the user of land arising by virtue of contract. Paragraph (4) provides that compensation is payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

### **Article 25**

7.1.50 Article 25 (*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 recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (5) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Articles 27 or 28 of this Order. These modifications have broad precedent in Schedule 14 to **the High Speed Rail (London – West Midlands) Act 2017, the Wrexham Gas Fired Generating Station Order 2017, Silvertown Tunnel Order 2018 and the Cleve Hill Solar Park Order 2020.**

### **Article 26**

7.1.51 Article 26 (*Rights under or over streets*) is a model provision which has been included in the majority of made DCOs to date and which allows 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.

7.1.52 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). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.

### **Article 27**

7.1.53 Article 27 (*Temporary use of land for carrying out the authorised development*) allows all of the Order Land to be temporarily used for the carrying out of the Authorised Development, where no notice of entry or general vesting declaration has been served.

7.1.54 In addition to the ability to enter on and take temporary possession of Order land, Article 27(1)(a)-(e) stipulate various activities that can be undertaken pursuant to the Article. This list has been modified from the model provisions to stipulate project specific activities, such as use of the land for temporary working sites and accesses, and to carry out any mitigation works required pursuant to the Requirements in Schedule 2 of the Order.

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

7.1.56 Article 27 also sets out limitations on this general power to temporarily use the Order Land for carrying out the Authorised Development. Under paragraph (2) the

Undertaker cannot take temporary possession of any house, garden or other occupied building. In addition, the Undertaker must:

7.1.56.1 serve notice of intended entry not less than fourteen (14) before intended entry onto the land (paragraph (3));

7.1.56.2 not remain in temporary possession of the land for any longer than required and not for more than one year after the date of final commissioning of the phase of the Authorised Development for which the land was temporarily possessed unless the Undertaker has already served a notice to treat or general vesting declaration (paragraph (4)); and

7.1.56.3 before giving up occupation of land, remove the temporary works and restore the land to the reasonable satisfaction of the owner. The model provision has been modified to specify certain operations that are not required to be removed. This approach is specific to the Authorised Development and is necessitated by the Authorised Development (paragraph (5)).

7.1.57 Compensation provisions are included at paragraphs (6) to (8) to compensate owners and occupiers that suffer loss or damage as a result of their land being temporarily used for carrying out the Authorised Development.

7.1.58 The article is a departure from the exact wording of the model provisions, but has precedent in a number of made DCOs see for example **the East Anglia Three Offshore Wind Farm Order 2017**, **the Millbrook Gas Fired Generating Station Order 2019** and **the Cleve Hill Solar Park Order 2020**.

### **Article 28**

7.1.59 A similar provision to Article 27 is made in article 28 (*Temporary use of land for maintaining the authorised development*) for the temporary use of Order land for maintenance of the Authorised Development during the "maintenance period". The Article is a model provision and it is required so that the Undertaker can take temporary possession of land within the Order Land if it is reasonably required to maintain the Authorised Development. The Article also allows temporary works and buildings to be constructed if reasonably necessary. It is considered appropriate as it would impose a lesser burden than acquiring rights to achieve the same purpose. The power is appropriately limited and cannot be exercised in respect of a house, garden or any other building where it is occupied.

7.1.60 The definition of "maintenance period" is set out in paragraph (11) and means a period of five years beginning with the date of final commissioning of the phase of the Authorised Development for which temporary possession is required under the Article. This excludes landscaping works, for which "the maintenance period" is set out in the landscape ecological management plan. This is in order that the Undertaker can carry out the landscaping commitments set out in the landscape ecological management plan, approved pursuant to Requirement 8. This wording has precedent in **the Millbrook Gas Fired Generating Station Order 2019** and **the Norfolk Vanguard Offshore Wind Farm Order 2022**.

7.1.61 There are several provisions that apply, which are similar to the provisions in Article 27 (*Temporary use of land for carrying out the authorised development*):

7.1.61.1 The Undertaker must provide at least twenty-eight (28) days' notice to the relevant owner/occupiers' before taking temporary possession (paragraph (3));



7.1.61.2 The Undertaker may only retain possession for as long as is reasonably necessary to carry out the maintenance (paragraph (4));

7.1.61.3 When returning the land after the temporary possession the Undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners (paragraph (5));

7.1.61.4 Compensation provisions are included to compensate owner/occupiers that suffer loss as a result of their land being temporarily used for the maintenance of the Authorised Development (paragraphs (6) to (8)).

### **Article 29**

7.1.62 Article 29 (*Statutory undertakers*) is a model provision subject to some amendments which provides the Undertaker with a statutory authority to compulsorily acquire land or new rights or impose restrictive covenants over land belonging to statutory undertakers which is identified in the Land and Crown Land Plans and the Book of Reference. The Article 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 40 below) included at Schedule 13 of the Order. The power is required over the whole of the Order Land and similar wording has been used in numerous made Orders, including **the Cleve Hill Solar Park Order 2020**. This Article is required because it is impracticable to show and describe all apparatus within the Order Land and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order Land is required.

### **Article 30**

7.1.63 Article 30 (*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 of the model provisions have been deleted to avoid duplication with the protective provisions contained in Schedule 13. It has precedence in Article 34 of **the Riverside Energy Park Order 2020**, Article 30 of **the Millbrook Gas Fired Generating Station Order 2019**, and Article 31 of **the Drax Power (Generating Stations) Order 2019**.

### **Article 31**

7.1.64 Article 31 (*Recovery of costs of new connections*) is a model provision which provides that persons who have to create a new connection following the exercise of powers under Article 29 (*Statutory undertakers*), for example in a situation where there is an interruption to the service provided by a statutory undertaker to owners or occupiers of premises (such as the provision of gas, water or electricity), their costs incurred in obtaining a new service can be recovered from the Undertaker.

## **Part 6 (Miscellaneous and general)**

### **Article 32**

7.1.65 Article 32 (*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 Authorised Development 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**, **the Cleve Hill Solar Park Order 2020**, and **the Longfield Solar Farm Order 2023**.

7.1.66 Article 32 also provides that, without prejudice to Article 33, that for Work Nos 6B and 6C and 7 (works to the Existing Substation and use of temporary laydown areas) the benefit of the Order is for the Undertaker and NGET. This is because NGET is best placed to carry out all or part of the works within NGET's operational land. This approach has precedent in orders such as **the Progress Power (Gas Fired Power Station) Order 2015**, **the Drax Power (Generating Stations) Order 2019** and **the Longfield Solar Farm Order 2023**.

### **Article 33**

7.1.67 Article 33 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs (i.e. offshore wind DCOs such as the **Norfolk Boreas Offshore Wind Farm Order 2021** and the **Norfolk Vanguard Offshore Wind Farm Order 2022** and other solar DCOs such as **the Longfield Solar Farm Order 2023**) 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 the transferee or lessee is:

7.1.67.1 the holder of an electricity generating licence under section 6 of the Electricity Act 1989;

7.1.67.2 a holding company or subsidiary of the Undertaker; or

7.1.67.3 where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. Article 33(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'.

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. In conjunction with this, under Article 43 (*Guarantees in respect of payment of compensation*), the Undertaker is unable to exercise certain powers under the Order until a guarantee has been put in place (see below). This has precedent in Article 9 of **the Riverside Energy Park Order 2020**. Article 33(4) provides that where the consent of the Secretary of State is not needed, the Undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 33(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**.

7.1.68 Article 33(8) provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then: the transferred benefit will

include any rights that are conferred and any obligations that are imposed; the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the Undertaker; 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. This approach has precedent in **the Cleve Hill Solar Park Order 2020** and **the Longfield Solar Farm Order 2023**.

#### **Article 34**

7.1.69 Article 34 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs and 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 Authorised Development.

#### **Article 35**

7.1.70 Article 35 (*Operational land for purposes of the 1990 Act*) is a model provision which is included in numerous made DCOs and which 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.

#### **Article 36**

7.1.71 Article 36 (*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 or operation 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 the hedgerows specified within Schedule 10 within the Order Limits that may be required for the purposes of constructing the Authorised Development. This has precedent in **The Norfolk Vanguard Offshore Wind Farm Order 2022** and **The Norfolk Boreas Offshore Wind Farm Order 2021**. 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.

#### **Article 37**

7.1.72 Article 37 (*Trees subject to tree preservation orders*) does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order ("**TPO**"). Article 37 (*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 or shrub to prevent it obstructing or interfering with the construction, maintenance or operation 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 for 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** and **the Longfield Solar Farm Order 2023**.

### **Article 38**

7.1.73 Article 38 (*Certification of plans and documents etc*) is a model provision which provides for the submission of the various documents referred to in the Order (such as the Book of Reference, Works Plans, Land and Crown Land Plans and ES) to the Secretary of State so that they can be certified as being true copies. The Article refers to Schedule 11, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 11 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.

### **Article 39**

7.1.74 Article 39 (*Arbitration*) is an arbitration provision and it is a departure from the model provisions. This drafting, and that in the associated Schedule 12, has been included in **the Millbrook Gas Fired Generating Station Order 2019, the Cleve Hill Solar Park Order 2020, and the Longfield Solar Farm Order 2023**, among 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.

7.1.75 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 time period then by the Secretary of State following application by one of the parties.

7.1.76 It applies Schedule 12 of the Order which sets out further detail of the arbitration process. The detail of Schedule 12 is set out at paragraphs 8.1.19 to 8.1.22 of this Explanatory Memorandum.

7.1.77 In addition, given that the Undertaker acknowledges that the Secretary of State has inserted this wording in other made orders such as **the Norfolk Boreas Offshore Wind Farm Order 2021** and **the Norfolk Vanguard Offshore Wind Farm Order 2022**, the Undertaker has included provision under Article 39(2) that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.

### **Article 40**

7.1.78 Article 40 (*Protective provisions*) provides for Schedule 13, which protects the interests of certain statutory undertakers, to have effect. Further detail of this is set out at paragraphs 8.1.23 and 8.1.24 of this Explanatory Memorandum.

### **Article 41**

7.1.79 Article 41 (*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.

#### **Article 42**

7.1.80 Article 42 (*Procedure in relation to certain approvals etc.*) provides that Schedule 14 is to have effect in relation to all consents, agreements or approvals contemplated by any provision of the Order (other than the provisions in Schedule 13 (*protective provisions*)), and that any such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed by the relevant authority or body. This is considered necessary in order that receipt of a consent required from a third party cannot unnecessarily delay implementation of the Authorised Development. Applying this provision to all consents, agreements or approvals is intended to provide consistency.

7.1.81 The Article also has the effect of providing that section 78 of the 1990 Act applies to the discharge of requirements included in Schedule 2 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.

#### **Article 43**

7.1.82 Article 43 (*Guarantees in respect of payment of compensation*) restricts the Undertaker from exercising the powers conferred under Articles 18, 20, 21, 26, 27, 28 and 29 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 might take the form of a parent company guarantee for example. 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**, **the Drax Power (Generating Stations) Order 2019** and **the Cleve Hill Solar Park Order 2020**.

#### **Article 44**

7.1.83 Article 44 (*Crown rights*) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the Order land. This Article is not a model provision but has precedent in numerous DCOs including in Article 41 of **the Hornsea Three Offshore Wind Farm Order 2020** and Article 42 of **the Norfolk Boreas Offshore Wind Farm Order 2021**. Article 18 (*Compulsory acquisition of land*) and Article 21 (*Compulsory acquisition of rights*) include express provision confirming that the powers contained therein are subject to Article 44. The intention of the article is to protect the Crown in respect of its land and interests, both when it holds the land or where it is held by another person (such as a government department). In particular it provides that nothing in the Order authorises the Undertaker (or licensee of the Undertaker) to interfere with any land or rights in that land as follows:

7.1.83.1 Where it belongs to His Majesty in right of the Crown and forms part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

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

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

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

**Article 45**

7.1.85 Article 45 is specific to the NGET extension works to the Existing Substation (Work Nos. 6B and 6C).

7.1.86 Article 45(1) makes clear that if the undertaker or NGET undertook any elements of the extension works described in Work No 6B and 6C pursuant to a permission under the 1990 Act or by virtue of their statutory undertaker permitted development powers under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 then the requirements in Schedule 2 of the Order will not have effect in respect of those works. This is to allow for a scenario in which NGET needed to extend the Existing Substation in advance of the Applicant commencing its DCO. This paragraph was not included in the model provisions, as it is project specific, but it does broadly follow an approach set out in article 59 of **the A428 Black Cat to Caxton Gibbet Development Consent Order 2022**.

7.1.87 Article 45(2) has the effect of disapplying the previous landscaping condition associated with planning permission (reference B/05/0046) granted by Boston Borough Council on 20 April 2005 which authorised the construction of the Bicker Fen substation (the "**2005 Permission**"). Documents (including the Approved Landscaping Plan) submitted pursuant to conditions of the 2005 Permission detailed that trees would be planted to the south of the Existing Substation. As explained in Chapter 4 of the ES (Rev 3, submitted with the NGET Change Application), these trees (or part thereof) may need to be removed to facilitate the Applicant's project. This paragraph is therefore necessary to ensure that enforcement action is not taken in respect of any inconsistencies between the Authorised Development and the 2005 Permission.

7.1.88 Article 45(2) is included in the Order pursuant to section 120 of the 2008 Act (*What may be included in order granting development consent*). The disapplication of conditions relating to the 2005 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 necessary or expedient for giving full effect to the Order.

7.1.89 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 here under Article 45(2) with disapplication of the 2005 Permission in so far as it is inconsistent with the Authorised Development. This approach has precedence in Article 3(3) of **the Lake Lothing (Lowestoft) Third Crossing Order 2020** and Article 6(4) of **the Longfield Solar Farm Order 2023**.

## 8 SCHEDULES TO THE ORDER

### **Schedule 1**

8.1.1 Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different elements of the Authorised Development. This split of the Authorised Development between different work numbers enables the 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.

8.1.2 The works set out in Schedule 1 to the Order are explained in paragraphs 2.1.11 to 2.1.18 of this Explanatory Memorandum.

8.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the Undertaker does not exceed the basis of the assessment in the ES. This is achieved through the following mechanisms in the Order:

8.1.3.1 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 ES.

8.1.3.2 In terms of the detailed design, Requirement 6 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, siting, 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.

8.1.3.3 Requirement 6(2) requires that the details submitted must accord with the Outline Design Principles and the Flood Risk Assessment. Both the Outline Design Principles and Flood Risk Assessment are certified documents pursuant to Article 38 (*certification of plans and documents*) and Schedule 11 (*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 ES. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the ES, recognising that the final massings may differ from (but will never be larger than) these maxima.

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.

### **Schedule 2**

8.1.4 Schedule 2 sets out the Requirements which 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 ES and discussions with the Relevant Planning Authorities, County Authority or other relevant statutory consultees.

8.1.5 The Requirements closely relate to the mitigation set out in the ES and a number of them specifically refer to the ES 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.

8.1.6 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 County Authority is the discharging authority. In some instances the Relevant Planning Authority or County 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 but has precedent in a number of made orders including the **Norfolk Boreas Offshore Wind Farm Order 2021** and the **Norfolk Vanguard Offshore Wind Farm Order 2022** and the **Longfield Solar Farm Order 2023**. Where consultation is required under the Order it is, in each case unless stated otherwise, the Relevant Planning Authority's or County Authority's duty to carry it out with the stated statutory consultee 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). Local planning authorities would usually operate in this way when considering a planning application under the 1990 Act and so will be familiar with the procedure. Where it is considered that it would be particularly relevant for the Relevant Planning Authority or County Authority to consult a third party, that third party has been named within the relevant requirement.

8.1.7 Some of the requirements are drafted with a view to distinguishing between the different specific work numbers, or more generally different parts or phases 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 or phase of the Authorised Development and construct that element, while continuing to submit details to discharge the Requirement in relation to other parts or phases. This provides an appropriate balance between development not starting until details are approved, and allowing other parts or phases of the Authorised Development (where details are already approved) to be constructed. This phased approach to the discharge of Requirements is proportionate for a Nationally Significant Infrastructure Project, particularly those with an element of linear development, such as this project, where certain elements or stages of the works may need to commence before others.

8.1.8 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 ES; enforceable and precise in their language; and reasonable in all other respects.

8.1.9 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 plan. This is subject to requirement 5, as explained below.

8.1.9.1 **Requirement 1 – Interpretation:** This provides certain definitions that apply to this Schedule only, rather than the Order as a whole.

8.1.9.2 **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.

8.1.9.3 **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 the Relevant Planning Authorities and the County Authority. The scheme must include:

- 8.1.9.3.1 a timetable for the construction of the phase or phases of the Authorised Development;
- 8.1.9.3.2 a plan to identify each area of land subject to phasing; and
- 8.1.9.3.3 a statement to confirm that the phasing details comprising the scheme are in line with the assumptions under the ES.
- 8.1.9.4 The scheme must be implemented as notified to the relevant authorities. The exact detail and number of phases can only be finalised once contractors have been appointed and have determined the detailed construction process and considered the approach to discharging requirements. In addition, and as a further justification for the need for the phasing scheme to be a 'notification' rather than an approval, as NGET will need to be in control of the discharge of requirements relating to their extension works on the Existing Substation (Work No. 6B and 6C), it is likely that these works will need to form a separate phase. This principle (particularly with the concept of a 'notification' rather than an approval) has precedent in Requirement 15 of the **Norfolk Boreas Offshore Wind Farm Order 2021** and Requirement 15 of the **Norfolk Vanguard Offshore Wind Farm Order 2022**.
- 8.1.9.5 In view of the optionality between Work No 5A and Work No 5B (explained at paragraph 2.1.12.4 of this Explanatory Memorandum), the Undertaker must give notice under Requirement 3(4) as to whether the Undertaker will be proceeding with Work No 5A or Work No 5B. This therefore provides the control to ensure proportionality and that the Undertaker cannot pursue both route options. The Undertaker must also give notice to the Relevant Planning Authorities within seven days of the date of final commissioning (or dates of final commissioning if the Authorised Development is constructed in phases as approved in the written scheme) that final commissioning for the phase (if constructed in a single phase) or phases (if constructed in multiple phases) has taken place.
- 8.1.9.6 **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.
- 8.1.9.7 **Requirement 5 – Approved details and amendments to them:** This Requirement provides that where any plans, details or schemes have been approved by the Relevant Planning Authority (or authorities) or County Authority, the Undertaker may submit for approval any amendments to those plans, details or schemes and, if approved by the Relevant Planning Authority (or authorities) or County Authority, those plans, details or schemes are to be taken to include the amendments approved by the Relevant Planning Authority (or authorities) or County Authority. 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 ES.
- 8.1.9.8 **Requirement 6 – Detailed design approval:** This Requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority (or authorities) in consultation with the County Authority before any phase of the Authorised Development can commence. The need to obtain approval

from the relevant authorities in respect of details of vehicular and pedestrian access, parking and circulation areas, junction improvements and passing places is not needed under this Requirement where consent has already been obtained for the relevant street / access works under Articles 9, 10 and/or 12 of the Order. This approach reflects discussions with the County Authority and is aligned with the draft Mallard Pass Solar Farm Order.

8.1.9.9 The details submitted must be in accordance with the Outline Design Principles and the Flood Risk Assessment and (added at Deadline 3 following a request from Lincolnshire County Council) demonstrate how any relevant results of the archaeological investigations or evaluations carried out pursuant to Requirement 12 have been incorporated into the design. The Authorised Development 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.

8.1.9.10 **Requirement 7 – Fire safety management:** The Requirement states that an Energy Storage Safety Management Plan (“**ESSMP**”), substantially in accordance with the outline energy storage safety management plan, must be submitted and approved by the County Authority in consultation with North Kesteven District Council (who have been specified by name due to the location of the Energy Storage) and Boston Borough Council (who have subsequently been added as a consultee (at Deadline 4) following a request given the close proximity of the site to the Borough of Boston) and Lincolnshire Fire and Rescue Service before commencement of Work No. 2 of the Authorised Development.

8.1.9.11 **Requirement 8 – Landscape ecological management plan:** The Requirement stipulates that no phase of the Authorised Development may commence until a written landscape ecological management plan (which is substantially in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The landscape ecology management plan must include:

8.1.9.11.1 details and timescales for any proposed planting;

8.1.9.11.2 an implementation timetable for any proposed works and surveys;

8.1.9.11.3 details of how the project will secure a minimum of 65% biodiversity net gain in habitat units during the operation of the Authorised Development; and

8.1.9.11.4 how the measures set out in the plan will be managed, maintained and monitoring up until the date the decommissioning and restoration plan is implemented pursuant to Requirement 18 (Decommissioning and restoration).

8.1.9.12 For the avoidance of doubt, the requirement to deliver the percentage of biodiversity net gain stipulated in paragraph (2)(c) applies to the whole Authorised Development (i.e. across the entire Order Land), regardless of how many phases there are. In other words, each phase does not have to deliver the stated percentage of biodiversity net gain but the plan submitted for each phase will need to demonstrate how the biodiversity net gain is secured across the whole of the project during the operation of the Authorised Development.

8.1.9.13 The Requirement expressly links the calculation of the biodiversity net gain to the Statutory Biodiversity Metric published by Department for Environment Food and Rural Affairs on 29 November 2023. This is because the Statutory Metric is the current version of the biodiversity metric at the time of close of the examination

for the Application and, therefore, is the appropriate calculation method (as opposed to any future updated version). The Applicant has agreed with the relevant planning authorities that it is appropriate to fix the metric now, in the interests of certainty. Notwithstanding this, following the approach taken in **The Longfield Solar Farm (Correction) Order 2023**, the Applicant has introduced flexibility so that "such other biodiversity metric" can be used by the Applicant with the approval of the relevant planning authority in consultation with the relevant statutory nature conservation body.

8.1.9.14 The Requirement also contains a further obligation on the Undertaker to ensure that any planting which dies, is damaged, or removed during seven years of the planting will be replaced.

8.1.9.15 **Requirement 9 – Implementation and maintenance of landscaping:** This Requirement provides that all landscaping works which are relevant to each phase must be carried out in accordance with the landscape ecological management plan approved under Requirement 8.

8.1.9.16 **Requirement 10 – Fencing and other means of enclosure:** As part of the detailed design approval required by Requirement 6, 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 Authorised Development. Any submitted details must be in line with the Outline Design Principles. 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 Authorised Development for which it was used.

8.1.9.17 **Requirement 11 – Surface and foul water drainage:** This Requirement provides that no phase of the Authorised Development 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 County Authority in consultation with the relevant internal drainage board and Anglian Water (in respect of its sewerage Undertaker functions). Any submitted details must be in line with the Flood Risk Assessment.

8.1.9.18 **Requirement 12 – Archaeology:** This requirement stipulates that any part of the cable route element of the Authorised Development (Work No. 5, Work No. 5A and Work No. 5B) which has not already been subject to an archaeological evaluation must not commence until a detailed archaeological investigation strategy for that part of the cable route has been submitted to and approved in writing by the County Authority in consultation with the Relevant Planning Authority (or authorities, as applicable). The investigation strategy must be in accordance with the outline Written Scheme of Investigation – Evaluation (document reference 7.13). This is required as the Applicant has undertaken full investigation works (including trial trenching) across the Energy Park (i.e. Work No. 1-4) but has not undertaken trial trenching across the full length of the cable route. Requirement 12(1) therefore secures the necessary investigation works over the unevaluated parts of the cable route prior to commencement of Work No. 5 (inclusive of Work No. 5A and 5B). The requirement also stipulates that no phase of the Authorised Development may commence until a detailed archaeological mitigation strategy for that phase has been submitted and approved on the same basis. The detailed archaeological mitigation strategies

must take into account the results of the approved written schemes of archaeological evaluation; and for all phases must be prepared by a competent archaeological organisation and appointed specialist analysts, and contain the details set out in paragraph (2) of the requirement. Any archaeological works must be carried out in accordance with the approved schemes and strategies.

**8.1.9.19 Requirement 13 – Construction and environmental management plan:**

Under this Requirement, no phase of the Authorised Development 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 County Authority and the Environment Agency.

**8.1.9.20 Requirement 14 – Construction traffic management plan:**

This Requirement provides that no phase of the Authorised Development may commence until a construction traffic management plan (which must substantially accord with the outline construction traffic management plan) has been submitted to and approved by the County Authority, in consultation with the Relevant Planning Authority (or authorities, as applicable) for that phase.

**8.1.9.21 Requirement 15 – Operational noise:**

This requirement stipulates that specific work packages comprising the Authorised Development (Work No.1, Work No. 2 and Work No. 4) may not commence until an operational noise assessment containing details of how the design of the Authorised Development ensures that the operational noise rating levels as set out in the ES are to be complied with has been submitted to and approved by both the Relevant Planning Authorities). This is because the relevant noise receptors for the purpose of the noise assessment outlined in the ES are located in the authority boundaries of both Relevant Planning Authorities. The approved assessment measures must be implemented and maintained during the operational lifetime of the Authorised Development.

**8.1.9.22 Requirement 16 – Supply chain, employment and skills:**

This Requirement provides that no part of Works Nos. 1, 2, 3, 4, 5, 5A, and 5B may commence until a supply chain, employment and skills plan (which accords substantially with the outline supply chain, employment and skills plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the County Authority. The plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the Authorised Development, and the means for publicising such opportunities. The trigger for submission of the plan is linked to commencement of the main Energy Park and off-site cable route as these works are considered to be the most relevant for accessing opportunities to employment and support with the supply chain; whereas, works on the Existing Substation will need to be undertaken by NGET and its specialist contractors.

**8.1.9.23 Requirement 17 – Permissive path:**

This Requirement stipulates that prior to the construction of the permissive path, the Undertaker must submit for approval the final details of the permissive path to the County Authority, in consultation with North Kesteven District Council (who are mentioned by name in view of the location of the permissive path) Relevant Planning Authority, including the details set out in the Requirement. It provides that where a phase of the Authorised Development includes a permissive path, the permissive path must be provided and open to the public prior to the date of final commissioning in respect of that

phase. The path must be provided and maintained in accordance with the permissive path details until the part(s) of the Authorised Development in which the permissive path is located is decommissioned.

**8.1.9.24 Requirement 18 – Decommissioning and restoration:** This Requirement provides that the decommissioning of the Authorised Development (save for Work No. 6B, 6C, and Work No. 9C) will commence no later than 40 years following the date of final commissioning of the last phase of the Authorised Development (therefore, the time limit for each relevant phase is 40 years from the date of final commissioning for that phase, such phase or phases to be notified in the written scheme under Requirement 3). Any apparatus and infrastructure constructed pursuant to Work No. 6B and 6C have been removed from the scope of this requirement. This is because these works packages will be carried out by NGET as part of an extension to the Existing Substation which is needed to facilitate the project's connection to the Existing Substation. The apparatus constructed pursuant to these works packages will form part of the Existing Substation's infrastructure going forward and their operational capacity is intended by NGET to extend beyond the 40 year lifetime of the project. No later than 12 months before the date that the Undertaker intends to decommission any part of the Authorised Development, the Undertaker must notify the Relevant Planning Authority and the County Authority of the intended decommissioning date. Within 12 months of the intended decommissioning date (but not later than 6 months before the end of the 40 year lifetime) for any part of the Authorised Development, the Undertaker must submit for approval to the Relevant Planning Authority (or authorities, as applicable) in consultation with the County Authority and the Environment Agency a decommissioning and restoration plan for that part which substantially accords with the outline decommissioning and restoration plan.

**8.1.9.25 Requirement 19 – Operational Environmental Management Plan:** This Requirement stipulates that before the date of final commissioning for any phase of the Authorised Development, an operational environmental management plan (which is substantially in line with the outline operational environmental management plan) must have been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable) for that phase. The submitted plan for each phase must contain details of how sheep grazing is to be managed at the main solar park site (i.e. the fenced areas for Work No. 1) for that phase of the Authorised Development. The approved operational environmental management plan for a phase must then be complied with as part of the operational period of that phase.

**8.1.9.26 Requirement 20 – Soil Management Plan:** This Requirement provides that no phase of the Authorised Development may commence until a soil management plan (which must substantially accord with the outline soil management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable) for that phase. The approved soil management plan for a phase must then be complied with as part of the construction of that phase.

**8.1.9.27 Requirement 21 – Community Orchard:** Under this Requirement, details of a community orchard are required to be submitted for approval to North Kesteven District Council (who are mentioned by name in view of the location of community orchard) before the construction of the orchard takes place. The submitted information must include details and timescales for any proposed planting (in line with the outline landscape ecological management plan) and a maintenance regime for the orchard. The Requirement secures the delivery of the orchard within six months of the date of final commissioning of the final phase of Work

No.1. The orchard must then be maintained in accordance with the approved maintenance regime.

### **Schedule 3**

8.1.10 This Schedule lists out the legislation that the Order disapplies relating to rivers, watercourses, railways, and water supply infrastructure 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. The footnotes in the Schedule contain information about the status of each Act, where relevant.

### **Schedule 4**

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

### **Schedule 5**

8.1.12 This Schedule sets out the streets that are to be altered by reference to the Streets and Access Plan. This Schedule relates to Articles 9 (*Power to alter layout, etc., of streets*) and 10 (*Construction and maintenance of altered streets*).

### **Schedule 6**

8.1.13 This Schedule sets out the locations of the public rights of way to be temporarily stopped up. It references the Rights of Way Plan. This Schedule relates to Article 11 (*Temporary stopping up of public rights of way*).

### **Schedule 7**

8.1.14 This Schedule sets out the permanent accesses (Part 1) and temporary accesses (Part 2) to the Authorised Development. It references the Streets and Access Plan. The Schedule relates to Article 12 (*Access to works*).

### **Schedule 8**

8.1.15 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 on the Land and Crown 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 20 (*Compulsory acquisition of rights*).

### **Schedule 9**

8.1.16 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**. 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 20 (*Compulsory acquisition of rights*).

### **Schedule 10**

8.1.17 This Schedule lists the hedgerows that are to be removed and the extent of their removal as a result of the Authorised Development pursuant to the powers under Article 36.

### **Schedule 11**

8.1.18 This Schedule lists the documents that the Undertaker must have certified as true copies by the Secretary of State pursuant to Article 38 (*Certification of plans and documents, etc.*).

### **Schedule 12**

8.1.19 This Schedule relates to Article 39 (*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.

8.1.20 Schedule 12 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

8.1.21 The timetable for the process is as follows:

8.1.21.1 Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of case and all supporting evidence to support the claim.

8.1.21.2 Within 14 days of receipt of the Claimant's statement of case and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.

8.1.21.3 Within 7 days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.

8.1.22 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.

### **Schedule 13**

8.1.23 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 40 (*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).

8.1.24 In addition, each of Parts 3 – 9 contain provisions for the benefit of a particular body. The versions of the protective provisions contained within Parts 3 – 7 and Part 9 of the Order represent agreed form protective provisions with the relevant undertakers. The provisions under Part 8 are still in discussion and the Applicant expects to have a final form for inclusion at Deadline 5. In addition, there may be a need for additional parts in

the event that any other parties request bespoke protective provisions and the Undertaker is willing to negotiate them. The relevant bodies are as follows:

8.1.24.1 Part 3 - for the protection of Anglian Water;

8.1.24.2 Part 4 – for the protection of National Gas Transmission PLC;

8.1.24.3 Part 5 – for the protection of the Environment Agency;

8.1.24.4 Part 6 – for the protection of National Grid Electricity Transmission PLC;

8.1.24.5 Part 7 – for the protection of Drainage Authorities;

8.1.24.6 Part 8 – for the protection of Railway Interests (Network Rail Infrastructure Limited); and

8.1.24.7 Part 9 – for the protection of Lincolnshire Fire and Rescue.

#### **Schedule 14**

8.1.25 This Schedule provides a bespoke procedure for dealing with an application made to the relevant authority (as defined in the Schedule) for any consent, agreement or approval required or contemplated by the provisions of the Order. It sets out a 10 week time periods (which has been agreed with the Relevant Planning Authorities) for a decision following an application, as well as various other time periods within which decisions or consultations must be made, and provides for deemed approval of the applications in certain circumstances.

8.1.26 Paragraph 4 of this Schedule to the Order makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application.

8.1.27 Paragraph 5 of this Schedule to this Order secures that the Undertaker is required to pay the prescribed fee (where applicable) for the discharge of each requirement under the DCO (whether dealt with in separate applications or combined within a single application) and must be paid to the Relevant Planning Authority with each relevant application. The paragraph also sets out the circumstance in which a fee will be refunded.

8.1.28 Schedules similar to Schedule 14 have been used in various made orders and can be seen in similar form in DCOs such as **the Cleve Hill Solar Park Order 2020**, **the Little Crow Solar Park Order 2022** and **the Longfield Solar Farm Order 2023**, with the drafting in Schedule 14 having regard to Advice Note 15 (July 2018). The bespoke process (which is in line with the **Longfield Solar Farm Order 2023**) is required in order to ensure that applications under the Order are dealt with efficiently so that the Authorised Development is not held up, and to provide greater certainty with regard to the time periods involved in discharging requirements. Deemed consent of applications is required for the same reason and ensures that the projects required to meet a national need will not be held up by the discharge of requirements. The Schedule relates to Article 42 (*Procedure in relation to certain approvals etc.*), described at paragraphs 7.1.77 to 7.1.78 of this Explanatory Memorandum.