



Mallard Pass

Solar Farm

Mallard Pass Solar Farm

Explanatory Memorandum (Tracked)

Deadline 9 (10th November 2023)

EN010127

EN010127/APP/3.2.1

Revision 1

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009 - Reg 5 (2)(c)

1. INTRODUCTION

1.1 Overview

- 1.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant and forms part of the Application.
- 1.1.2 The Applicant is seeking development consent for the Proposed Development, which in summary comprises the construction, operation, maintenance and decommissioning of a solar PV generating station with a total capacity exceeding 50MW and export connection to the National Grid.
- 1.1.3 The Proposed Development is situated within the administrative area of unitary authority Rutland County Council (RCC), South Kesteven District Council (SKDC) and Lincolnshire County Council (LCC).
- 1.1.4 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act. This is because it consists of a generating station with a gross electrical output capacity exceeding 50MW, this being a ground mounted solar PV generating station.
- 1.1.5 The DCO, if made, would be known as the Mallard Pass Solar Farm Order 202[*]. A draft of the DCO has been submitted with the Application.
- 1.1.6 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. It should be read in conjunction with the suite of documents accompanying the Application, in particular the draft Order, the Environmental Statement [[EN010127/APP/6.1](#) from [\[APP-030\]](#) to [\[APP-047\]](#)], the Works Plans [[EN010127/APP/2.2](#) [REP7-006](#)], Land Plans [[EN010127/APP/2.1](#)] [latest version of this document submitted at Deadline 9](#), Book of Reference [[EN010127/APP/4.3](#)] [latest version of this document submitted at Deadline 9](#), Statement of Reasons [[EN010127/APP/4.1](#) [AS-009](#)], Consultation Report [[EN010127/APP/5.1](#) [APP-025](#)] and Statement of Need [[EN010127/APP/7.1](#) [APP-202](#)].

1.2 Mallard Pass Solar Farm Limited

- 1.2.1 The Applicant is a limited company registered at Companies House under company number 12575861 and whose registered office is at 111 Park Street, Mayfair, London, United Kingdom, W1K 7JF. More information on the Applicant's ownership and corporate structure is set out in the Funding Statement [[EN010127/APP/4.2](#)] [APP-022](#) .

1.3 The Site

- 1.3.1 The Site comprises 852 hectares (ha), with approximately 556 ha of the Order limits lying within RCC's administrative boundary and the remaining 296 ha of the Order limits lying within SKDC's administrative boundary. For the purposes of the Application, the areas within the Site are referred to as follows:
 - (a) The Solar PV Site – areas within the Order limits for PV Arrays, Solar Stations, and the Onsite Substation, ancillary buildings and associated infrastructure;

- (b) Mitigation and Enhancement Areas – areas within the Order limits for landscape screening, habitat creation and provision of permissive paths;
 - (c) Highway Works Site – areas for potential improvement works to facilitate access to the Solar PV Site;
 - (d) Grid Connection Corridor – area within the Order limits for the Grid Connection Cable between the Onsite Substation and the National Grid Ryhall Substation.
- 1.3.2 The Order limits is the area ~~within which that can be acquired permanently or used temporarily to carry out~~ the Proposed Development ~~may be carried out~~. The Order limits is shown on the Land Plans [EN010127/APP/2.1] latest version of this document submitted at Deadline 9 and Works Plans [EN010127/APP/2.2REP7-006]. The powers in the Order enabling the acquisition of land ~~and new rights over land and the imposition of restrictions over land~~ relate to the Order Land land only, which is all ~~the land~~ within the Order limits.
- 1.3.3 Information about the Order limits, including about the current land use and any environmental constraints, is provided in greater detail in Chapter 3 of the Environmental Statement [EN010127/APP/6.1APP-033].

1.4 The Proposed Development

- 1.4.1 A detailed description of the Proposed Development can be found in Chapter 5 of the Environmental Statement [EN010127/APP/6.1APP-035]. It comprises a generating station of more than 50MW, being the NSIP, and is described in Work No.1 in Schedule 1 to the Order. The Proposed Development also includes Associated Development, which comprises Work Numbers 2-7 in Schedule 1 to the Order.
- 1.4.2 All elements of the NSIP are described in the sub-paragraphs below and the Associated Development is described in paragraph 1.4.7:
- (a) **Work No. 1** ~~is~~ the ground mounted solar PV generating station with a gross electrical output capacity of over 50 MW including:-
 - (i) Solar modules fitted to mounting structures;
 - (ii) Inverters;
 - (iii) Transformers;
 - (iv) Switchgear; and
 - (v) Electrical cables.
- 1.4.3 The description of Work No.1 refers to a gross electrical output capacity of over 50MW. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.
- 1.4.4 The description of the NSIP at Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or

necessary. The Order includes reference to the means by which the parameters of the Proposed Development will be constrained and it is on this basis that the EIA has been undertaken, as is set out in the Environmental Statement [~~EN010127/APP/6.1~~from [\[APP-030\]](#) to [\[APP-047\]](#)] and explained further below in relation to the “consent envelope”. There is no reason to limit the electrical output capacity of the Proposed Development provided those parameters of the consent envelope are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.

- 1.4.5 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Proposed 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 [~~EN010127/APP/6.1~~ [\[APP-202\]](#)]. The approach taken has precedent in the **Cleve Hill Solar Park Order 2020** and the **Little Crow Solar Park Order 2022**.
- 1.4.6 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 7 of the Proposed Development as provided for in Schedule 1 to the Order. This comprises the following elements:
- (a) **Work No. 2** – works in connection with an onsite substation. This includes a substation, switch room buildings and ancillary equipment including reactive power units; control building housing offices, storage, welfare facilities, parking areas and access; workshop, store and ancillary structures; monitoring and control systems for Work No. 2 and Work No. 1 housed within the control building in Work No. 2(b) or located separately in their own containers or control rooms; and harmonic filters;
 - (b) **Work No. 3** – works to lay high voltage electrical cables, access and temporary construction laydown areas for the electrical cables, to connect to the existing Ryhall substation, including –
 - (i) **Work No. 3A** – works to lay electrical cables including 400 kilovolt cable connecting Work No. 2 to the existing substation;
 - (ii) **Work No. 3B** – temporary construction compound laydown areas for the purposes of Work No. 3A.
 - (c) **Work No. 4** – works to lay electrical cables connecting Work No. 1 to Work No. 2;
 - (d) **Work No. 5** – temporary construction and decommissioning compound and laydown areas comprising areas of hardstanding; HGV, vehicle and cycle parking; site and welfare offices, canteens and workshops; area to store materials and equipment; storage and waste skips; area for download and turning; security infrastructure (including cameras, perimeter fencing and lighting); site drainage and waste management infrastructure (including sewerage); and electricity, water and telecommunications connection;

- (e) **Work No. 6** – works to facilitate access to Work Nos.1 to 5 including creation of accesses from the public highway; creation of visibility splays; removal of vegetation, works to widen and surface the streets; and making and maintaining passing places;
- (f) **Work No. 7** – works to create, enhance and maintain green infrastructure including landscape and biodiversity mitigation and enhancement areas; habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure; and laying down of permissive paths, signage and information boards.

1.4.7 The Associated Development includes such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Proposed Development but only within the Order limits and insofar as these works or operations ~~are unlikely to do not~~ give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement [~~EN010127/APP/6.1~~ from [APP-030] to [APP-047]], including:-

- (a) fencing, gates, boundary treatments, ~~including and other~~ means of enclosure;
- (b) bunds, embankments, trenching and swales;
- (c) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;
- (d) irrigation infrastructure, surface water drainage systems, runoff outfalls, SuDs Ponds, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (e) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- ~~(g) — fencing, gates, boundary treatment and other means of enclosure;~~
- (g) ~~(h)~~ works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, lightning protection masts, weather stations, storage containers, communication infrastructure, and perimeter fencing;
- (h) ~~(i)~~ improvement, maintenance, repair and use of existing streets, private tracks and access roads;
- (i) ~~(j)~~ laying down, maintenance and repair of new internal access tracks, ramps, means of access, cycle routes and roads, signage and information boards;
- (j) ~~(k)~~ temporary footpath diversions;

- (k) ~~(f)~~landscaping;
- ~~(m) SuDs Ponds, runoff outfalls, general drainage and irrigation infrastructure and improvements or extensions to existing drainage and irrigation systems;~~
- (l) ~~(n)~~temporary storage of materials prior to installation;
- (m) ~~(e)~~site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- ~~(p) works to maintain and repair streets and access roads;~~
- (n) ~~(e)~~tunnelling, boring and drilling works; and
- ~~(r)~~any other further associated development comprising such other works or operations as may be necessary or expedient for the purposes of the authorised development or in connection with the authorised development but only within the Order limits and insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

1.5 Parameters of the Order and the “consent envelope”

- 1.5.1 The detailed design of the Proposed Development must be in accordance with the Design Guidance [~~EN010127/APP/7.3~~[REP5-058](#)] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~[REP7-013](#)], as secured in Requirement 6 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Proposed Development, such that new technology or different layouts can be used within that envelope, while ensuring that the development will not fall outside of the scope of the Environmental Statement [~~EN010127/APP/6.1~~from [\[APP-030\]](#) to [\[APP-047\]](#)]. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in PINS’ Advice Note 9: Rochdale Envelope (July 2018).
- 1.5.2 In addition to the Design Guidance [~~EN010127/APP/7.3~~[REP5-058](#)] and Parameters [~~Appendix 1 of EN010127/APP/6.2~~[REP7-013](#)], other DCO requirements, certified documents and plans will operate to control and manage the detailed design of the Proposed Development, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the authorised development is to be undertaken, is explained in more detail below.

1.5.3 Article 3 (*Development consent etc. granted by this Order*) and Schedule 2 (Requirements) operate to create a “consent envelope” within which the Proposed Development would be brought forward:

- (a) The Proposed Development is described in Schedule 1 of the Order, where it is referred to as the “authorised development”. The authorised development is granted consent pursuant to Article 3(1).
- (b) In Schedule 1 the Proposed Development (the authorised development) is divided into a series of component parts, referred to as “numbered works”.
- (c) Article 3(2) requires that the numbered works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans.
- (d) The design of the Proposed Development is also controlled via Requirement 6 (detailed design approval) of Schedule 2 of the Order which requires approval of details of the Proposed Development’s design ~~and~~. This requires that the details submitted for approval accord with the Design Guidance [~~EN010127/APP/7.3~~] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~]. The Design Guidance [~~EN010127/APP/7.3~~REP5-058], the Parameters [REP7-013], any details approved under requirements 7, 8, 9(1) and 10 as well as demonstrate how the undertaker has taken account of the result of any archaeological investigations or archaeological evaluations carried out pursuant to the outline Written Scheme of Investigation [REP8-017]. The Design Guidance [REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~REP7-013] set out the basis on which the assessment set out in the Environmental Statement [~~EN010127/APP/6.1~~from [APP-030] to [APP-047]] has been undertaken, and secures the key design mitigation measures referenced in the Environmental Statement [~~EN010127/APP/6.1~~from [APP-030] to [APP-047]]. The Design Guidance [~~EN010127/APP/7.3~~REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~REP7-013] capture the important parameters that are necessary to ensure that the Proposed Development is constructed and operated in such a way that the impacts and effects would not exceed the scenario assessed in the Environmental Statement [~~EN010127/APP/6.1~~from [APP-030] to [APP-047]].
- (e) In addition to the Design Guidance ~~and~~, Parameters [~~EN010127/APP/7.3~~REP5-058], other requirements, and the Works Plans [~~EN010127/APP/2.2~~REP7-006], the design of the Proposed Development is also controlled by:
 - (i) approval and implementation of the Landscape and Ecology Management Plan (including the final routing, specification and maintenance regime for each permissive path) (Requirement 7);
 - (ii) approval and implementation of permanent fencing and means of enclosure (Requirement 8);
 - (iii) approval and implementation of any surface and foul water drainage scheme or system (Requirement 9);

- (iv) ~~approval and implementation of a~~ requirement that the authorised development is carried out in accordance with the outline written scheme of ~~archaeological~~ investigation (Requirement 10); and
- (v) the requirement for the design of the Proposed Development to comply with operational noise rating levels ~~in the Environmental Statement [EN010127/APP/6.1]~~ (determined in line with BSI British Standards Publication 4142:2014+A1:2019 dated 30 June 2019 (or the current version of that publication if this has been superseded when the assessment is submitted for approval)) not exceeding 35 decibels at residential properties (Requirement 16); and
- (vi) provision of permissive paths (Requirement 7).

Where the Design Guidance [REP5-058] and Parameters ~~[EN010127/APP/7.3]~~ REP7-013 do not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the environmental impact assessment and having regard to the other controls in place via the measures listed at ~~(4i)~~ to ~~(6vi)~~ above.

- (f) The construction phase of the Proposed Development (as set out in Schedule 1 of the Order and which is required to be constructed within the areas on the Works Plans) is also controlled by:
 - (i) approval and implementation of temporary fencing and means of enclosure (Requirement 8);
 - (ii) approval and implementation of ~~any surface and foul water drainage Proposed Development or system a~~ Water Management Plan (Requirement 9);
 - (iii) ~~approval and implementation of a~~ being carried out in accordance with the outline written scheme of ~~archaeological~~ investigation (Requirement 10);
 - (iv) approval and implementation of a Construction Environmental Management Plan (Requirement 11);
 - (v) approval and implementation of a Construction Traffic Management Plan and associated construction travel plan (Requirement 13);
 - (vi) approval and implementation of a Soil Management Plan (Requirement 14);
 - (vii) approval and implementation of a written strategy in relation to the identification and remediation of risks associated with contamination (Requirement 15); and
 - (viii) the Skills, Supply Chain and Employment Plan (Requirement 17).

- (g) The ongoing operation and maintenance of the Proposed Development is controlled by:
 - (i) approval and implementation of the Landscape and Ecology Management Plan (Requirement 7);
 - (ii) approval and implementation of any surface and foul water drainage ~~Proposed Development or system~~ scheme (Requirement 9);
 - (iii) approval and implementation of an Operational Environmental Management Plan (Requirement 12);
 - (iv) approval and implementation of a Soil Management Plan (Requirement 14);
 - (v) approval and implementation of a written strategy in relation to the identification and remediation of risks associated with contamination (Requirement 15);
 - (vi) ~~approval and implementation of the~~ an operational noise strategy assessment has been compiled, submitted to and approved (Requirement 16); and
 - (vii) the Skills, Supply Chain and Employment Plan (~~proposed section 106 agreement and~~ Requirement 17).
- (h) The decommissioning of the Proposed Development is controlled by the requirement that decommissioning must commence no later than 60 years following the date of the final commissioning of Work No. 1 as well as the approval and implementation of a Decommissioning Environmental Management Plan (Requirement 18).

1.5.4 The Application seeks flexibility to undertake the Proposed Development within the above envelope, in particular within the maximum areas and parameters secured via the Works Plans [~~EN010127/APP/2.2~~ REP7-006] and Design Guidance [~~EN010127/APP/7.3~~ REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~ REP7-013]. As set out in Chapter 2 of the Environmental Statement [~~EN010127/APP/6.4~~ APP-032] and the individual technical chapters, the environmental impact assessment has assessed the upper extent of the areas and sizes allowed by the Works Plans [~~EN010127/APP/2.2~~ REP7-006] Design Guidance [~~EN010127/APP/7.3~~ REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~ REP7-013]. As a result, the Environmental Statement [~~EN010127/APP/6.4~~ from [APP-030] to [APP-047]] has assessed a worst case and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.

1.5.5 The Illustrative development layouts have been submitted to provide illustrative examples of the different design layouts that have been considered for the Proposed Development that could be built out within the "consent envelope" (the design aspect of which is controlled primarily through the Works Plans [~~EN010127/APP/2.2~~ REP7-006], Design Guidance [~~EN010127/APP/7.3~~ REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~ REP7-013]). These are provided for illustration only

within the Environmental Statement figures [~~EN010127/APP/6.3~~from [\[APP-116\]](#) to [\[APP-119\]](#)] and are not sought to be secured.

2. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 2.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each article of, and Schedule to, the Order is required for the Proposed Development.
- 2.1.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**model provisions**"). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions.
- 2.1.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Proposed 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 Proposed Development. All powers provided for within the Order come within the scope of section 120 of, and Schedule 5 to, the 2008 Act.
- 2.1.4 The provisions contained in the Order are briefly described below and then considered in more detail in the following sections:-
- (a) **Part 1 (Preliminary): Article 1** sets out what the Order may be cited as and when it comes into force. **Article 2** sets out the meaning of the defined terms used in the Order;
 - (b) **Part 2 (Principal Powers): Articles 3 to 5** provide development consent for the Proposed 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;
 - (c) **Part 3 (Streets): Articles 8 to 15** provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to stop up temporarily or divert public rights of way; to deal with claimed a public right of way; to enter into agreements with street authorities and provisions relating to traffic regulations;
 - (d) **Part 4 (Supplemental Powers): Articles 16 to 19** set out four supplemental powers relating to the discharge of water; the removal

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

- (e) **Part 5 (Powers of Acquisition): Articles 20 to 33** 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, maintenance or decommissioning of the Proposed Development. Article 21 sets out a time limit for the exercise of the compulsory acquisition powers and Article 23 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 29 and 30 provide for the temporary use of land for constructing and maintaining the Proposed Development. Article 31 provides for powers in relation to the land and apparatus of statutory undertakers;
- (f) **Part 6 (Miscellaneous and General): Articles 34 to ~~46~~ 45** include various general provisions in relation to the Order:-
 - (i) **Article 34** sets out who has the benefit of the powers contained in the Order and **Article 35** sets out how those powers can be transferred.
 - (ii) **Articles 36 and 37** provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";
 - (iii) **Articles 38 and 39** ~~provide (respectively)~~ provides powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Development ~~and in relation to trees subject to tree preservation orders~~;
 - (iv) **Articles ~~40 to 46~~ 39 to 45** include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 15); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; and the incorporation of the mineral code.

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

- (a) **Schedule 1** – the description of the Proposed Development;
- (b) **Schedule 2** ~~—~~ — the requirements that apply to the Proposed Development (i.e. the controls that apply to the Order, similar to planning conditions). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order;
- (c) **Schedule 3** ~~—~~ — a list of the local legislation relating to railways, turnpikes, rivers and other watercourses that the Order will disapply and modify insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order;

- (d) **Schedules 4 to 8** – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary traffic regulation measures;
- (e) **Schedule 9** – details of land in which only new rights may be acquired;
- (f) **Schedule 10** – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- (g) **Schedule 11** – details of land over which temporary possession may be taken;
- (h) **Schedule 12** – details of hedgerows to be removed known at this time;
- (i) **Schedule 13** – the documents and plans to be certified by the Secretary of State;
- (j) **Schedule 14** – arbitration rules that apply to most arbitrations in connection with the Order;
- (k) **Schedule 15** – provisions for the protection of statutory undertakers and their apparatus; and
- (l) **Schedule 16** – procedure for the discharge of requirements.

3. **PURPOSE OF THE ORDER**

- 3.1.1 The Proposed Development involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant requires development consent under the 2008 Act in order to construct, maintain, operate and decommission the Proposed Development. Under section 37 of the 2008 Act, development consent may only be granted by a DCO, following an application to the Secretary of State.
- 3.1.2 The Applicant is therefore making an application to the Secretary of State for a development consent order for the Proposed Development. In the Order, the Proposed Development is referred to as the "authorised development". The Order refers to the person authorised to exercise the powers in the Order as the "undertaker" and defines the undertaker as Mallard Pass Solar Farm Limited.
- 3.1.3 The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the Order.
- 3.1.4 Section 115(1) of the 2008 Act provides that development consent may be granted for Associated Development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the

authorised development are either the NSIP or are Associated Development, in order to include them in the Order.

- 3.1.5 The ground mounted solar PV generating station within Work No. 1 in Schedule 1 to the Order constitutes "development for which development consent is required", and as such is the NSIP.
- 3.1.6 The Order also includes other development which is Associated Development, included at Work Nos. 2 to 7 of Schedule 1 of the Order. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the 2008 Act.
- 3.1.7 The approach taken by the Applicant between those parts of the authorised development which form the NSIP and those parts that form Associated Development follows the approach taken by other DCO applications to date, most notably the Cleve Hill Solar Park Order 2020, which also comprised ground mounted solar PV panel arrays and related development.
- 3.1.8 In particular, Work Nos. 2 to 7 are:
- (a) all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
 - (b) all subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
 - (c) not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (paragraph 5(iii));
 - (d) all proportionate to the nature and scale of the NSIP (paragraph 5(iv));
 - (e) all of a nature which is typically brought forward alongside a solar generating station (paragraph 6);
 - (f) all listed in or analogous to the types of Associated Development listed in Annexes A and B to the Guidance. Those annexes mention:
 - (i) In Annex A, "Connections to national, regional or local networks", including electricity networks and in Annex B, "substations", "jointing pits", "control buildings" and "underground lines" would include the electrical compounds and grid connection works (Work Nos. 2, 3 and 4);
 - (ii) In Annex A, "monitoring apparatus" (Work Nos 2);
 - (iii) 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. 2, 3, and 6);

- (iv) In Annex A, Hard and soft landscaping would include landscaping and other works to mitigate adverse impacts (Work No. 7); and
- (v) In Annex A, "Security measures" and "-Working sites, site offices and laydown areas" (Work Nos. 3 and 5).

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

3.2 Compulsory Acquisition

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

3.2.2 The Book of Reference ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)) sets out a description of, and interests included in, the Order Land, split by "plots", and these are shown on the Land Plans ~~[EN010127/APP/2.1]~~ ([\[EN010127/APP/2.1\] latest version of this document submitted at Deadline 9](#)). The Book of Reference ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)) is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests, and the identification of those interests is explained in both the Book of Reference ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)) and the Consultation Report [~~EN010127/APP/5.1~~ [APP-025](#)]. The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired and other rights and interests that will be affected. The Order and the Book of Reference ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)) should be read together with the Land Plans ([\[EN010127/APP/2.1\] latest version of this document submitted at Deadline 9](#)) and the Statement of Reasons [~~EN010127/APP/4.1~~ [AS-009](#)], which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

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

3.3 Statutory undertakers' land and apparatus

3.3.1 The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order Land are identified in the Book of Reference ~~[EN010127/APP/4.3]~~ ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)).

- 3.3.2 Section 127(2) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- (a) the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - (b) the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 3.3.3 Section 127(5) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land to the extent that:
- (a) the land can be purchased without serious detriment to the carrying on of the undertaking; or
 - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- 3.3.4 Section 138 of the 2008 Act states that a DCO may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.
- 3.3.5 The Order includes protective provisions in respect of statutory undertakers (see Article ~~42-41~~ and Schedule 15). The Applicant ~~is currently seeking to agree~~ has successfully reached agreement about the form of protective provisions with all of the affected undertakers during the course of DCO examination. 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 [AS-009].

4. PROVISIONS OF THE ORDER

- 4.1.1 The Order consists of ~~46-45~~ operative provisions, each referred to as articles and 16 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below. Equally, the Proposed Development is referred to as the "authorised development" in the Order and so for ease this document refers to the "authorised development" when explaining the provisions of the Order.

4.2 Part 1 (Preliminary) and Part 2 (Principal Powers)

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

- 4.2.2 Article 2 (*Interpretation*) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:
- (a) definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 13 to the Order;
 - (b) the definition of "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary, markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Riverside Energy Park Order 2020**;
 - (c) the definition of "authorised development" means the authorised development and Associated Development described in Schedule 1 to 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;
 - (d) the definition of "commence" is defined so as to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of certain relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as "permitted preliminary works", there may be a requirement to submit relevant details to the Relevant Planning Authority. Where this is the case, the relevant requirement has been adapted to expressly prevent the relevant "permitted preliminary works" from being carried out until those details have been approved – for example a WSI prior to intrusive archaeological investigations.
 - (e) a definition of "limits of deviation" has been added and operates by reference to the Works Plans [~~EN010127/APP/2.2~~**REP7-006**]. These are the areas within which the authorised development can be constructed and are required so that the design of the authorised development does not lead to effects that would exceed the worst-

case scenario assessed in the Environmental Statement [~~EN010127/APP/6.1~~from [\[APP-030\]](#) to [\[APP-047\]](#)]. See further below in relation to Article 3 and above in relation to the parameters and consent envelope;

- (f) a definition of "maintain" has been added to make clear what activities are authorised under Article 5 during the operation of the authorised development [to the extent that these do not give rise to any materially new or materially different environmental effects than those identified in the Environmental Statement \[from \[\\[APP-030\\]\]\(#\) to \[\\[APP-047\\]\]\(#\)\]](#) for the operation of the authorised development;
- (i) The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards, controls and advances in technology;
- (ii) For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
- (1) **Maintenance and inspection:** Throughout the life of the Proposed Development there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to plant failures. It is anticipated that there will be up to 4 permanent staff onsite during the operational phase, with additional staff attending when required for maintenance and cleaning activities;
- (2) **Repair / Refurbish / Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced. [The drafting is clear that the undertaker cannot remove or replace the whole of Work No. 1 at the same time;](#)
- (3) **Adjust and alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions;

(4) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed;

(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. The drafting is clear that the undertaker cannot reconstruct the whole of Work No. 1 at the same time;

(iii) The definition of "maintain" should be read alongside the outline Operational Environmental Management Plan [REP8-011] at paragraphs 2.2.2 to 2.2.4. This sets out how the undertaker will provide an annual maintenance schedule of planned maintenance activities to the relevant planning authority, and where any activities involve the replacement of solar panels or solar stations those activities cannot take place until the relevant planning authority has confirmed their agreement that the activities will not lead to materially new or materially different environmental effects than those identified in the operational phase of the Environmental Statement.

(g) the definition of "Order land" means the land shown coloured pink and the land shown coloured blue on the Land Plans ~~[EN010127/APP/2.1] which is within the limits of land to be acquired or used and~~ ([EN010127/APP/2.1] latest version of this document submitted at Deadline 9) which is described in the Book of Reference ~~[EN010127/APP/4.3]~~ ([EN010127/APP/4.3] latest version of this document submitted at Deadline 9). This land is coloured:

(i) pink (land to be permanently acquired); and

(ii) blue (land in which the undertaker can create and acquire new rights); ~~and~~

~~(iii) — yellow (land over which rights of temporary possession only can be exercised by the undertaker).~~

~~The Land Plans [EN010127/APP/2.1] also provide clarity (by way of hatching) as to land that is excluded from both the Order limits and Order Land;~~

(h) the definition of "Order limits" means the limits of land to be acquired permanently or used temporarily as shown on the Land Plans ~~([EN010127/APP/2.1] and latest version of this document submitted at Deadline 9)~~ and the limits of land, as shown on the Works Plans ~~[EN010127/APP/2.2] — REP7-006],~~ within which the authorised development may be carried out;

(i) the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing a network or service to members of the public and, insofar as they may have assets or apparatus within the Order limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is

precedent for this approach, for instance the **Riverside Energy Park Order 2020**;

- (j) 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
 - (k) the "undertaker" is defined as Mallard Pass Solar Farm Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 35.
- 4.2.3 Paragraph (2) of Article 2 has been included to reflect that "rights over land" include references to rights 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.
- 4.2.4 Paragraph (3) of Article 2 has been included to enable efficient drafting within the Order – rather than having to spell out all of the phases of the authorised development that the various Order powers apply to each time, this paragraph allows for the phrase “purposes of the authorised development” to be utilised where appropriate throughout. As a consequence of this approach, minor amendments have been made to standard drafting throughout the Order to refer to this phraseology (and minor tweaks which fall out of this as a consequence).
- 4.2.5 Paragraphs (4) to (8) of Article 2 have been added to provide clarity (respectively) that all distances, directions, capacities and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans [~~EN010127/APP/2.2~~REP7-006]; 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 ([\[EN010127/APP/4.3\] latest version of this document submitted at Deadline 9](#)) are approximate.
- 4.2.6 Article 3 (*Development consent etc. granted by this Order*) grants development consent for the authorised development. This article is adapted from the model provisions. Schedule 1 describes the authorised development in detail, split into ‘work numbers’, each of which represents different 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 above.
- 4.2.7 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 [~~EN010127/APP/2.2~~REP7-006]. This is in order to provide certainty as to what has been consented by the Order, in respect of which areas of land.
- 4.2.8 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.

- 4.2.9 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 [[EN010127/APP/2.2REP7-006](#)], whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement [[EN010127/APP/6.1from \[APP-030\] to \[APP-047\]](#)] accompanying the application for development consent has assessed the authorised development within the full envelope provided by the limits of deviation, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the Environmental Statement [[EN010127/APP/6.1from \[APP-030\] to \[APP-047\]](#)]. Further detail in this respect is provided above.
- 4.2.10 Article 4 (*Operation of generating station*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station.
- 4.2.11 Article 5 (*Power to maintain the authorised development*) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement [[EN010127/APP/6.1from \[APP-030\] to \[APP-047\]](#)] has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement [[EN010127/APP/6.1for the operation of the authorised development \[from \[APP-030\] to \[APP-047\]](#)].
- 4.2.12 Article 6 (*Application and modification of statutory provisions*) disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.
- 4.2.13 Article 6 provides for the disapplication of the following specified provisions:
- (a) section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority or relevant internal drainage board;

- (b) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
- (c) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;
- (e) Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) permit(s) is required; and
- (f) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 29 and 30 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being articles 29 and 30. This approach has precedent and has been accepted by the Secretary of State; see for example the **Drax Power (Generating Stations) Order 2019**, the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**.

4.2.14 Article 6 also provides for amendments to be made to the regimes relating to trees and hedgerows under the Forestry Act 1967, the Hedgerow Regulations 1997 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012. This seeks to deal with the lacunae in these statutes where works can be undertaken to trees and hedgerows pursuant to a planning permission or a 'deemed' planning permission (such as under the Transport and Works Act 1992). However, due to the operation of section 33 of the Planning Act 2008 not 'deeming' planning permission, but instead saying it is not required, DCO development does not benefit from these provisions, meaning that NSIP development is left in a worse position than 'normal' planning development, which is considered not appropriate. With the controls set out in the Requirements, the local planning authorities will still be able to consider the impacts of such works, the provisions of article 6 simply mean that separate consents are not required to be obtained. This approach, in respect of the Forestry Act 1967, has precedent in the **Great Yarmouth Third River Crossing Development Order 2020**. The Hedgerow and Tree Preservation provisions are unprecedented but are considered necessary to ensure legislative clarity.

4.2.15 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, the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency (Part 4 of Schedule 15 to the Order) and the approval role of local lead flood authorities in the Requirements. 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 Proposed Development.

- 4.2.16 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. Section 150 consent has been obtained from the Environment Agency, Upper Witham Internal Drainage Board (IDB) (both in its capacity as IDB and acting as agents on behalf of Lincolnshire County Council as a Lead Local Flood Authority for the area of the Proposed Development) and Rutland County Council (which is the other Lead Local Flood Authority for the area of the Proposed Development). The Applicant's approach to obtaining the other consents required for the Proposed Development is set out in greater detail in the Consents and Licences required under other legislation [~~EN010127/APP/3.3~~ APP-019].
- 4.2.17 ~~In addition~~ Section 120(5)(a) of the 2008 Act provides for DCOs to apply, the modify or exclude statutory provisions that relate to any matter for which provision may be made in the Order. Section 120(5)(b) of the 2008 Act provides that a DCO may amend, repeal or revoke the statutory provisions of local application as appear to the Secretary of State to be "necessary or expedient" in consequence of a provision of or in connection with the DCO, or (in accordance with section 120(5)(c)) in order to give full effect to any other provision of the DCO. 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 under section 120(5)(a) in Schedule 3, which relates to matters including railways, turnpikes, rivers and other watercourses within, and in the vicinity of, the Order limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the Order, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6 disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are inconsistent with how the powers in the Order can be exercised. The Applicant seeks to disapply each of the enactments on the list in Schedule 3 on the basis that a clear alternative regime has been provided with the draft DCO and the DCO is intended to provide a single unified consent for the Proposed Development. The Applicant considers that, due to the importance of Nationally Significant Infrastructure Projects, it is expedient to disapply these provisions in order to ensure that the Proposed Development can be implemented as intended in the DCO. The Applicant provided detailed reasons for disapplication for each enactment in Schedule 3 in the Summary of Applicant's Oral Submissions at ISH3 [REP4-040].
- 4.2.18 Article 6(2) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.
- 4.2.19 Article 7 (Defence to proceedings in respect of statutory nuisance) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot

be reasonably avoided as a consequence of the authorised development. Article 7 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Proposed Development and for this reason it is necessary to include the article in the Order. It has however been adapted to account for the operational and decommissioning phases as well, where controls in the OEMP and an approved operational noise ~~strategy~~[assessment pursuant to Requirement 16](#), and in DEMP, should be able to be taken into account in the consideration of nuisance claims. It should be noted that certain Design Guidance [\[REP5-058\]](#) and Parameters [\[EN010127/APP/7.3REP7-013\]](#) relate to noise.

4.3 Part 3 (Streets)

- 4.3.1 Article 8 (*Street works*) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the 1991 Act to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been extended in paragraph (1)(e) to provide for works which may be required to any culvert under a street. This article is based on Article 9 of **The Immingham Open Cycle Gas Turbine Order 2020**. In addition, as the Applicant is seeking to construct part of its cable route within the street (as shown on the Access and Rights of Way Plans [\[EN010127/APP/2.4\)\]-REP7-006\]](#) and the Works Plans [\[EN010127/APP/2.2REP7-006\]](#)), this article has been adapted to provide for street works to be able to be undertaken to deal with types of apparatus that may be required for the authorised development;
- 4.3.2 Article 9 (*Power to alter layout, etc., of streets*) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 then sets out the alterations to streets (split into three parts showing temporary and permanent works respectively). This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph ~~(23)~~ (which is a general power enabling the undertaker to alter the layout of any street) require the consent of [the street authority in such a form as reasonably required by](#) the street authority before they can be exercised. It has been extended to include streets outside the Order limits to allow for unforeseen circumstances during the construction stage. 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**. [Paragraph \(7\) makes it clear that if the street authority has already provided detailed design approval pursuant to requirement 6\(1\), then it does not need to provide its approval again under this article for the use of the general powers in this article.](#)
- 4.3.3 Article 10 (*Construction and maintenance of altered streets*) provides that the permanent alterations to the streets listed in Part 1 of Schedule 5 [and restoration works carried out pursuant to Article 9\(4\)](#) must be completed to the reasonable satisfaction of [the street authority in a form reasonably required by](#) the street authority and be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be

the responsibility of the ~~street~~ highway authority (~~paragraph (2)~~ paragraphs (1) and (3)). Temporary alterations are set out in Part 2 of Schedule 5 and they must be completed to the reasonable satisfaction of the street authority in a form reasonably required by the street authority, and they must be maintained at the undertaker's expense (~~paragraph (3)~~ for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development (paragraph (2))). The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.

- 4.3.4 Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (6) provides that with the exception of paragraph (1) of this Article, the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in the **Drax Power (Generating Stations) Order 2019**.
- 4.3.5 Article 11 (*Temporary stopping up of public rights of way*) provides for the temporary stopping up, prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of public rights of way for the purposes of the authorised development. It is required because, in particular, the undertaker will need to temporarily divert certain public rights of way in order to construct the authorised development, as provided for in the Outline Construction Traffic Management Plan [~~EN010127/APP/7.11~~ REP7-023] (which is secured by Requirement 13) and shown on the Traffic Regulation Measures Plans – Road Closures [~~EN010127/APP/2.7~~ REP7-007]. No permanent stopping up or diversion of public rights of way is required. Schedule 6 is comprised of two parts (public rights of way to be temporarily stopped up and temporary use of motor vehicles on public rights of way).
- 4.3.6 The authorisation under Article 11 of the use of motor vehicles over public rights of way where there is no public right to use motor vehicles is necessary to enable the undertaker to access parts of the authorised development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 6 to the Order and as shown on the Access and Rights of Way Plans [~~EN010127/APP/2.4~~ REP7-006]. Article 11 mirrors Article 11 of the model provisions in providing that where the public right of way is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other public rights of way not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 15 (see below) deals with traffic regulation more widely.
- 4.3.7 An addition to the precedents that has been made for this Order is to provide for approval of a relevant CEMP or DEMP (as appropriate) to have taken place before these powers can be used. This will ensure that the relevant planning authority has sight of the diversion and management measures to be put in place before a temporary stopping up takes place.

- 4.3.8 Article 11(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any public right of way temporarily stopped up as a temporary working site (which is not in the model provision). Similar wording to this Article has been used in other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, Article 12 of the **Meaford Gas Fired Generating Station Order 2016** and Article 13 of the **Riverside Energy Park Order 2020**.
- 4.3.9 Article 12 (*Claimed public right of way*) seeks to deal with a claimed public right of way that is the subject of a Definitive Map Modification Order ([DMMO](#)) application to Lincolnshire County Council. As it is possible that this could be dealt with during the lifetime of the Proposed Development, it is considered prudent for the Order to deal with this matter to provide certainty ~~as to the legal status of the claimed route moving forward about what would happen should the new right of way be created.~~
- [4.3.10](#) [The article allows the DMMO application process to run its course and reach its conclusion. If a new right of way should be created as a result of the process, then the Applicant can use the powers under the article to stop it up.](#)
- ~~4.3.10 The article has the effect of confirming the suggested route as a public right of way, but allowing it to then be immediately stopped up by the undertaker—ensuring that its legal status will be that it does not exist.~~
- 4.3.11 ~~This approach~~ [This approach and DCO drafting have been agreed with Lincolnshire County Council during the Examination.](#) It is taken on the basis that the historic claimed route is for a restricted byway along 'Gravel Pit Road' which extends in a southerly direction from Carlby Road and terminates within an agricultural field (where a former gravel pit was located). The claimed route does not currently exist, as it was removed at some point after the gravel activities ceased. It therefore has no users or receptors. Furthermore, it is a cul-de-sac, which does not connect to any other existing or claimed public right of way.
- 4.3.12 As such, the Applicant considers that the section 136(1)(b) test of there not being a requirement for an alternative right of way to be provided is passed for this route, whether the DMMO claim is made out or not. ~~The article therefore seeks to remove all doubt that the route can exist as a public right of way now or in the future.~~
- 4.3.13 Where the claimed ~~public right of way route~~ is stopped up, all [public](#) rights of way over ~~this land or along the route~~ are also extinguished [and private rights over or along the route are extinguished or cease to have effect \(subject to the provisions in article 23 \(private rights\)\)](#). The undertaker can use as much of the ~~public right of way route as is bounded on both sides by land owned by the undertaker~~ as necessary for the authorised development (paragraph ~~42(c)~~ [42\(5\)12\(7\)](#)) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated.
- 4.3.14 Article 13 (*Access to works*) is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 7 to the Order. This

article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 7 is split into Part 1 (permanent means of access to works) and Part 2 (temporary means of access). The Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the Relevant Planning Authority, in consultation with the highway authority. [The article also clarifies that approval of the relevant planning authority for the access works sought under this article is not required if approval for those works has already been given pursuant to Requirement 6\(1\).](#)

- 4.3.15 Article 14 (*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), 10 (construction and maintenance of altered streets) and 13 (access to works) 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.
- 4.3.16 Article 15 (*Traffic regulation measures*) provides the undertaker with powers to place temporary traffic signs and signals, impose speed limits and undertake road closures in the extents of the roads specified in Schedule 8 and shown on the traffic regulation measures plans [~~EN010127/APP/2.7~~]. [REP7-007](#). This Schedule identifies the relevant roads and specifies the extent of the roads that will be subject these provisions. These specific measures are required to safely regulate traffic. Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Proposed Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned.
- 4.3.17 Both the specific and general powers are subject to a new provision requiring a CTMP/DEMP (as appropriate) to have been approved for the relevant phase that the traffic regulation measures apply to, to ensure the relevant authorities have an understanding of how the traffic regulation will take place, without the need for a separate TRO to be obtained.
- 4.3.18 The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act. For example, similar provision is contained within the **Network Rail (Norton Bridge Area Improvements) Order 2014**, **National Grid (Hinkley Point C Connection Project) Order 2016** and more recently in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

4.4 Part 4 (Supplemental Powers)

- 4.4.1 Article 16 (*Discharge of water*) is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. [There is also an obligation for the undertaker to take such steps as are reasonably practicable to ensure that water discharged into a watercourse or public sewer or drain does not enter the public highway](#). The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order.
- 4.4.2 Article 17 (*Removal of human remains*) is a model provision which provides for the removal of human remains from [specified land \(defined in article 17\(1\) as any land within the Order limits-\)](#) and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This Article has been included because the undertaker's environmental surveys indicate that there is potential for archaeological findings within the Order limits and therefore the undertaker is not able to rule out the presence of any human remains, meaning that a clear statutory authority for removing any human remains that may be discovered is required. This provision is considered necessary so that the discovery of any remains does not delay the implementation of the authorised development.
- 4.4.3 The undertaker is required to publish a notice of intended removal of human remains from the Order Land and follow the procedure set out in Article 17(3)-(10)(11). However, Article ~~17(11)~~[17\(12\)](#) provides that no such notice is required where the undertaker is satisfied that the remains were interred more than 100 years ago and no relative or personal representative of the deceased is likely to object to their removal.
- 4.4.4 Article 18 (*Protective works to buildings*) is a model provision which is included in most DCOs made 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 need to be carried out in respect of buildings within the Order ~~Land~~[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 landowner/occupier within a period of 10 days from the day on which the notice was served.
- 4.4.5 Protective works can also be undertaken after the carrying out of the works forming part of the authorised development for a period of 5 years from the date of completion of the part of the authorised development carried out in vicinity of the building. This wording is a minor update from the model provision

wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. Further updates have also been made to allow for this power to be utilised during the decommissioning phase, which is considered sensible and beneficial to third parties.

- 4.4.6 A definition of "building" has also been included within Article 2 (*Interpretation*) for clarity.
- 4.4.7 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).
- 4.4.8 Article 19 (*Authority to survey and investigate the land*) is a model provision that enables the undertaker to enter onto any land within the Order limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 4.4.9 The model provision has been modified so that no trial holes are to be made:
 - (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority.
- 4.4.10 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**.

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

- 4.5.1 Article 20 (*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. ~~It also allows the undertaker to use any acquired land for the purpose authorised by the Order or any other purpose in connection with, or ancillary to the undertaking.~~ 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 23 (Private rights). Similarly, Article 22 (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**.

- 4.5.2 Article 20(2) makes clear that the powers in this Article are subject to the powers and restrictions in Article 22 (Compulsory acquisition of rights) and Article 29 (Temporary use of land for constructing the authorised development), to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.
- 4.5.3 Article 21 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 to the Order and has precedent in the majority of made DCOs to date.
- 4.5.4 Article 22 (*Compulsory acquisition of rights*) enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for ~~any purpose for which the land may be acquired under Article 20 (Compulsory acquisition of land)~~[the purposes of access rights, cable rights and vegetation maintenance rights as these rights are defined in Schedule 9 of the Order](#). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 29 (temporary use of land for constructing the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 11 to the Order (i.e. land of which temporary possession may be taken).
- 4.5.5 The Article provides that, in respect [of those parts](#) of the Order Land set out in Schedule 9 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct and maintain the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 9 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 4.5.6 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenants for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.
- 4.5.7 This Article is a departure from the model provisions, but it has precedent in many DCOs including the **East Anglia Three Offshore Wind Farm Order 2017**, the **Cleve Hill Solar Park Order 2020** ~~and~~ the **Riverside Energy Park Order 2020** [and The Longfield Solar Farm Order 2023](#).
- 4.5.8 Article 23 (*Private rights*) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained

in Article 20 (Compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 22 (Compulsory acquisition of rights); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.

- 4.5.9 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.
- 4.5.10 Article 24 (*Application of the 1981 Act*) is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 4.5.11 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 which has precedent in numerous DCOs including the **Drax Power (Generating Stations) Order 2019**
- 4.5.12 Article 25 (*Acquisition of subsoil only*) is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to Article 20 or Article 22), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners.
- 4.5.13 Article 26 (*Power to override easements and other rights*) provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in Article 19 of the **Immingham Open Cycle Gas Turbine Order 2020**.
- 4.5.14 Article 27 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects

changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Article 18 (Protective work to buildings), Article 29 (Temporary use of land for constructing the authorised development) or Article 30 (Temporary use of land for maintaining the authorised development). These modifications have precedent in numerous made DCOs and other legislation including Schedule 14 to the **High Speed Rail (London - West Midlands) Act 2017**, the **Wrexham Gas Fired Generating Station Order 2017** and the **Silvertown Tunnel Order 2018**.

- 4.5.15 Article 28 (*Rights under or over streets*) is a model provision which has been included in the majority of DCOs made to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.
- 4.5.16 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Land, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.
- 4.5.17 Article 29 (*Temporary use of land for constructing the authorised development*) allows the land specified in Schedule 11 (*Land of which temporary possession may be taken*) to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the authorised development for which temporary possession of the land was taken. The Article also requires the undertaker to give 14 days' notice before taking possession, and to restore the land following the temporary works.
- 4.5.18 Wording has been added to paragraph (1)(a)(ii) in order to allow Article 29 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 4.5.19 New wording has also been added to paragraphs (4) and (5) to take into account that the Applicant may, pursuant to Article 29(1)(a)(ii), temporarily use land that it may compulsorily acquire. This is also subject to a one-year limit beginning with the date of final commissioning of the authorised development.
- 4.5.20 Paragraph (10) makes clear that the undertaker cannot compulsorily acquire, nor permanently acquire rights or impose restrictive covenants over, the land specified in Article 29(1)(a)(i) (which is land of which temporary possession only is required). Wording has also been deleted in paragraph (9) to dovetail

with the new drafting in paragraph (1). This Article has precedent in Article 26 of **The Wrexham Gas Fired Generating Station Order 2017**.

- 4.5.21 Wording has been added at paragraph (11) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 9 (land in which only new rights etc. may be acquired), and nor are the powers under Article 25 (Acquisition of subsoil only) or Article 28 (Rights under or over streets) precluded.
- 4.5.22 Article 30 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 4.5.23 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development, except in relation to landscaping (or, in an addition to precedents on the basis that they need to be maintained just as much as landscaping to ensure environmental outcomes are achieved) ecological works where "the maintenance period" means such period as set out in the landscape and ecology management plan which is approved by the Relevant Planning Authority pursuant to requirement 7 beginning with the date on which that part of the landscaping is completed. Similar wording has been used in other made Orders in connection with generating stations, including the **Drax Power (Generating Stations) Order 2019** and the **Immingham Open Cycle Gas Turbine Order 2020**. However, in order to be able to carry out the landscaping commitments set out in the landscape and ecology management plan, the maintenance period has been extended to the period in the landscape and ecology management plan approved pursuant to Requirement 7. A similar provision was included in the **North Wales Wind Farm Connection Order 2016** and the **Drax Power (Generating Stations) Order 2019**.
- 4.5.24 Articles 29 and 30 are broadly based on the model provisions and provide for the payment of compensation for that temporary use of the land.
- 4.5.25 Article 31 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 42 below) included at Schedule 15 of the Order. Further details on statutory undertakers' land and apparatus is included in the Statement of Reasons ~~[EN010127/APP/4.4]~~[\[AS-009\]](#). This power is required over the whole of the Order Land and similar wording has been used in other made Orders including the **Wrexham Gas Fired Generating Station Order 2017** and the **Immingham Open Cycle Gas Turbine Order 2020**.
- 4.5.26 Article 32 (*Apparatus and rights of statutory undertakers in stopped up streets*) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that

paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 15.

- 4.5.27 Article 33 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 32 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

4.6 Part 6 (Miscellaneous and General)

- 4.6.1 Article 34 (*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](#). [This is with the exception of Work No. 3, where the provisions of the Order have effect for the benefit of the undertaker and National Grid Electricity Transmission Plc \(NGET\). This gives NGET the power to undertake Work No. 3 themselves should they prefer to do so as Work No. 3 is undertaken entirely on NGET land.](#) Given the nature of the Proposed 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** and **Cleve Hill Solar Park Order 2020**.
- 4.6.2 Article 35 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- (a) the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989;
 - (b) [in respect of Work No. 7 only](#), the transferee or lessee is a holding company or subsidiary of the undertaker; or
 - (c) 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.
- 4.6.3 Article 35(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'.
- 4.6.4 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~~ [Work No. 7](#) 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~~ [who, for example, may want to transfer the benefit of Work No. 7 to an entity that involves an entrepreneurial farmer on site to undertake](#)

[sheep grazing and/or the undertaker may choose to set up a separate subsidiary entity to transfer the benefit in relation to landscaping.](#) . Article 35(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. Article 35(5) to (7) provide further detail on the notification that is to be given [including that the undertaker must give at least 14 days' notice of the transfer to the Secretary of State](#). This is based on the notification procedure contained in Article ~~7 of the Wrexham Gas Fired Generating Station Order 2017~~³³ of [The Longfield Solar Farm Order 2023](#).

4.6.5 Article 35(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:

- (a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
- (b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
- (c) the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.

4.6.6 This approach has precedent in the **Cleve Hill Solar Park Order 2020**.

4.6.7 Article 36 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the Proposed Development.

4.6.8 Article 37 (*Operational land for purposes of the 1990 Act*) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.

4.6.9 Article 38 (*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~~ [within or overhanging land within the Order limits](#) 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 those hedgerows specified in Schedule 12 (Hedgerows to be removed) [and as shown on the Hedgerows Plans](#) along with the specific purpose of each removal. The removal of vegetation is also controlled via the Design and Access Statement [~~EN010127/APP/7.3~~ [REP5-058](#)] which restrict

vegetation loss to the maximum extents shown on the Hedgerows Plans [~~EN010127/APP/2.5~~[APP-012](#)].

4.6.10 Alongside that specific power, the Article also allows for a generic power for any hedgerows within the Order ~~land limits~~ to be removed where required for the purposes of the authorised development, to allow for construction flexibility. [This generic power is subject to provisions in requirement 7 and the approval by relevant planning authorities of the landscape and ecology management plan in consultation with Natural England and Lincolnshire County Council.](#)

4.6.11 The Article provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited. [There are no trees subject to tree preservation orders that will be affected by the Order so there is no separate article to deal with tree preservation orders.](#)

~~4.6.12 Article 38 does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order ("TPO"). Article 39 (Trees subject to tree preservation orders) provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance 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 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**. It does not include a paragraph identifying specific TPO trees affected as such information is not yet known at this stage – in South Kesteven it is currently presumed that none will be affected on the assessment undertaken to date [Appendix 15.2 of ~~EN010127/APP/6.2~~], however TPO information was still awaited from Rutland at the time of submission.~~

[4.6.12](#) ~~4.6.13~~[Article 40](#) ~~Article 39~~ (Certification of plans and documents, etc.) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the Book of Reference [~~EN010127/APP/4.3~~][\[EN010127/APP/4.3\]](#) [latest version of this document submitted at Deadline 9](#)), plans and Environmental Statement [~~EN010127/APP/6.4~~[from \[APP-030\] to \[APP-047\]](#)]) to the Secretary of State so that they can be certified as being true copies. The article refers to Schedule 13, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 13 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.

[4.6.13](#) ~~4.6.14~~[Article 41](#) ~~40~~ (Arbitration) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 14 (Arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**, amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.

- [4.6.14](#) ~~4.6.15~~ The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- [4.6.15](#) ~~4.6.16~~ It applies Schedule 14 to the Order, which sets out further detail of the arbitration process. The detail of Schedule 14 is set out below.
- [4.6.16](#) ~~4.6.17~~ In addition, Article ~~41~~([240\(2\)](#)) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- [4.6.17](#) ~~4.6.18~~ Article ~~42-41~~ (Protective Provisions) provides for Schedule 15, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail below. This is a model provision.
- [4.6.18](#) ~~4.6.19~~ Article ~~43-42~~ (*Service of notices*) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and numerous made DCOs.
- [4.6.19](#) ~~4.6.20~~ Article ~~44-43~~ (*Procedure in relation to certain approvals etc.*) provides procedures in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within ~~six-eight~~ weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article.
- [4.6.20](#) ~~4.6.21~~ For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 16 (Procedure for discharge of requirements) (see below).
- ~~4.6.22 — This Article has precedent in the Immingham Open Cycle Gas Turbine Order 2020 and is considered appropriate and justified in order to ensure that the authorised development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.~~
- [4.6.21](#) The time period was increased following representations received during the course of the examination by the Applicant, and it has precedent in article 42 of The Longfield Solar Farm Order 2023.
- [4.6.22](#) ~~4.6.23~~ Article ~~45~~ Article 44 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under articles 20, 22, 23, 28, 29, 30 and 31 until it has either put in place a guarantee or other form of security approved by the Secretary of State in

respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the **Wrexham Gas Fired Generating Station Order 2017** and the **Drax Power (Generating Stations) Order 2019**.

[4.6.23](#) ~~4.6.24~~Article ~~46~~ [45](#) (*Compulsory acquisition of land - incorporation of the mineral code*) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order limits, and that the Order limits is located within Mineral Consultation and Safeguarding Areas.

5. SCHEDULES

5.1 Schedule 1 (Authorised Development)

5.1.1 This Schedule describes the authorised development in detail and split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.

5.1.2 The works set out in Schedule 1 to the Order are explained in detail above.

5.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement [~~EN010127/APP/6.4~~from [\[APP-030\]](#) to [\[APP-047\]](#)]. This is achieved through the following mechanisms in the Order:

- (a) Article 3 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the Works Plans [~~EN010127/APP/2.2~~[REP7-006](#)] – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the Environmental Statement [~~EN010127/APP/6.4~~from [\[APP-030\]](#) to [\[APP-047\]](#)].
- (b) Schedule 1 provides that development which does not form part of a specific Work Number can only be brought forward if it does not lead to materially new or materially different effects from those assessed in the Environmental Statement.
- (c) 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, scale, ground levels, external appearance, hard surfacing materials, ~~access, drainage, water, power and communication cables and pipelines, access, parking and circulation areas, junction~~

improvements and passing places, refuse or other storage units, signs and lighting.

- (d) Paragraph (2) of the detailed design requirement requires that the details submitted must accord with the Design Guidance [~~EN010127/APP/7.3~~] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~]. ~~Design Guidance [EN010127/APP/7.3] and Parameters [Appendix 5.1 of EN010127/APP/6.2]~~ REP5-058 and Parameters [REP7-013]. The details must also accord with any details approved under requirements 7 (landscape and ecology management plan), 8 (fencing and other means of enclosure), 9(1) (surface and foul water drainage) and 10 (archaeology) as well as demonstrate how results of any archaeological investigations or archaeological evaluations undertaken pursuant to outline written scheme of investigation have been taken into account. Design Guidance [REP5-058], Parameters [REP7-013] and the outline written scheme of investigation [REP8-017] are certified documents pursuant to Article ~~40-39~~ (certification of plans and documents) and Schedule 13 (documents and plans to be certified). The Design Guidance [~~EN010127/APP/7.3~~ REP5-058] and Parameters [~~Appendix 5.1 of EN010127/APP/6.2~~ REP7-013] contain the maximum parameters for the authorised development and are the same as those used for the assessment of effects in the Environmental Statement [~~EN010127/APP/6.4~~ from [APP-030] to [APP-047]]. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the Environmental Statement [~~EN010127/APP/6.4~~ from [APP-030] to [APP-047]], recognising that the final massing may differ from (but will never be larger than) these maxima. The outline written scheme of investigation sets out a programme of work and detail on the scope, parameters and methodological approaches for further archaeological work.

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

5.2 **Schedule 2 (Requirements)**

- 5.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the Relevant Planning Authority or other relevant statutory consultee.
- 5.2.2 The requirements closely relate to the mitigation set out in the Environmental Statement [~~EN010127/APP/6.4~~ from [APP-030] to [APP-047]] and specifically refer to the ~~outline strategies or plans~~ relied upon in the Environmental Statement, in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 5.2.3 Many of the requirements require submission of details for approval by the Relevant Planning Authority (or Relevant Planning Authorities where

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

- 5.2.4 In the undertaker's opinion the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement [~~EN010127/APP/6.1~~from [\[APP-030\] to \[APP-047\]](#)]; enforceable and precise in their language; and reasonable in all other respects.
- 5.2.5 In all cases where a Proposed Development or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved Proposed Development or strategy or plan. This is subject to requirement 5, as explained below.
- 5.2.6 Requirement 1 – Interpretation: This provides a definition in relation to "both relevant planning authorities", "date of final commissioning"~~—and “field,~~ [“decommissioning timing provisions” and “relevant highway authority”](#) which apply to this Schedule only, rather than the Order as a whole.
- 5.2.7 *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.
- 5.2.8 *Requirement 3 – Phasing of the authorised development and date of final commissioning:* This requirement provides that no part of the authorised development may commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the Relevant Planning Authorities. The scheme must include a timetable for the construction of the authorised development [and a plan identifying the phasing areas](#). The scheme must be implemented as approved. [The requirement also sets the obligation on the undertaker to give notice of the date of final commissioning with respect to each phase of Work No. 1 to the relevant planning authorities within 15 working days of the date of final commissioning for that phase. The date of final commissioning is also the fixed point in time from which to measure the authorised development's 60-year time-limit in Requirement 18.](#)
- 5.2.9 *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.
- 5.2.10 *Requirement 5 – Approved details and amendments to them:* This requirement provides that where any documents [\(except the book of reference and land plans\)](#) have been certified under Article ~~40-39~~ and where any plans, details or schemes have been approved [pursuant to any requirement and the percentage of any biodiversity net gain units referred to in Requirement 7\(2\)\(f\)](#) by the Relevant Planning Authority (or authorities), the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the Relevant Planning Authority (or authorities), those

documents, plans, details or schemes and percentage of any biodiversity net gain units referred to in Requirement 7(2)(f) are to be taken to include the amendments approved by the Relevant Planning Authority (or authorities). Any amendments should not be approved unless it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement [~~EN010127/APP/6.1~~from [APP-030] to [APP-047]]. The rationale for including the percentage of any biodiversity net gain units is to enable the Applicant to amend this with the approval of the relevant planning authorities without needing to change the DCO to provide flexibility to account for the detailed design and the nuances of any new biodiversity net gain metric that is developed.

5.2.11 *Requirement 6* – Detailed design approval: This requirement stipulates the details that must be submitted to and approved by the Relevant Planning Authority (or authorities) before any phase of the authorised development can commence. The details submitted must be in accordance with the Design Guidance [~~EN010127/APP/7.3~~and REP5-058], Parameters [~~Appendix 5.4 of EN010127/APP/6.2~~and REP7-013], any details approved under requirements 7, 8, 9~~and 10(1)~~ and 10 as well as demonstrate how they have taken account of the results of any archaeological investigations or archaeological evaluations carried out pursuant to the outline written scheme of investigation. This includes a statement confirming how the design guidance and parameters have been taken into account in the details that have been submitted. The authorised development must be carried out and then maintained in accordance with the approved details. The Requirement does not apply to details of vehicular and pedestrian access, parking and circulation areas, junction improvements and passing places in Requirement 6(1)(g) if approval of these details has already been obtained pursuant to articles 9, 10 or 13 to avoid duplication of approval processes for those aspects.

5.2.12 *Requirement 7* – Landscape and ecology management plan: The requirement stipulates that no phase of the authorised development may commence, no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology 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) following consultation with Natural England and Lincolnshire County Council. The landscape ecological management plan must include details of the proposed hard and soft landscaping works and ecological mitigation and enhancement measures, and where applicable include:

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;
- (b) any hedgerows proposed for removal that are not shown on the ~~hedgerow plan~~hedgerows plans;
- (c) cultivation, importing of materials and other operations to ensure plant establishment; ~~and~~
- (d) existing trees to be retained;
- (e) ~~(d)~~an implementation timetable;

- (f) ~~(e)~~ details of how the plan proposals will contribute to the achievement of a minimum of ~~40~~⁶⁵% biodiversity net gain in habitat units and a minimum of 36% net gain in hedgerow units for all of the authorised development during the operation of the authorised development and the metric that has been used to calculate that those percentages will be reached;
- (g) ~~(f)~~ how the measures set out in the plan will be managed up until the date the decommissioning environmental management plan is implemented pursuant to Requirement 18 (Decommissioning and restoration);
- (h) ~~(g)~~ information on the surveys required prior to commencement of, or following completion of, a numbered work must be set out, in order to monitor the effect of, or inform the ecological mitigation measures to be taken forward; and
- (i) ~~(h)~~ final routing, specification and maintenance regime for each permissive path.

If, within five years of planting ~~a~~^{any} hedgerow, shrub or tree as part of the approved plan, said plant or tree dies, is removed, or becomes damaged or diseased (in the opinion of the Relevant Planning Authority), it must be replaced in the first available planting season with one of the same species and size as that originally planted. ~~The~~ Each landscape and ecology management plan approved under this requirement must be implemented as approved and maintained throughout the operation phase.

5.2.13 *Requirement 8 – Fencing and other means of enclosure:* The undertaker is required to submit details of and obtain the written approval from the Relevant Planning Authority (or authorities, as applicable, and this approval to be given in consultation with Lincolnshire County Council) for any proposed permanent and temporary fences, walls or other means of enclosure, for each phase prior to commencement of the phase in question. In respect of any permanent fences, walls or other means of enclosure:

- (a) The details must be in accordance with the Design Guidance [REP5-058] and Parameters [REP7-013];
- (b) The fencing, walls or other means of enclosure must be completed prior to the date of final commissioning for the phase it is associated with; and
- (c) ~~5.2.13~~ The fencing, walls or other means of enclosure must be properly maintained for the operational lifetime of that part of the authorised development.

5.2.14 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.

5.2.15 ~~5.2.14~~ *Requirement 9 – 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, foul water drainage system (if any) and water management plan for that phase have been submitted to and approved by the local lead flood authority and the Relevant Planning Authority (or both local lead flood authorities or relevant planning authorities, as

applicable). The surface water drainage scheme and foul water drainage system must be substantially in accordance with the outline surface water drainage strategy and the design and operation of any phase of the authorised development must be carried out and maintained in accordance with the scheme approved for that phase. The water management plan must be substantially in accordance with the outline water management plan. ~~Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development and it must be consistent with the details of the soil management plan submitted for approval under Requirement 14(1). Construction of any phase must be carried out in accordance with the approved water management plan.~~

5.2.16 ~~5.2.15~~ *Requirement 10* – Archaeology: This requirement stipulates that ~~no part of the~~ authorised development must be carried out in accordance with the outline written scheme of investigation, which is a document which sets out the process and timing for the agreement of archaeological mitigation measures. This approach is well-precedented in The Port of Tilbury (and no intrusive archaeological investigations) may commence until a written scheme of archaeological investigation for that part has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable) Expansion) Order 2019 and The A303 (Amesbury to Berwick Down) Development Consent Order 2023.

5.2.17 ~~5.2.16~~ *Requirement 11* – Construction environmental management plan: Under this requirement, no phase of the authorised development may commence, and no above ground site preparation for temporary facilities for the use of contractors and site clearance may start , until a construction environmental management plan for that phase (which must substantially accord with the outline construction environmental management plan and detail measures required for public rights of way that are temporarily closed) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable) for that phase, in consultation with the ~~relevant highway authority and the~~ Environment Agency and Lincolnshire County Council. ~~All The~~ construction works ~~associated with of any phase of the~~ authorised development must be carried out in accordance with the approved construction environmental management plan for that phase.

5.2.18 ~~5.2.17~~ *Requirement 12* - Operational environmental management plan: This requirement provides that prior to the date of final commissioning for any phase of the authorised development an operational environmental management plan (which must substantially accord with the outline operational environmental management plan and which must include decommissioning timing provisions which are defined as provisions in section 2.4 of the outline Operational Environmental Management Plan) must be submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the Environment Agency and Lincolnshire County Council. The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

5.2.19 ~~5.2.18~~ *Requirement 13* - 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 Relevant Planning Authority (or authorities, as applicable), in consultation with ~~the both~~ relevant highway ~~authority~~ authorities. ~~The outline Any~~ construction traffic management plan ~~will comprise~~ must include a construction travel plan which must be substantially

in accordance with the outline travel plan. The construction traffic management plan must be implemented as approved.

5.2.20 ~~5.2.19~~ *Requirement 14* – Soil management plan: This requirement provides that no phase of the authorised development may commence until a soil management plan, which must include an excavated materials management plan (which must be substantially in accordance with the outline soil management plan and the outline excavated materials management plan) has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable), in consultation with the Environment Agency in relation to the outline excavated materials management plan and the excavated materials management plan. The measures in the soil management plan must be consistent with the details of the water management plan submitted for approval under Requirement 9(3). The construction of the authorised development must be carried out in accordance with the approved soil management plan.

5.2.21 ~~5.2.20~~ *Requirement 15* – Ground conditions: This requirement stipulates that no phase of the authorised development may commence, and no demolition or decommissioning of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only may start, until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable) in consultation with the Environment Agency. ~~The~~ Any phase of the authorised development must be carried out in accordance with the strategies approved for that phase.

5.2.22 ~~5.2.21~~ *Requirement 16* – Operational noise: This requirement stipulates that no phase of the authorised development may be operational until an operational noise ~~strategy assessment~~ has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The operational noise ~~strategy assessment~~ must contain details of how the design of the authorised development for that phase has incorporated mitigation to ensure that operational noise rating levels ~~as set out in the environmental statement~~ (determined in line with BSI British Standards Publication 4142:2014+A1:2019 dated 30 June 2019 (or the current version of that publication if this has been superseded when the assessment is submitted for approval)) not exceeding 35 decibels at residential properties are to be complied with for that phase. The ~~design as mitigation measures~~ described in the operational noise ~~strategy assessment~~ must be implemented ~~as approved~~ and maintained as approved throughout the operation of that phase of the authorised development. The operational noise rating levels have been set out on the face of the DCO, at the request of the Examining Authority during the Examination, in order for them to be more easily identifiable.

5.2.23 ~~5.2.22~~ *Requirement 17* – Skills, supply chain and employment: this requirement stipulates that no phase of the authorised development may commence until a skills, supply chain and employment plan (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the Relevant Planning Authority (or authorities, as applicable). The skills-, supply chain and employment 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 skills-, supply chain and employment plan must be implemented as approved.

5.2.24 *Requirement 18 – Decommissioning and restoration: This requirement provides for a 60-year time limit to the operation of the authorised development by requiring that decommissioning works must commence no later than 60 years following the date of the final commissioning of Work No. 1. This is controlled by requirement 3(4) which requires the undertaker to give notice of the date of final commissioning of each phase of Work No. 1 within 15 working days of the date of final commissioning for that phase.*

5.2.25 ~~5.2.23~~*Requirement 18—Decommissioning and restoration: This requirement provides that within 12 months (or such longer period as agreed with the Relevant Planning Authority) of the date the undertaker decides to decommission any part of the authorised development*Requirement 18 should also be read alongside section 2.4 of the outline Operational Environmental Management Plan as this contains provisions about the timing of the decommissioning works to provide certainty in the event decommissioning takes place before the end of the 60-year time limit. Before decommissioning works can commence (and before the end of the decommissioning timeframes set out in the approved detailed Operational Environmental Management Plan), the undertaker must submit to the Relevant Planning Authority (or authorities, as applicable) for its approval a decommissioning environmental management plan for that part which substantially accords with the outline decommissioning environmental management plan. The approval must be given in consultation with the Environment Agency and Lincolnshire County Council. No decommissioning works must be carried out until the Relevant Planning Authority (or authorities, as applicable) has approved the plan submitted in relation to such works. The plan submitted must be implemented as approved for the works required to decommission that phase of the authorised development. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

5.3 Schedule 3 (Legislation to be disapplied)

5.3.1 This Schedule lists out the legislation that the Order disapplies that relate to matters including railways, turnpikes, rivers and other watercourses within, and 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.

5.4 Schedule 4 (Streets subject to street works)

5.4.1 This Schedule sets out the streets that are to be subject to street works by reference to the Access and Rights of Way Plans [~~EN010127/APP/2.4~~REP7-006]. The Schedule relates to Article 8 (Street works).

5.5 Schedule 5 (Alteration of streets)

5.5.1 This Schedule sets out the streets that are to be permanently altered (Part 1), and temporarily altered (Part 2) by reference to the Access and Rights of Way Plans [~~EN010127/APP/2.4~~REP7-006]. This Schedule relates to Articles 9 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).

5.6 Schedule 6 (Public rights of way)

5.6.1 This Schedule sets out the locations of the public rights of way to be temporarily stopped up (Part 1), the public rights of way over which the undertaker seeks authorisation to use motor vehicles permanently (Part 2). It

references the Access and Rights of Way Plans [[EN010127/APP/2.4REP7-006](#)]. This Schedule relates to Article 11 (Temporary stopping up of *streets and private means of access*).

5.7 **Schedule 7 (Access to works)**

- 5.7.1 This Schedule sets out the permanent means of accesses to works (Part 1) and temporary means of accesses (Part 2) to the authorised development. It references the Access and Rights of Way Plans [[EN010127/APP/2.4REP7-006](#)]. The Schedule relates to Article 13 (Access to works).

5.8 **Schedule 8 (Traffic regulation measures)**

- 5.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 15 (Traffic regulation measures), and contains details of the nature of the measures for each affected street.

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

- 5.9.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of the table correlate with the relevant plot numbers shaded blue on the Land Plans ([\[EN010127/APP/2.1\] latest version of this document submitted at Deadline 9](#)) 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 22 (Compulsory acquisition of rights).

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

- 5.10.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the **Cleve Hill Solar Park Order 2020** and the **East Anglia ONE North Offshore Wind Farm Order 2022**. 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 22 (Compulsory acquisition of rights).

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

- 5.11.1 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 29 (Temporary use of land for constructing the authorised development). This land is shown yellow on the Land Plans [[EN010127/APP/2.4](#)]([\[EN010127/APP/2.1\] latest version of this document submitted at Deadline 9](#)), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans [[EN010127/APP/2.2REP7-006](#)].

5.12 **Schedule 12 (Hedgerows to be removed)**

- 5.12.1 This Schedule sets out the specific hedgerows to be removed pursuant to Article 38 (Felling or lopping of trees and removal of hedgerows) and listing in Column 2 the number of hedgerow and extent of removal.

5.13 **Schedule 13 (Documents and plans to be certified)**

- 5.13.1 This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article ~~40~~39 (Certification of plans and documents, etc.).

5.14 **Schedule 14 (Arbitration rules)**

- 5.14.1 This Schedule relates to Article ~~41~~40 (Arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.
- 5.14.2 Schedule 14 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 5.14.3 The timetable for the process is as follows:
- (a) Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
 - (b) Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
 - (c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a statement of reply.
- 5.14.4 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

5.15 **Schedule 15 (Protective provisions)**

- 5.15.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article ~~42~~41 (Protective provisions) and ~~currently~~ contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2).

~~5.15.2 In addition, each of Parts 3 – 4 contain provisions for the benefit of a particular body and these remaining Parts are at varying stages of negotiation with the relevant parties. The versions of the protective provisions contained within Parts 3 – 4 of the Order represent the latest point that negotiations have reached with each party, and therefore are not agreed and are subject to change. 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:~~

~~(a) Part 3 – for the protection of National Grid as electricity and gas undertaker; and~~

~~(b) Part 4 – for the protection of the Environment Agency.~~

~~5.15.3 Discussions have also taken place with Anglian Water, Cadent Gas and Network Rail to agree Protective Provisions. As the parties have yet to reach an agreed starting point, these provisions are not yet included in the Order but are anticipated to be a short time into the Examination process.~~

5.15.2 ~~5.15.4~~ The protective provisions in Part 1 - for the protection of electricity, gas, water and sewerage undertakers apply in the meantime, and have been amended slightly to include other mains, pipelines or cables not ordinarily falling within the definition of "apparatus" and the owner of such mains, pipelines and cables as a "utility undertaker". This is to capture and protect a water supply to tenants that is privately provided within the Order limits.

5.15.3 In addition, each of Parts 3 - 8 contain provisions for the benefit of a particular body. These Parts have been agreed with the relevant bodies and represent the final form of bespoke protective provisions. On that basis, these bodies have also withdrawn any objections they had lodged against the DCO application. The relevant bodies are as follows:

(a) Part 3 – for the protection of National Gas Transmission Plc as gas undertaker;

(b) Part 4 – for the protection of National Grid Electricity Transmission Plc as electricity undertaker;

(c) Part 5 – for the protection of the Environment Agency;

(d) Part 6 – for the protection of Anglian Water Services Limited;

(e) Part 7 – for the protection of railway interests; and

(f) Part 8 – for the protection of Cadent Gas Limited.

5.16 **Schedule 16 (Procedure for discharge of requirements)**

5.16.1 This Schedule provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by ~~the Requirements~~ a requirement, a document referred to by a requirement or a document that has been approved pursuant to a requirement in Schedule 2 of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. For a discharge of requirement 6, 7, 8, 9, 11, 12 or 18, the relevant planning authority has ten weeks to give notice of its decision to the undertaker and for all other requirements this timeframe is eight weeks. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the Relevant Planning Authority requires further information to be provided in relation to that application. Schedules similar to Schedule 16 have been used in various orders and can be seen in a similar form in The Longfield Solar Farm Order 2023, the **Cleve Hill Solar Park Order 2020** and the **Little Crow Solar Park Order 2022**. The bespoke process is required in order to ensure that applications under Requirements are dealt with efficiently so that the anticipated timeframe of the authorised development is not

disrupted. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be slowed down by the discharge of requirements.

[5.16.2 Paragraph 5 sets out the amount of fee payable by the undertaker to the relevant planning authority on each occasion that the undertaker submits an application for consent.](#)

