



# DRAFT EXPLANATORY MEMORANDUM: 3.2

DECARBONISATION

## Cory Decarbonisation Project

PINS Reference: EN010128

March 2024

Revision A

# CORY DECARBONISATION PROJECT ORDER 202\*

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## EXPLANATORY MEMORANDUM

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### 1. GLOSSARY

<b>1968 Act</b>	The Port of London Act 1968
<b>1990 Act</b>	The Town and Country Planning Act 1990 (as amended).
<b>1991 Act</b>	The New Roads and Street Works Act 1991 (as amended).
<b>1994 Agreement</b>	The agreement under section 106 of the Town and Country Planning Act 1990 dated 21 January 1994 between (1) The Mayor and Burgesses of the London Borough of Bexley and (2) Thames Water Utilities Limited.
<b>2008 Act</b>	The Planning Act 2008 which is the legislation that governs applications for nationally significant infrastructure projects and Projects of National Significance, including preapplication consultation and publicity, the examination of applications and decision making by the Secretary of State.
<b>Access and Rights of Way Plans</b>	The plans, which accompany the Application, referred to in Schedule 13 of the Order ( <b>Document Reference 2.4</b> ).
<b>Applicant</b>	Cory Environmental Holdings Limited (company number 05360864), also referred to as "Cory". In the Order, the Applicant is referred to as the "undertaker".
<b>APFP Regulations</b>	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
<b>Application</b>	The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Scheme. A DCO is required pursuant to the Section 35 Direction given by the Secretary of State pursuant to section 35(1) of the

2008 Act. The Section 35 Direction states that that the Proposed Scheme should be treated as development for which development consent under the 2008 Act is required, as a Project of National Significance (PNS).

<b>Associated Development to the PNS development</b>	Defined under section 115(2) of the 2008 Act as development which is associated with the principal development (i.e. the PNS) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
<b>Book of Reference</b>	The Book of Reference ( <b>Document Reference 4.3</b> ), which accompanies the Application (and which will be updated throughout the Examination), which is a reference document providing details of all land ownership interests within the Order limits with reference to the Land Plans ( <b>Document Reference 2.2</b> ).
<b>Carbon Capture Facility</b>	Infrastructure to capture 95% of CO2 emissions from Riverside 1 and 95% of CO2 emissions from Riverside 2 once operational, which is equivalent to approximately 1.3Mt CO2 per year.
<b>Cory</b>	Cory Environmental Holdings Limited (Company number 05360864), the Applicant for the DCO. In the Order, Cory is referred to as the “undertaker”.
<b>Deemed Marine Licence (DML)</b>	A Deemed Marine Licence is required as the Proposed Scheme involves activities which are licensable under Part 4 of the Marine and Coastal Access Act 2009, namely the Proposed Jetty and its related dredging. This states that “No person may (a) carry on a licensable marine activity, or (b) cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority”.
<b>DCO</b>	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a PNS.
<b>EIA</b>	Environmental Impact Assessment. The assessment of the likely significant

	environmental effects of the Scheme undertaken in accordance with the EIA Regulations.
<b>EIA Regulations</b>	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of projects consented under the 2008 Act must be carried out and the procedures that must be followed.
<b>Environmental Statement</b>	The Environmental Statement <b>(Document Reference 6.1 – 6.4)</b> which accompanies the Application, documenting the findings of the EIA.
<b>Explanatory Memorandum</b>	This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks <b>(Document Reference 3.3)</b> .
<b>Extended Crossness Local Nature Reserve (LNR)</b>	The proposed extension of a network of ditches and open water, scrub and rough grassland that is Crossness Local Nature Reserve to incorporate the Mitigation and Enhancement Area.
<b>Land Plans</b>	The plans which accompany the Application, showing the Order <b>(Document Reference 2.2)</b> .
<b>London Borough of Bexley (LBB)</b>	The local authority in whose administrative area the Proposed Scheme is located. In the Order, LBB is defined as the “relevant planning authority” and the “relevant highways authority”.
<b>Mitigation and Enhancement Area</b>	Land within the Site identified to provide habitat, recreation and access mitigation, compensation and enhancement (including). The Mitigation and Enhancement Area provides a valuable opportunity to improve access for users of the Crossness Local Nature Reserve (LNR).
<b>Model Provisions</b>	As set out in The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. For further information please refer to PINS Advice Note Thirteen (February 2019 (version 3)).
<b>MMO</b>	The Marine Management Organisation.
<b>Order</b>	The Cory Decarbonisation Order 202[*], being the DCO that would be made by

	the Secretary of State authorising the Proposed Scheme, a draft of which has been submitted as part of the Application <b>(Document Reference 3.1)</b> .
<b>Order Land</b>	The land over which the Order would authorise compulsory acquisition and compulsory acquisition of rights, as shown on the Land Plans <b>(Document Reference 2.2)</b> .
<b>Order limits</b>	The limits of the land to which the Application relates and as shown on the Works Plans <b>(Document Reference 2.3)</b> .
<b>Other Consents and Licences Statement</b>	The Other Consents and Licences Statement <b>(Document Reference 5.5)</b> , which accompanies the Application, that explains the Applicant's approach to obtaining all other necessary consents to deliver the Scheme beyond the Order.
<b>PLA</b>	The Port of London Authority
<b>Project of National Significance (PNS)</b>	A project that, as a result of a direction under section 35 of the 2008 Act, has been classified as a development for which development consent is required.
<b>Proposed Jetty</b>	A new and dedicated export structure within the River Thames is required to export the CO2 captured by the Carbon Capture Facility.
<b>Proposed Scheme</b>	The development to which the Application relates and which is described in Schedule 1 to the Order. In Schedule 1, the Scheme is described as the "authorised development."
<b>REPL</b>	Riverside Energy Park Limited (company number 11536739) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF.
<b>REP Order</b>	The Riverside Energy Park Order 2020 (2020/419), which was amended by the Riverside Energy Park (Correction) Order 2021 (2021/273) and the Riverside Energy Park (Amendment) Order 2023 (2023/165).
<b>Riverside 1</b>	An energy from waste (EfW) facility generating up to 80.5 megawatt (MW) of electricity. Riverside 1 has been

operational since 2011. Riverside 1 is owned and operated by RRRL.

**Riverside 2**

Riverside 2, an EfW facility with a generating capacity of up to 96MW. Riverside 2 is currently under construction and anticipated to be operational by 2026. Riverside 2 is owned and will be operated by REPL.

**Riverside Heat Network**

A heat network planned to be constructed to distribute heat from Riverside 1, Riverside 2 and in time the Proposed Scheme to developments in the locality.

**RRRL**

Riverside Resource Recovery Limited (company number 03723386) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF

**Secretary of State**

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

**Section 35 Direction**

A direction under section 35(1) of the Planning Act 2008 from the Secretary of State, which provides that a development will be treated as a development for which development consent is required.

**Supporting Plant**

A key element of the Carbon Capture Facility, this is the infrastructure required to support the operation of the Carbon Capture Plant(s) which includes a cooling system, chemical storage and distribution handling facilitates, water treatment plant (process water supply), wastewater treatment plant and gatehouse, control room, welfare facilities, stores and workshop.

**Temporary Construction Compounds**

The three secure areas from which site work is managed and resourced, including but not limited to temporary offices, workshop, parking, and storage, made up of the Core Construction Compound, the Western Construction Compound and the Proposed Jetty Construction Compound.

**Works Plans**

The plans, which accompany the Application, showing the Order limits and the numbered works that form the Scheme and as described in Schedule 1 to the Order (**Document Reference 2.3**).

## 2. INTRODUCTION

- 2.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of the provisions of the draft Riverside Decarbonisation Order 202\* (**the Order**), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended). This document should be read alongside the Order and the other documents submitted in respect of this application for the Order.
- 2.2 This Memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (**the model provisions**). Whilst 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 important and relevant to note and explain variations made in the Order compared to the model provisions.

## 3. THE PURPOSE OF AND NEED FOR THE ORDER

### *Project of National Significance*

- 3.1 Cory Environmental Holdings Limited (**Cory**) has made an application pursuant to the Planning Act 2008 (as amended) (**the 2008 Act**) to the Secretary of State for Energy Security and Net Zero (**the Secretary of State**) for a development consent order for the construction, operation and maintenance of the Riverside Decarbonisation Project (referred to in the Order as "**the authorised development**", and in this document also as the **Proposed Scheme**).
- 3.2 By way of letter dated 6th October 2022, the Secretary of State made a Direction, under Section 35(1) of the 2008 Act (the **Section 35 Direction**), that the Proposed Scheme should be treated as development for which development consent under the 2008 Act is required and therefore a Project of National Significance (**PNS**). The Secretary of State was satisfied that:
- 3.2.1 *"The Proposed Project is in the field of energy and development and will be wholly within England;*
- 3.2.2 *The Proposed Project does not currently fall within the existing definition of a "nationally significant infrastructure project" and therefore it is appropriate to consider use of the power in section 35(1) of the Planning Act 2008; and*
- 3.2.3 *Cory's request constitutes a "qualifying request" in accordance with section 35ZA(11) of the Planning Act 2008."*
- 3.3 In coming to this conclusion, the Secretary of State noted that the "*Proposed Project relates to the construction of post combustion carbon capture, storage, and transfer equipment; and the construction of hydrogen facilities and thus sits within one of qualifying infrastructure fields listed in section 35(2)(a)(i) – energy - of the Planning Act*".
- 3.4 The Secretary of State highlighted that one of the reasons that the Proposed Scheme should be considered as a PNS is that:
- 3.4.1 *"The carbon capture element of the Proposed Project would provide and support the decarbonisation of energy from waste derived CO2 emissions in the UK, delivering over a million tonnes of CO2 savings per annum, and supporting the achievement of a fully de-carbonised district heating network that crosses local authority areas"*.

- 3.5 The scope of the Direction made on 6 October 2022 included proposed hydrogen production facilities, as a separate PNS development to the carbon capture and storage elements of the Proposed Scheme. As a result of further project design development, Cory has made a commercial decision not to pursue the hydrogen production element of the Proposed Scheme in the immediate future and, in particular, for it not to form part of the application for development consent which this document forms part of. Whilst Cory is still considering options for how to deliver these hydrogen elements, Cory has decided to focus its immediate efforts on securing the delivery and associated benefits of the carbon capture (and associated buffer storage) elements of the Proposed Scheme as soon as possible in this application.
- 3.6 The Secretary of State confirmed that the Proposed Scheme remains in the ambit of the Section 35 Direction in a letter dated 28 January 2024, which is appended to the Planning Statement.
- 3.7 As a result of the Section 35 Direction, development consent must be obtained in order to carry out the development in Work No. 1 and an application for a development consent order must be made to the Secretary of State (section 37 of the 2008 Act).

#### *The Proposed Scheme*

- 3.8 Cory is part of the Cory Group, one of the UK's leading resource management companies with an extensive river logistics network in London. Its core activity, recovering energy from residual waste, is undertaken at the Riverside Campus, located adjacent to the River Thames at Belvedere in the London Borough of Bexley (“**LBB**”). Riverside 1, an energy from waste (“**EfW**”) facility generating up to 80.5 megawatt (MW) of electricity, has been operational since 2011. Riverside 2, an EfW facility with a generating capacity of approximately 76MW, is currently under construction and anticipated to be operational in 2026.
- 3.9 Riverside 1 and Riverside 2 will provide over 1.5 million tonnes per annum (tpa) of residual waste management capacity, making a substantial contribution to addressing the waste needs of London and Southeast England.
- 3.10 Cory intends to construct and operate the Proposed Scheme to be linked with the River Thames. The authorised development comprises the following key components:
- 3.10.1 The Carbon Capture Facility (including Supporting Plant and Ancillary Infrastructure): the construction of infrastructure to capture a minimum of 95% of carbon dioxide (CO<sub>2</sub>) emissions from Riverside 1 and 95% of CO<sub>2</sub> emissions from Riverside 2 once operational, which is equivalent to approximately 1.3Mt CO<sub>2</sub> per year. The Carbon Capture Facility will be one of the largest carbon capture projects in the UK.
- 3.10.2 The Proposed Jetty: a new and dedicated export structure within the River Thames as required to export the CO<sub>2</sub> captured as part of the Carbon Capture Facility.
- 3.10.3 The Mitigation and Enhancement Area: land identified as part of the **Landscape, Biodiversity and Recreation Strategy Delivery Plan (Document Reference 7.9)** to provide improved access to open land, habitat mitigation, compensation and enhancement (including forming part of the drainage system and Biodiversity Net Gain delivery proposed for the Proposed Scheme) and planting. The Mitigation and Enhancement Area provides the opportunity to improve access to outdoor space and to extend the area managed as the Crossness Local Nature Reserve (LNR).



- 3.10.4 Temporary Construction Compounds: areas to be used during the construction phases for activities including, but not limited to office space, warehouses, workshops, open air storage and car parking, as shown on the Works Plans (**Document Reference 2.3**). These include the core Temporary Construction Compound, the western Temporary Construction Compound and the Proposed Jetty Temporary Construction Compound.
- 3.10.5 Utilities Connections and Site Access Works: The undergrounding of utilities required for the Proposed Scheme in Norman Road and the creation of new, or the improvement of existing, access points to the Carbon Capture Facility from Norman Road.
- 3.11 The Proposed Scheme demonstrates Cory's status as a leader within the decarbonisation agenda and the UK's drive towards net zero, and the Proposed Scheme is the next stage of the company's ambitions to continue to drive forward innovation.

*Matters for which development consent is sought*

- 3.12 The development authorised by the Order, all located within LBB, can be summarised as follows:
  - 3.12.1 Carbon Capture Facility (Work No. 1 (including Work No. 1A, 1B, 1C, 1D, and 1E) which includes Carbon Capture Plant, Absorber Column and Stack, LCO<sub>2</sub> Buffer Storage Area and the Supporting Plant.
  - 3.12.2 Modifications to Riverside 1 and Riverside 2: being the areas where connections and interconnection to the existing Riverside 1 and Riverside 2 facilities will take place, which is Work No. 2 (including Work No. 2A, 2B and 2C) in Schedule 1 of the draft DCO).
  - 3.12.3 Proposed Jetty (including Liquid Carbon Dioxide (LCO<sub>2</sub>) including:
    - (a) works to create the jetty and its associated Access Trestle (Work No. 4B);
    - (b) dredging associated with creating the jetty (Work No. 4C);
    - (c) the modification or removal of the existing Belvedere Power Station Jetty (Work No. 4A).
  - 3.12.4 Utilities Connections Corridor and provisions of access from Norman Road (Work No. 3).
  - 3.12.5 LCO<sub>2</sub> Connection Corridor (Work No. 5)
  - 3.12.6 Temporary Construction Compounds (Work No. 6).
  - 3.12.7 Mitigation and Enhancement Area (Work No. 7).
  - 3.12.8 Potential relocation of existing access road to the adjacent Thames Water site (Work No. 8).
  - 3.12.9 Protective works to land if required as a result of the authorised development (Work No. 9).

- 3.13 Section 115(1) of the 2008 Act provides that development consent may be granted for "*(a) development for which development consent is required, or (b) associated development*". The third limb - paragraph (c) - is not relevant for the Proposed Scheme. All the development in the Order must therefore come within either Section 115(1)(a) or 115(1)(b), in order for the Secretary of State to have the power to grant development consent for it.
- 3.14 By virtue of the Section 35 Direction, Work No. 1 falls under section 115(1)(a) of the 2008 Act.
- 3.15 The Section 35 Direction refers to the Proposed Scheme encompassing:
- 3.15.1 *"the delivery of "associated development" (within the meaning of section 115(1)(b) of the Planning Act including, but not limited to, jetty facilities, dredging, hydrogen storage facilities, temporary working sites, temporary and permanent utilities and highway diversions and environmental mitigation ("the associated development to the PNS developments"); and*
- 3.15.2 *ancillary matters ("the ancillary development to the PNS developments")".*
- 3.16 Work Numbers 2-9 fall within section 115(1)(b) of the 2008 Act, as they comprise development that is associated with Work Number 1 and that is required in order to carry out Work Number 1.
- 3.17 It is clear that all of the development set out in Work Nos. 2 to 9 in Schedule 1 to the Order falls within the policy and criteria set out in the '*Guidance on associated development applications for major infrastructure projects*' (Department for Communities and Local Government, April 2013) (**the AD Guidance**) and is capable of being granted development consent by the Secretary of State under section 115(1)(b) of the 2008 Act. Work Numbers 2 to 9 are all:
- 3.17.1 directly associated with the PNS, as they are all required for the construction, operation or maintenance of the PNS, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- 3.17.2 subordinate to the PNS - none of them are an aim in themselves (paragraph 5(ii));
- 3.17.3 not necessary as a source of additional revenue for Cory, in order to cross-subsidise the cost of the PNS (paragraph 5(iii));
- 3.17.4 proportionate to the nature and scale of the PNS (paragraph 5(iv)); and
- 3.17.5 of a nature which is typically brought forward alongside the PNS (paragraph 6).
- 3.18 Schedule 1 to the Order also includes details of further associated and ancillary development that may be carried out in connection with Work Nos. 1 to 9. The further associated and ancillary development listed in Schedule 1 is not exhaustive and other works required in connection with Work Nos. 1 to 9 may be carried out provided they are within the parameters that have been assessed in the EIA and do not lead to materially new or materially different effects which are worse than those reported in the Environmental Statement (**Document Reference 6.1 – 6.4**).
- 3.19 In conclusion, all of the works described in Schedule 1 are either development for which development consent is required or associated development for which development consent may be granted (in accordance with section 115 of the 2008 Act, and taking

account of the AD Guidance) and, accordingly, may lawfully form part of an application for an order granting development consent under the 2008 Act.

- 3.20 A more detailed description of the various elements of the Proposed Scheme is provided in Chapter 2 of the Environmental Statement (**Document Reference 6.1 – 6.4**).

#### *Ancillary Matters*

- 3.21 The Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 3.22 In accordance with sections 120(3) and 122 of, and Schedule 5 to, the 2008 Act, the Order would authorise the acquisition of land and rights over land. The Book of Reference (**Document Reference 4.3**) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (**Document Reference 4.1**) and the Schedule of Negotiations and Powers Sought (**Document Reference 4.4**) which accompanies this Application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the Land Plans (**Document Reference 2.2**).
- 3.23 The Order also seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 3.24 Other ancillary matters include the permanent stopping up of streets and private means of access, the temporary prohibition of use of streets and public rights of way, and the application and disapplication of legislation relating to the authorised development.

## 4. **THE PROVISIONS OF THE ORDER**

- 4.1 The Order consists of 50 operative provisions, each referred to as Articles, and 16 Schedules. This part of the Explanatory Memorandum refers to the “undertaker” as defined in the draft Order (see further below).

### 4.2 **Part 1 (preliminary)**

#### *Article 1 (citation and commencement)*

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

#### *Article 2 (interpretation)*

- 4.2.2 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development, for example the “date of final commissioning.”

- 4.2.3 Definitions to note include:

- (a) "apparatus" is defined as having 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), heat pipework, 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 nature of street works which the undertaker may need to carry out.

- (b) “commence” has been defined to exclude “permitted preliminary works” which are separately defined in Article 2. Where appropriate the Requirements (in Schedule 2, see paragraphs 4.6.5 to 4.6.35 below) are drafted so that the permitted preliminary works can be carried out without discharging certain Requirements. Where the permitted preliminary works need to be regulated by the relevant Requirement, they are not excluded from it – this is reflected in the drafting of the Requirement. The works identified in the “permitted preliminary works” are considered appropriate as to the nature of these works, and the Environmental Statement (**Document Reference 6.1 – 6.4**) has assessed the Proposed Scheme on the basis that the permitted preliminary works may be carried out prior to certain Requirements being discharged or triggered. The controls to be imposed instead are set out in Appendix 2.1 of the Environmental Statement (**Document Reference 6.2**). A similar structure and wording is widely precedented, including in the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **Longfield Solar Farm Order 2023** and the **REP Order** (albeit in the latter “pre-commencement works” is the definition used, rather than “permitted preliminary works”).
- (c) “authorised development” is used and referred to throughout the Order. As there are no ancillary works included in the Order, the concept within the model provisions of an “authorised project” has not been used in the Order (there are however “ancillary matters” as defined in section 120(4) of the 2008 Act including compulsory purchase powers).
- (d) “the 1994 agreement”, “crossness local nature reserve as extended” and “crossness local nature reserve byelaws” are terms used to facilitate Article 47 (Crossness Local Nature Reserve), which provides for the Extended Crossness Local Nature Reserve to be created and the creation of a refreshed system of management, and ensuring the previous regime no longer applies.
- (e) “maintain” has been added to Article 2 to make clear what activities are authorised under Article 4 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or materially different environmental effects which are worse than those identified in the Environmental Statement (**Document Reference 6.1 – 6.4**).
  - (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 whilst enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must

be built into what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology, including efficiency.

(ii) For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:

(1) **Maintenance and inspection:** The Carbon Capture Facility will be designed to operate concurrently with Riverside 1 and Riverside 2, for approximately 8,000 hours per year.

(2) **Repair/Refurbish/Replace:** 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.

(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 moving part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed.

(6) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old moving part and replacing it with a new, more efficient moving part.

(iii) The development consent granted by virtue of Article 3 and Schedule 1 does not extend beyond the "authorised development" and the Order limits. In addition, the activities are restricted to those that do not give rise to materially new or materially different environmental effects which are worse than those assessed in the Environmental Statement (**Document Reference 6.1 – 6.4**).

(f) "Order land" means the land shown coloured pink and the land shown coloured blue on the Land Plans (being the land to be compulsorily acquired, or land over which rights are to be

compulsory acquired) (**Document Reference 2.2**), which is described in the Book of Reference (**Document Reference 4.3**).

- (g) “Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the Land Plans (**Document Reference 2.2**), and the limits of land within which the authorised development, as shown on the Works Plans (**Document Reference 2.3**) may be carried out.
- (h) “undertaker” is defined as Cory Environmental Holdings Limited, who has the benefit of the provisions of the Order, subject to Article 9 (Consent to transfer benefit of the Order).

4.2.4 Article 2(2) provides that the definitions in Article 2(1) do not apply to the deemed marine licence except where expressly provided for in the deemed marine licence, which is an approach favoured by the MMO.

4.2.5 Article 2(3) explains the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.

4.2.6 Articles 2(4) and (5) define measurements and areas as approximate. This is required as, for example, in the Book of Reference (**Document Reference 4.3**) the plot areas are given in square metres, and each measurement is rounded up to the nearest whole square.

4.2.7 Article 2(6) ties references to numbered works to those as numbered in Schedule 1 to the Order. The paragraph makes it clear that where reference is made to a number, such as numbered work 1, that reference is to the entirety of the numbered work in question, so numbered work 1A to 1E inclusive.

4.2.8 Articles 2(7), (8), (9), (10) and (11) provide additional definitions as to how references to certain words and phrases are to be interpreted. In particular, Article 2(8) makes clear that references to “land” include land under water and on the riverbed.

#### 4.3 **Part 2 (Work Provisions)**

##### ***Principal Powers***

###### *Article 3 (development consent granted by the Order)*

4.3.1 This Article confers the principal power to construct the authorised development, to be carried out and decommissioned within the Order limits, subject to the provisions of the Order and the Requirements. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development.

4.3.2 Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (**Document Reference 2.3**) and within limits of deviation which are also specified on the Works Plans.

4.3.3 The purpose of this Article 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.

*Article 4 (maintenance of the authorised development)*

4.3.4 This Article provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised.

4.3.5 A definition of "maintain" has been included in Article 2 so that it is clear what the term involves (see paragraph 4.2.3(e) above for the explanation). The Environmental Statement (**Document Reference 6.1 – 6.4**) accompanying this application has assessed maintenance as it is defined in the Order.

*Article 5 (operation of the authorised development)*

4.3.6 This Article permits the operation and use of the authorised development and is included pursuant to section 120(3) of the 2008 Act. Article 5(2) specifically preserves the need for any other operational consent that may be needed to operate the authorised development in addition to the Order.

*Article 6 (disapplication of legislative provisions)*

4.3.7 This Article 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 DCO to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the disapplication provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

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

- (a) sections 66 to 75 of the Port of London Act 1968 which deals with river works licencing for works in, under or over the Thames or which involve cutting its banks other than those referred to in section 73 (Licensing of dredging, etc.) and dredging licencing. The regime to replace these provisions is set out in article 7 of the DCO and the PLA's Protective Provisions;
- (b) section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority, being LBB;
- (c) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991;

- (e) the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;
- (f) Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) or a water activity permit(s) is required; and
- (g) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under Articles 35 (Temporary use of land for carrying out the authorised development) and 36 (Temporary use of land for maintaining the authorised development) 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 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. This approach has precedent and has been accepted by the Secretary of State; see for example the **Cleve Hill Solar Park Order 2020** and the **Longfield Solar Farm Order 2023**.

4.3.9 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 Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency (Part 5 of Schedule 12 (protective provisions) to the Order). Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Proposed Scheme.

4.3.10 Section 150 of the 2008 Act 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. The Applicant's approach to obtaining the other consents required for the Proposed Scheme is set out in greater detail in the Other Consents and Licences Statement (**Document Reference 5.5**).

4.3.11 In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3 (legislation to be disapplied), which relates to local watercourses, flood prevention, local docks and other local authority legislation. 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 incompatible with how the powers in the Order can be exercised.

4.3.12 Sub-paragraph (2) confirms that the disapplication of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 by



Schedule 3 does not affect the Environment Agency's ability to use the powers vested in it under that Act against any person, other than the undertaker and any other person exercising a power under this Order, provided that the use of those powers vested in the Environment Agency does not interfere with the construction or operation of the authorised development.

*Article 7 (Interaction with the 1968 Act)*

- 4.3.13 Article 7(1) provides that any works licence granted by the PLA under section 66 of the 1968 Act in respect of an existing structure located within the limits of deviation for Work No. 4 and still having effect immediately before the Order comes into force is extinguished, and no longer has effect from the date this Order comes into force.
- 4.3.14 Article 7(2) provides that if such a works licence applies to an existing structure as well as to other works or structures, Article 7(1) has effect to extinguish the works licence only in relation to, and so far as it applies to, the existing structure.
- 4.3.15 Article 7(3) provides that any existing structure falling under Article 7(1) may remain in the river Thames under the authority of and subject to the terms of the Order. It also provides that the requirement to obtain a works licence under the 1968 Act does not apply.
- 4.3.16 Article 7(4) provides that the PLA must not grant or vary a river works licence or a dredging licence granted under the 1968 Act licensing any works or dredging within the limits of deviation for Work Nos. 4A or 4B and within the area of dredging within the limits of deviation of Work No 4.C that is approved by the PLA under Part 5 of Schedule 12 (from the date that such approval is given) without the consent of the undertaker.
- 4.3.17 Article 7(5) makes clear that despite section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence to a part of the river Thames within the limits of deviation of Work No. 4 that belongs to the PLA, and in respect of land the undertaker has a proprietary interest, is not, without the consent of the undertaker, deemed to give the licence holder rights enabling the holder to enjoy the benefit of the licence.
- 4.3.18 Article 7(6) provides the undertaker must not unreasonably withhold or delay consent under sub-paragraph (4) or (5) of the Article but may require reasonable modifications to the proposed works or dredging or impose reasonable terms and conditions on them. In considering whether to grant consent, require modifications or impose terms and conditions, the undertaker must have regard only to the matters set out in Article 7(7).
- 4.3.19 The objective of these provisions, taken as a whole, is to ensure that the DCO provides a one stop shop for the regulation of the marine aspects of the Proposed Scheme. It wipes the slate clean of existing consents and ensures that all matters moving forward are dealt with under the DCO. This approach has been discussed with the PLA, and it is understood that they are agreed conceptually to the approach, but will have comments on the detailed drafting. The approach taken in this article is preceded in the **Port of Tilbury (Expansion) Order 2019**.

*Article 8 (benefit of this Order)*

- 4.3.20 This Article makes it clear that, subject to Articles 8(2) and (3), it is the undertaker who may take the benefit of the Order. The “undertaker” is defined in Article 2 as Cory Environmental Holdings Limited (as explained in paragraph 4.2.3(h) above).
- 4.3.21 Article 8(2) provides that Work Number 2 is for the benefit of both the undertaker and REPL and RRRL. This is because Work Number 2 is the electrical connection to Riverside 1 and Riverside 2, which may be installed by any of these three parties, given that the connection is between both of the two existing facilities and the Carbon Capture Facility.
- 4.3.22 Article 8(3) provides that Work Numbers 1E(iv)–(vi), 2A(i)–(ii), and 3(b) is for the benefit of both the undertaker and a company operating a relevant heat network as defined by section 216 of the Energy Act 2023. This is because these works are likely to become part of the Riverside Heat Network, which may be installed by the operator of a district heat network or a communal heat network as defined by section 216 Energy Act 2023, as part of the wider development of that overall network.

*Article 9 (consent to transfer benefit of the Order)*

- 4.3.23 This Article makes detailed provision for the transfer of the benefit of the Order and supplements Article 8 (benefit of this Order). Under Article 9, the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order, but such consent is not required where:
- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989. This is to allow electricity licenced companies to carry out the works to electrical networks instead of Cory. This is precedented in many Orders including the **REP Order**. This is not limited to just the connections corridor (Work No. 3 and as identified above) as work to electrical infrastructure could take place across the Order limits (pursuant to the works listed at the end of Schedule 1);
  - (b) if the transfer is in respect of Work Numbers 1D and 4B only, the transferee or lessee is the holder of a licence under section 7 (power to grant licences) of the Energy Act 2023. This is a carbon transport and storage operator. Depending on the final contractual and governmental-sanctioned arrangements between Cory and that transport and storage operator, it is possible that that operator may be required to and operate the LCO<sub>2</sub> Buffer Storage Area, LCO<sub>2</sub> Pipework and the Proposed Jetty and so would need the benefit of the DCO in such an instance. That party would have been tested by Government through the licensing process. The logic is similar to that for electricity companies as discussed above;
  - (c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker. This is to allow for corporate restructuring within the Cory Group to be undertaken, without the need for further consent. This may be the case given the connectivity of the carbon capture infrastructure with Riverside 1 and Riverside 2 meaning the Cory bodies operating those plants may want to ‘take on’ the CCS facilities.
  - (d) in relation to a transfer or lease of any works within a highway, the transferee or lessee is a highway authority responsible for the highways within the Order limits; or

- (e) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 4.3.24 Article 9(3) provides an exception to Article 9(1), providing that the undertaker requires the written consent of the Secretary of State to transfer the benefit of the deemed marine licence to any transferee or lessee. The Secretary of State must consult the MMO before providing consent to the transfer (Article 9(3)). This is a known requirement of the MMO.
- 4.3.25 Article 9(11) provides that, in the event that any of the benefit of the deemed marine licence is transferred or Work Number 4 is transferred, the undertaker must notify the Environment Agency, the PLA, and the MMO in writing within 10 working days. The notice must include particulars of the other party to the transfer agreement and details of the extent, nature and scope of the functions to be transferred or otherwise dealt with which relate to the functions of any of those bodies.
- 4.3.26 The justification for the provisions in Article 9 is that in the instances set out in Article 9(1), the transferee or lessee will either be of a similar financial and 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 acquisition claims. Article 9(7) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 9(8) to (10) provide further detail on the notification that is to be given. Similar wording to this Article is in Article 7 of the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, and Article 9 of the **Port of Tilbury (Expansion) Order 2019** and the **REP Order**.

*Article 10 (guarantees in respect of payment of compensation)*

- 4.3.27 This Article relates to the funding mechanism for compulsory acquisition. This requires that before the powers in Articles 26, 28, 30, 35, 36 and 37 of the Order are exercised, the undertaker must put in place either a guarantee or an alternative form of security. This wording follows, as is applicable to the authorised development, that used in the **REP Order**.

**Streets**

*Article 11 (street works)*

- 4.3.28 This Article is a model provision intended to permit in certain streets (as specified in Schedule 4 (streets subject to street works)) the carrying out of street works for the purposes of the authorised development. Article 11(3) applies sections 54 to 106 of the 1991 Act to any street works carried out pursuant to Article 11(1). This provides protection for the street authority for the street in question. The items in Schedule 4 relate to the works sought to be authorised through Work No. 3. This provision is necessary to deal with the highways law aspects of undertaking such works.

*Article 12 (power to alter layout etc. of streets)*

- 4.3.29 This Article allows the undertaker to temporarily or permanently alter the layout of a street or carry out any works in the street as are set out in Schedule

5 (streets subject to permanent or temporary alteration of layout) and shown on the access and rights of way plan without the requirement for street authority approval. This power relates to the alteration of streets to facilitate the proposed creation of new accesses from Norman Road to service the authorised development. This relates to the part of Norman Road that is only utilised by Cory for the purposes of accessing Riverside 1 and Riverside 2, and in due course, the Proposed Scheme, and will likely involve changes to existing access points and some new access points as the Proposed Scheme moves from the construction phase to the operation phase. It is therefore considered appropriate that such works do not require street authority consent. The need for not requiring consent of a street authority to identified highway works is well precedented, such as in the **Drax Bioenergy with Carbon Capture and Storage Extension Order 2024**.

- 4.3.30 Article 12(2) allows for the alteration of the layout of any street for the purposes of the authorised development, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. This includes areas to the south of Norman Road, where it is understood that works in the street could affect other highway users, including users of the access road to Iron Mountain and Asda.

*Article 13 (permanent stopping up of specified street and private means of access)*

- 4.3.31 This Article allows the undertaker to stop up the street and private means of access as shown on the Access and Rights of Way Plan (**Document Reference 2.4**) and as are set out in Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access), subject to the provision of a new substitute street and private means of access set out in Articles 13(2) and 13(3) respectively. This is to provide for the highway law matters pertaining to the works sought to be authorised through Work No. 8, namely the diversion of the Thames Water Crossness STW secondary access road. This power is subject to the consent of Thames Water in their Protective Provisions.

- 4.3.32 Article 13(4) provides that where a street or private means of access has been stopped up under the Article, the rights of way or private means of access are extinguished and the undertaker may appropriate and use for the purposes of the authorised development so much of the side of the street or private means of access as is bounded on both sides by land owned by the undertaker.

- 4.3.33 Article 13(5) makes provision for compensation pursuant to the use of these powers and article 13(6) provides that the powers in the Article are subject to Article 38 (apparatus and rights of statutory undertakers in stopped up streets).

- 4.3.34 The drafting of this article is well precedented, including for example the **A303 (Amesbury to Berwick Down) Development Consent Order 2023**.

*Article 14 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way)*

- 4.3.35 This Article provides for the temporary prohibition of the use, restriction of the use, alteration or diversion, of streets or public rights of way and allows the undertaker to authorise the temporary use of motor vehicles on public rights of way for the purposes of carrying out the authorised development.

- 4.3.36 The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets (set out in Schedule 7

(temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way) to the Order).

- 4.3.37 Article 14(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 14(1), to use such a street as a temporary working site.
- 4.3.38 Article 14(5) confirms that any authorisation given by the undertaker for the use of motor vehicles on public rights of way during construction of the authorised development constitutes lawful authority for the purposes of section 34 of the Road Traffic Act 1988. This was something proposed in relation to the Mallard Pass Solar Farm DCO, and it is noted that permanent use of motor vehicles in such a way was authorised in the **Longfield Solar Farm Order 2023**.
- 4.3.39 The specified diversions in Schedule 7 have been assessed in the Environmental Statement, but in any event, article 14(6) provides that, in respect of the public rights of way set out in Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way), the power cannot be exercised for the construction of the authorised development until a code of construction practice for the phase of the authorised development in which the public right of way is situated has been approved under Requirement 7 to Schedule 2 (requirements) to the Order (see paragraph 4.6.15 below). If the power is to be exercised for the decommissioning of the authorised development, a decommissioning traffic management plan for the phase of the authorised development in which the public right of way is situated must have been approved under Requirement 24 to Schedule 2 (requirements) to the Order (see paragraph 4.6.34 below), before it can be exercised.
- 4.3.40 The unspecified use of this power is subject to street authority consent. This ensures that there are appropriate controls on the use of this power. Article 14(7) provides for compensation to apply where relevant.
- 4.3.41 Similar wording has been used in other made Orders, including the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **REP Order** and the **Millbrook Gas Fired Generating Station Order 2019**, however this goes further by providing for the additional protection of Code of Construction Practice overall.

*Article 15 (permanent closure and diversion of, and creation of new public rights of way and authorising vehicular use on public rights of way)*

- 4.3.42 This Article allows the undertaker to, in connection with the authorised development, permanently stop up public footpath 2 within the London Borough of Bexley between the points H and L, as shown on the Access and Rights of Way Plan (**Document Reference 2.4**).
- 4.3.43 Article 15(2) provides that the undertaker must not permanently stop up the public right of way until it has:
- (a) agreed with LBB (as the relevant highway authority) the route for the substitute public right of way between points H and L;
  - (b) gained approval for the landscape, biodiversity, access and recreation strategy delivery strategy which relates to the land on

which the substitute public rights of way is to be provided under Requirement 12 of Schedule 2 to the Order (see paragraph 4.6.20 below).

- 4.3.44 Article 15(3) provides that the undertaker may construct new public footpaths at two locations specified in that sub-paragraph.
- 4.3.45 These provisions have been put forward to reflect the commitments made in the Outline Landscape, Biodiversity, Access and Recreation Delivery Strategy (**Document Reference 7.9**) for access improvements.
- 4.3.46 Article 15(4) provides that the undertaker may authorise the use of motor vehicles on the alternative route created under Article 15(2), on any public footpath created under Article 15(3), as well as on four other footpaths referred to in Article 15(4) by reference to the Access and Rights of Way Plan (**Document Reference 2.4**). As noted above, such an approach has precedent in the **Longfield Solar Farm Order 2023**.
- 4.3.47 Article 15(5) confirms that Article 15(4) and any authorisation given under it constitutes lawful authority for the purposes of section 34 of the Road Traffic Act 1988.
- 4.3.48 Article 15(6) provides that following the opening for public use of a public right of way constructed under Article 15, where it is permanently altered or permanently diverted under the powers conferred by the Order, the undertaker must supply the surveying authority with detailed plans and a statement of the modifications required to the definitive map and statement. This is to ensure that the mechanisms in the DCO dovetail with the process for updating the definitive map. It has precedent in the **A66 Northern Trans-Pennine Development Consent Order 2024**.
- 4.3.49 This Article is not a model provision, and its precise drafting is bespoke to this Order to allow for discussions to continue post consent with LBB as to the substitute route to be provided as part of the overall proposals for the Extended Crossness Local Nature Reserve, which will follow post-DCO consent. However, similar provisions for the permanent closure and diversion of public rights of way have been included in the **Hornsea Four Offshore Wind Farm Order 2023** (Article 11).

*Article 16 (access to the authorised development)*

- 4.3.50 This Article is based on the model provision (albeit it is named “access to works” in the model provisions) which permits the undertaker to form new or to improve existing means of access from Norman Road in the London Borough of Bexley between the points E and K on the Access and Rights of Way Plan (**Document Reference 2.4**). The text of the model provision has been amended to reflect the specific circumstances of this Order. Other means of access or works can also be provided in other locations reasonably required for the authorised development. This power dovetails with article 12.
- 4.3.51 Article 16(2) provides that the undertaker may, for the purposes of the authorised development, utilise the (a) temporary or permanent means of access from the public highway constructed under the Order and (b) temporary means of access from the public highway constructed under the REP Order as permanent means of access (and must notify LBB if it intends to use this latter power).

- 4.3.52 Article 16(4) provides that where Article 16(2) applies, the undertaker shall not be required to:
- (a) remove temporary accesses created under the REP Order being used during the construction of the authorised development, or afterwards as permanent means of access; and
  - (b) restore any alterations to the layout to streets that were undertaken to facilitate the creation of temporary access from the public highway under the REP Order being used during the construction of the authorised development, or afterwards as permanent means of access.
- 4.3.53 Article 16(4) also confirms that it will not be a breach of the terms of the REP Order if such temporary accesses are not removed and alterations to streets are not restored.
- 4.3.54 Article 16(5) confirms that for the purposes of Article 16, “the REP Order undertaker” has the same meaning as the undertaker defined by Article 2 (interpretation) of the REP Order.
- 4.3.55 These latter paragraphs are specific to the Proposed Scheme and its interaction with the REP project. Temporary accesses have been provided from Norman Road, with the agreement of the street authority, to land that is being used for REP construction compounds, that are likely also to be used for the Proposed Scheme at construction and operation stage. The drafting here authorises this to happen and ensures there is no breach of the REP Order where it does so.

*Article 17 (agreements with street authorities)*

- 4.3.56 This Article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the **REP Order**, the **Net Zero Teesside Order 2024** and the **Boston Alternative Energy Facility Order 2023**.

*Article 18 (traffic regulation measures)*

- 4.3.57 This Article allows the undertaker to regulate traffic to the extent that is necessary for the purposes of, in connection with, the authorised development, in the ways and in the locations set out in article 18(1). Article 18(2) provides a non-specific power more generally but article 18(4) makes this latter power subject to street authority consent.
- 4.3.58 Article 18(3) provides that no speed limit imposed by or under the Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011 when in accordance with regulation 3(5) of those regulations.
- 4.3.59 Article 18(5) provides that the use of any powers under this article is subject to the identified management plan being approved prior to the use of that power.

- 4.3.60 The Article also makes it clear that any prohibition, restriction or other provision made by the undertaker under Article 18(1) or (2) has effect as if duly made by the traffic authority under the Road Traffic Regulation Act 1984 or the local authority under the Road Traffic Regulation Act 1984.
- 4.3.61 The Article is not in the general model provisions but there is a precedent for it in the **REP Order**, the **Longfield Solar Farm Order 2023** and the **Millbrook Gas Fired Generating Station Order 2019**, the former of which referred in its Explanatory Memorandum to its use in other made orders, including the **Wrexham Gas Fired Generating Station Order 2017**.

### ***Supplementary powers***

#### *Article 19 (discharge of water)*

- 4.3.62 This Article is a model provision and sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 4.3.63 The effect of this Article is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably.
- 4.3.64 Article 19(6) makes clear that this Article does not obviate the need for an environmental permit for such discharge where this is relevant.
- 4.3.65 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 and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 4.3.66 This Article has precedent in many orders, including, for example, the **Drax Power (Generating Stations) Order 2019** and the **Millbrook Gas Fired Generating Station Order 2019** and is necessary for the authorised development in order to establish and regulate the undertaker's authority to discharge water.

#### *Article 20 (authority to survey and investigate the land)*

- 4.3.67 This Article gives the undertaker the power to enter certain land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.
- 4.3.68 This Article is based on the model provisions, although Article 20(1) has been extended to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development.
- 4.3.69 Article 20(6) 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.

#### *Article 21 (Protective works to buildings)*



- 4.3.70 The purpose of this Article (which is included in the model provisions and the majority of made orders to date) is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.
- 4.3.71 Article 21(11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.
- 4.3.72 Given the industrial area in which the authorised development is to be constructed, the Article is necessary to make appropriate provision to carry out protective works in the unlikely event that the need to do so arises.

*Article 22 (felling or lopping of trees)*

- 4.3.73 This Article allows any tree or shrub within, or overhanging land within, the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.3.74 The Article is included to ensure that the undertaker has adequate powers to construct, operate and maintain the authorised development, including in particular its proposals in the Mitigation and Enhancement Area.
- 4.3.75 The undertaker does not have any other statutory powers available to it in order to fell or lop trees or shrubs and so the Article is considered necessary to ensure that trees or shrubs do not obstruct the construction, operation or maintenance of this nationally significant infrastructure. This article is well precedented, including in the **REP Order**.

*Article 23 (Works in the river Thames: conditions)*

- 4.3.76 This article provides for the suspension of the public right of navigation over the River Thames situated within the Order limits where necessary to construct the authorised development.
- 4.3.77 Articles 23(2) to 23(8) deal with the mechanics of suspending the public right of navigation. This involves giving notice to the PLA, getting PLA approval and the PLA then issuing a notice to mariners. This wording has precedent in **The Port of Tilbury (Expansion) Order 2019**.
- 4.3.78 Article 23(9) requires the undertaker to notify the owner of any mooring and the owner or master of any vessel or structure likely to be materially affected by the exercise of any powers under the Order at least 35 days prior to exercising those powers unless in the case of emergency.
- 4.3.79 Article 23(10) provides that the undertaker will pay costs reasonably incurred by the owner of any mooring if in exercise of the powers of the Order any such owner incurs costs for the alteration, removal, re-sitting, repositioning or reinstating of that mooring, laying down and removing substitute mooring or buoys or carrying out dredging operations. The owner of the mooring must give the undertaker not less than 28 days' notice of its intention to incur such costs and take into account representations from the undertaker given within 14 days of receipt of the notice.

- 4.3.80 Article 23(11) provides that the undertaker's written consent is required for a person to use any work constructed or used in connection with the authorised development for the purposes of landing or embarking persons or land or loading goods or to remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised development.
- 4.3.81 The wording at Articles 23(9) to 23(11) has precedent in **The Silvertown Tunnel Order 2018**.

*Article 24 (oversailing rights)*

- 4.3.82 This Article provides the undertaker with the power to oversail any booms, cranes and similar or associated plant or machinery over land within, or adjacent to, the Order limits, as is required for the construction, operation, maintenance or decommissioning of the authorised development. Article 24(5) defines "oversail" as meaning that the bottom of the equipment oversailing must be at least 8 metres higher than the ground level of the land that it is oversailing.
- 4.3.83 Where the land that is to be oversailed is not within the Order limits, Article 24(2) provides that the undertaker must serve notice of the intended oversailing on the owners and occupiers of the land at least 14 days before the oversailing is due to commence. This notice must set out the proposed duration of the oversailing, the hours of use of the equipment that is intended to oversail the land and a map of showing the location of the works which require the oversail.
- 4.3.84 Article 24(3) provides that, before oversailing powers over highway land can be exercised, a code of construction practice for the part of the authorised development for which the oversailing is required must have been approved under Requirement 7 to Schedule 2 (requirements) to the Order (see paragraph 4.6.15 below), where the oversailing relates to the construction of the authorised development. Where the oversailing relates to the decommissioning of the authorised development, a decommissioning environmental management plan for the phase of the authorised development for which the oversailing is required must have been approved under Requirement 23 Schedule 2 (requirements) to the Order (see paragraph 4.6.32 below). This ensures that the typical concerns of the highways authority would be able to be dealt with prior to the use of the powers.
- 4.3.85 Article 24(4) also provides that compensation is payable to owners and occupiers for any loss or damage that arises as a result of the exercise of the powers.
- 4.3.86 This Article is not included in the model provisions; however, it is considered necessary to include these powers in order for the authorised development to be constructed and decommissioned in a timely and efficient manner. Notably, this development is within the urban environment of London and without this article, a variety of oversailing agreements would be necessary, delaying the construction of this nationally significant infrastructure.

*Article 25 (power to dredge)*

- 4.3.87 This Article provides the undertaker with the power to dredge within any part of the limits of deviation for Work No.4 for the purpose of maintaining and operating the Proposed Scheme. Without this, the normal dredging licence requirements would apply, which goes against the intention of the Order

forming a single operational regime for the carrying out of the authorised development.

- 4.3.88 Article 25(3) provides that materials dredged under the powers of this Order may not be disposed of in the UK marine licensing area except in accordance with an approval from:
- (a) the MMO (under the deemed marine licence); and
  - (b) the Port of London Authority (under the provisions for the protection of the Port of London Authority contained in Part 7 to Schedule 12 (protective provisions)) where such disposal is on the bed of the river Thames.
- 4.3.89 Article 25(4) provides that the exercise of powers is subject to the Requirements of Schedule 12 (protective provisions) as to the payment of compensation for grudged material.
- 4.3.90 Article 25(5) deems that the Order is legislation falling within section 75(3) of the Marine and Coastal Access Act 2009 for the purpose of dredging activities falling within Article 25(1). This means that the exemption from the need to obtain a licence for dredging is applied to the Order and as a result maintenance dredging does not need to be listed as a licensable activity in any required marine licence.
- 4.3.91 This article is not a model provision, however, similar a similar article is included in the **Port of Tilbury (Expansion) Order 2019**.

#### 4.4 **Part 3 (Powers of acquisition and possession of land)**

##### *Article 26 (compulsory acquisition of land)*

- 4.4.1 This Article provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 26 (compulsory acquisition of land) makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. 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 30 (private rights). A similar approach was taken in the **REP Order**.

##### *Article 27 (time limit for exercise of authority to acquire land compulsorily)*

- 4.4.2 This Article gives the undertaker [seven] years to issue 'notices to treat' or to execute 'general vesting declarations' to acquire the land that is subject to the power of compulsory acquisition. These are the two procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. [Seven] years from the date of the Order "coming into force" has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order.
- 4.4.3 Seven years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Requirement 1 of Schedule 2 to the Order. These time limits have been put in the application in light of the uncertainty in the competitive process of the CCS process and that

the Applicant would not wish to be timed out in delivering the benefits of the Proposed Scheme by delays in any success in that process. The Proposed Scheme is one of the first projects to be a non-pipeline CCS project and the Government has acknowledged in its CCS Vision that its regulation of such projects is not as well advanced as it is for pipeline related projects. In that context, whilst the Applicant stands ready to deliver the benefits the Proposed Scheme brings as soon as it is put in a position by Government (through consenting and support decisions) to do so, it is considered prudent that a longer time limit for commencement is given to allow for the uncertainty of the timing of that process to play out.

- 4.4.4 The Article also provides that land subject to the power of temporary possession for the carrying out of the authorised development, under Article 35 (temporary use of land for carrying out the authorised development), may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order. Such an Article is included in the model provisions and the majority of made orders to date.

*Article 28 (compulsory acquisition of rights)*

- 4.4.5 This Article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land. The Article also allows for restrictive covenants to be imposed.
- 4.4.6 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 26 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills and has been followed in a number of development consent orders, for example the **REP Order**, the **Millbrook Gas Fired Generating Station Order 2019** and the **Drax Power (Generating Stations) Order 2019**.
- 4.4.7 Article 28(2) provides that, for the land described in Schedule 8 (land in which only new rights etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 8 (land in which only new rights etc. may be acquired).
- 4.4.8 The nature of the restrictions are described in Schedule 8 (land in which only new rights etc. may be acquired) to the Order as a right to prevent any works on or uses of the land which may interfere with, damage or restrict access to the relevant infrastructure, including a right to prevent or remove the buildings, structures, works and other things. This is to ensure there is certainty, as has been required by the Secretary of State in previous DCO decisions on similar articles.
- 4.4.9 Article 28(3) provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 4.4.10 Article 28(4) introduces Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) which modifies the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the

Compensation Code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

- 4.4.11 Article 28(5) to (7) allows for the acquisition of new rights or the imposition of restrictive covenants in respect of changes to apparatus to be transferred to statutory undertakers with the Secretary of State's consent subject to the same restrictions, liabilities and obligations as the undertaker. Consent is not required where the statutory undertaker is one named under Article 8, on the basis that the acceptability of that statutory undertaker having the benefit of the Order would already have been accepted in granting the Order with that article within it.
- 4.4.12 This Article and Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the **Silvertown Tunnel Order 2018** and followed in the Orders that have followed, such as the **Longfield Solar Farm Order 2023**.

*Article 29 (acquisition of subsoil or airspace only)*

- 4.4.13 This Article permits the undertaker to acquire only the subsoil of or the airspace over the land which is to be compulsorily acquired or subject to compulsory acquisition of rights, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision. This Article is precedented in **Sizewell C (Nuclear Generating Station) Order 2022**.

*Article 30 (private rights)*

- 4.4.14 This Article applies to extinguish private rights generally. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development. It also provides for the extinguishment of private rights over such parts of the Order land as are already in the ownership of the undertaker, when any activity authorised by the Order interferes with or breaches those rights. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, existing rights or restrictive covenants are extinguished only to the extent that the continued exercise of the existing right or the burden of the existing restrictive covenant would be inconsistent with the enjoyment by the undertaker of the rights acquired, or restrictive covenants imposed, compulsorily.
- 4.4.15 Article 30(6) provides for exceptions to this power which account for the wider uses in and around the Proposed Scheme at Riverside 1 and Riverside 2.
- 4.4.16 This approach is proportionate and draws on the precedents of the **REP Order** and many other made orders.

*Article 31 (power to override easements and other rights)*

- 4.4.17 This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4) of the 2008 Act, and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 32 of the **Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014** and Article 24 of the **Silvertown Tunnel Order 2018**. This Article is supplementary to Articles 26 (compulsory acquisition of land) and 28 (compulsory acquisition of rights) and is necessary and expedient to give full effect to development consent under Article 3 (development consent granted by the Order). The Article makes it clear that any “authorised activity”, as defined in Article 31(2), is authorised notwithstanding that it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. Compensation is also payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

*Article 32 (application of the 1981 Act)*

- 4.4.18 This Article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order. Vesting declarations are one of two procedures for the compulsory acquisition of land (the other being by means of serving a notice to treat). 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.
- 4.4.19 Such an article has been included in the model provisions and the majority of orders made to date but the drafting used in the Order has been adapted to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in numerous made orders including the **REP Order** and the **Cleve Hill Solar Park Order 2020**.

*Article 33 (modification of Part 1 of the 1965 Act)*

- 4.4.20 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016. Articles 33(1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and Article 33(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 Articles 35 and 36 of this Order. These modifications have broad precedent in Schedule 14 to the **High Speed Rail (London – West Midlands) Act 2017** and numerous made Orders including the **Silvertown Tunnel Order 2018**, the **Cleve Hill Solar Park Order 2020** and the **Net Zero Teesside Order 2024**.

*Article 34 (rights under or over streets)*

- 4.4.21 This Article is a model provision which has been included in most made Orders to date and allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **REP Order**.

- 4.4.22 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in Article 34(3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

### ***Temporary possession of land***

#### *Article 35 (temporary use of land for carrying out the authorised development)*

- 4.4.23 This Article allows the land specified in Schedule 10 (land of which temporary possession may be taken) to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way and provisions around giving 14 days' notice and restoration of the land following the temporary works.
- 4.4.24 Wording is included in Article 35(1)(a)(ii) in order to allow the provisions of the Article to be applicable in the context of land which may be the subject of compulsory acquisition, prior to any such compulsory acquisition taking place. 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.
- 4.4.25 Wording is also included in Articles 35(3) and (4) to take in to account that the undertaker may, pursuant to Article 35(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. This is also subject to a one year limit beginning with the date of final commissioning of the authorised development, and a requirement to pay compensation for any loss or damage arising from the exercise of these rights (Article 35(5)). Should the undertaker compulsorily acquire the land that it is in temporary possession of, then the undertaker should remain in possession of such land, and Article 35(1)(d) clarifies that the undertaker will be able to carry out the works authorised by the Order on such land.
- 4.4.26 Article 35(9) makes clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land under Articles 28 (compulsory acquisition of rights), 29 (acquisition of subsoil only) or 34 (rights under or over streets). This approach has precedent in a number of made Orders, including the **Drax Power (Generating Stations) Order 2019**.

#### *Article 36 (temporary use of land for maintaining the authorised development)*

- 4.4.27 This Article 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.
- 4.4.28 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more

appropriate for this type of development. Similar wording has been used in other made Orders in connection with generating stations, including the **Drax Power (Generating Stations) Order 2019** and the **Immingham Open Cycle Gas Turbine Order 2020**.

### **Supplementary**

#### *Article 37 (statutory undertakers)*

- 4.4.29 This Article allows the undertaker to extinguish rights of statutory undertakers, and remove and reposition their apparatus. Reference is made to the Order Land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans (**Document Reference 2.2**) and described in the Book of Reference (**Document Reference 4.3**). In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order Land is required.
- 4.4.30 As the land where this power may be exercised is shown on the Land Plans (**Document Reference 2.2**), and the beneficiaries of such rights are identified in the Book of Reference (**Document Reference 4.3**), the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 4.4.31 The exercise of this Article is subject to the protective provisions contained in Schedule 12 (protective provisions).
- 4.4.32 This Article has precedent in numerous made Orders, for example, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **Immingham Open Cycle Gas Turbine Order 2020** and the **REP Order**.

#### *Article 38 (apparatus and rights of statutory undertakers in stopped up streets)*

- 4.4.33 This Article 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 Articles 38(2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 12 (protective provisions). It has been included in most made Orders to date.

#### *Article 39 (recovery of costs of new connections)*

- 4.4.34 This Article (which reflects the model provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker. It has been included in most made Orders to date.

## **4.5 Part 4 (Miscellaneous and general)**

#### *Article 40 (deemed marine licence)*



- 4.5.1 This Article constitutes deemed consent (as provided for under section 149A of the 2008 Act) under section 65 of the Marine and Coastal Access Act 2008, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 11 (deemed marine licence) sets out the terms on which the licence would be granted. The overall structure of this licence reflects that found in Schedule 13 of the **Eggborough Gas Fired Generating Station Order 2018** and Schedule 8 to the **Cleve Hill Solar Park Order 2020**.

*Article 41 (application of landlord and tenant law)*

- 4.5.2 This Article is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised 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.
- 4.5.3 This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development and has been included in most made Orders to date.

*Article 42 (defence to proceedings in respect of statutory nuisance)*

- 4.5.4 This Article provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of fumes, gas, dust, steam, smell, accumulations or deposits which are prejudicial to health or a nuisance, artificial light, noise or any other statutory nuisances created in the course of carrying out construction or maintenance of the authorised development or which is an unavoidable consequence of the authorised development.

*Article 43 (protective provisions)*

- 4.5.5 This Article provides for Schedule 12 (protective provisions), which protects the interests of certain statutory undertakers, to have effect. This is a model provision.

*Article 44 (certification of plans etc.)*

- 4.5.6 This Article is a model provision which provides for the submission of various document and plans (as listed in Schedule 13 (documents and plans to be certified)) to the Secretary of State in order that they may be certified as being true copies.

*Article 45 (service of notices)*

- 4.5.7 This Article governs how any notices that may be served under 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. This Article has precedent in a number of orders, for example, the **REP Order**.

*Article 46 (procedures in relation to certain approvals etc.)*

- 4.5.8 This Article provides that Schedule 14 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provision of the Order, except for in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 12 (protective provisions) or any dispute under Article 21(6) (protective work to buildings) (as those provisions make clear what procedure should be followed).

*Article 47 (arbitration)*

- 4.5.9 This Article is an arbitration provision and it is a departure from the model provisions. This drafting, and that in the associated Schedule 15 (arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **Longfield Solar Farm Order 2023**, 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.
- 4.5.10 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.
- 4.5.11 It applies Schedule 15 (arbitration rules) to the Order, which sets out further detail of the arbitration process. The detail of Schedule 15 (arbitration rules) is set out at paragraphs 4.6.49 to 4.6.52 below.
- 4.5.12 In addition, Article 47(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.

*Article 48 (Crossness Local Nature Reserve)*

- 4.5.13 Article 48 provides for the extension of Crossness Local Nature Reserve to incorporate the Mitigation and Enhancement Area, which forms part of the ecological mitigation and enhancement commitments of the authorised development.
- 4.5.14 Article 48(1) provides that the undertaker must notify the relevant planning authority when it has completed the carrying out of Work No. 7 (the Mitigation and Enhancement Area) no later than 20 working days after it is completed.
- 4.5.15 Article 48(2) provides that, from the date of the notice given under Article 48(1), the Extended Crossness Local Nature Reserve will constitute a nature reserve for the purpose of section 21 (establishment of nature reserves by local authorities) of the National Parks and Access to the Countryside Act 1949 and that the relevant Crossness Local Nature Reserve byelaws will apply to the Extended Crossness Local Nature Reserve. Section 21 of the 1949 Act provides local authorities with the power to provide, or secure the provision of, nature reserves on any land in their area, and is the power pursuant to which the Crossness Local Nature Reserve was created.
- 4.5.16 Article 48(2) also abrogates clause 4 of the 1994 Agreement. Clause 4 of the 1994 Agreement contains provisions relating to an area within the Order limits and the Crossness Local Nature Reserve (identified as “Conservation Land” in the 1994 Agreement) and the management of this land through a

management plan agreed between LBB and Thames Water Utilities Limited. Clause 4 requires the Conservation Land to be maintained and enhanced for a period of 99 years from the approval of the management plan.

- 4.5.17 The Order abrogates clause 4 to ensure that the powers sought in the Order applying to the land covered by the 1994 Agreement do not result in a breach of the agreement. It is Cory's view that the conservation objectives in the 1994 Agreement will not be compromised if clause 4 of the 1994 Agreement is abrogated. This is because Cory considers that the requirement for the undertaker to produce and implement the Landscape, Biodiversity Access and Recreation Delivery Strategy (as approved by LBB) (**Document Reference 7.9**) secured through Requirement 12 (landscape, biodiversity, and recreation strategy delivery plan) of Schedule 2 to the Order will ensure that the authorised development results in equivalent, or indeed improved, safeguarding of the conservation objectives in the 1994 Agreement. This means that the Extended Crossness Local Nature Reserve will only have one operating management regime – that set out in the Landscape, Biodiversity Access and Recreation Delivery Strategy (**Document Reference 7.9**).
- 4.5.18 The Strategy approved pursuant to Requirement 12 must contain the undertaker's proposals for the Crossness Local Nature Reserve byelaws.
- 4.5.19 Article 48(3) provides that the carrying out of Work No.7 on the Extended Crossness Local Nature Reserve shall not constitute a breach of the 1994 Agreement (in its entirety), or planning permission number 91/1318U granted by LBB (the permission to which the 1994 Agreement relates) to cover the authorised development activities taking place in the intermediate period before the new management regime is in place.

*Article 49 (planning permission, etc)*

- 4.5.20 Article 49(1) permits certain development authorised by a planning permission granted under the 1990 Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. These provisions have precedent in the **M20 Junction 10a Development Consent Order 2017** and the **A30 Chiverton to Carland Cross Development Consent Order 2020**.
- 4.5.21 Article 49(2) provides that the land within the Order limits in which the undertaker holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the 1990 Act. The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the authorised development will benefit from certain permitted development rights on that land in connection with the operation of the road. The **A19/A184 Testo's Junction Alteration Development Consent Order 2018** (article 37) and the **A30 to Chiverton to Carland Cross Development Consent Order 2020** (article 42) followed the same approach. Other DCOs often have this provision as a separate article. Cory has chosen to include this provision in this article as it relates to “planning permissions” under the 1990 Act, and so is regarded as neater, more concise drafting than having a separate article.
- 4.5.22 Article 49(3) addresses the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]*. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under

one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.

- 4.5.23 Article 49(3) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act or DCO made under the 2008 Act or consent granted by the Secretary of State pursuant to section 36 of the Electricity Act 1989 which are inconsistent with the works and exercise of powers under the Order. The provision is based on Article 3(3) of the **Lake Lothing (Lowestoft) Third Crossing Order 2020**. However, it differs from that precedent in that the provision which reflects the terminology used by their Supreme Court in the *Hillside* case, and confirms that relevant permissions which conflict with the Proposed Scheme can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Proposed Scheme and the development authorised under a planning permission. In addition, it makes clear that the provision also applies to DCO made under the 2008 Act and section 36 consents under the Electricity Act 1989 (notwithstanding that this was not at issue in the *Hillside* judgment). It is considered this is necessary to confirm that developments are not prevented.
- 4.5.24 Article 49(4) has been inserted to deal with the converse situation covered by Article 49(3) and confirms that development under other consents is not to prevent activity authorised under the Order.
- 4.5.25 Without Articles 49(3) or (4) there is a significant risk of the Proposed Scheme or other permissions and consents being undeliverable or subject to enforcement action. This is a particular issue for the Proposed Scheme given the existing consents for Riverside 1 and Riverside 2. This article therefore works in tandem with Article 6.
- 4.5.26 Article 49(5) treats works carried out under this Order as being immediately required for the purpose of carrying out development authorised by a planning permission for the purposes of a tree felling licence. This provision is based on article 54(3)(c) of the **Great Yarmouth Third River Crossing Development Consent Order 2020**. This is required as section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Article 49(5) extends the exception to any trees felled as a result of the authorised development.
- 4.5.27 Article 49(6) provides that works carried out this Order are deemed to be work requiring development consent under section 31 of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010. At the time of writing, this Schedule is not yet in force, although it is anticipated that it will be brought into force later in 2024, and so this paragraph has been included in advance of it coming into force. Paragraph 7(3) of Schedule 3 makes clear that that the Schedule does not apply to work requiring development consent under section 31 of the 2008 Act (i.e. nationally significant infrastructure projects). The legislation is silent on the position for Projects of National Significance which have been directed into the 2008 Act regime by the Secretary of State, as is the case for the Proposed Scheme. The Applicant considers this to be a lacuna in the Flood and Water Management Act 2010, as it does not consider there to be a legal or practical reason why a Project of National Significance should be treated differently to a NSIP requiring development consent under section 31 of the 2008 Act.

- 4.5.28 Article 49(7) defines “enforcement action” to make clear what this term means under the 1990 and 2008 Acts, to aid clarity for all Interested Parties.

*Article 50 (no double recovery)*

- 4.5.29 This Article provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.
- 4.5.30 This Article has precedent in numerous made Orders, including the **North London Heat and Power Generating Station Order 2017** and the **REP Order**.

#### 4.6 Schedules

*Schedule 1 (authorised development)*

- 4.6.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (**Document Reference 2.3**) to delineate the area within which each "work" can be constructed, maintained and operated (see Articles 3 (development consent granted by the Order) and 4 (maintenance of authorised development)).
- 4.6.2 Paragraph 3.12 of this Explanatory Memorandum summarises the authorised development. A more detailed description of the various elements of the authorised development is provided in Chapter 2 of the Environmental Statement (**Document Reference 6.1**).
- 4.6.3 The mechanics of the drafting in Schedules 1 (authorised development) and 2 (requirements) ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement (**Document Reference 6.1 – 6.4**). This is achieved through a number of mechanisms in the Order which together ensure:
- (a) Article 3 (development consent granted by the Order) and Schedule 1 (authorised development) provide the power to build the authorised development. Pursuant to Article 3(2), each numbered work must be situated within the area delineated on the Works Plans (**Document Reference 2.3**) – thus, for example, the Carbon Capture Facility can only be built within the area for Work Number 1. Given these overarching constraints, there is certainty as where each element can be built;
  - (b) The relevant parameters secured via Requirement 4(2) and set out in Schedule 16 (design parameters) set maximums and, where applicable, minimums for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the Environmental Statement (**Document Reference 6.1 – 6.4**). These parameters are based on the application of the Rochdale Envelope principle, such that maximum and, where applicable, minimum building dimensions have been presented and assessed in the Environmental Statement,

recognising that the final building sizes may differ from (but will never be materially larger than) these maxima depending on the technology selected;

- (c) In terms of detailed design, Requirement 4(1) of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the layout, scale and external appearance of Work Number 1 prior to commencing that work. These details submitted for approval must include a statement to confirm how the design principles and design code (**Document Reference 5.7**) have been taken into account in the details that have been submitted.

4.6.4 The combined effect of and relationship between these provisions, and the remainder of the requirements in Schedule 2 of the Order, ensures that the authorised development will not give rise to materially new or materially different environmental effects beyond those which have been assessed.

*Schedule 2 (requirements)*

4.6.5 This Schedule sets out the requirements which apply to the construction, operation (including maintenance) and decommissioning of the authorised development under the Order. The requirements closely relate to the mitigation set out in the Mitigation Schedule (**Document Reference 7.8**) and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' or 'framework' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

4.6.6 The requirements operate by reference to preventing the undertaker from "commencing" any part of the authorised development (or for the purposes of Requirement 5 (permitted preliminary works) from carrying out "permitted preliminary works") until it has met its obligations under the relevant requirements.

4.6.7 It is the opinion of the undertaker that the requirements in Schedule 2 (requirements) are all:

- (a) necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement (**Document reference 6.1 – 6.4**);
- (b) enforceable and precise in their language; and
- (c) reasonable in all other respects.

4.6.8 Paragraph 1 of Schedule 2 sets out a number of definitions that are used solely in this Schedule rather than in the Order more widely. This includes a definition of "ground conditions investigations and assessments strategy", which is a strategy for investigating, assessing, assessing and (where necessary) remediating ground conditions, contamination and ground stability; "mitigation schedule", which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified); and a definition of "jetty works environmental design scheme", which is a scheme setting out the details of the undertaker's proposals for Work Number 4A.

- 4.6.9 **Requirement 2: Time limits.** This requirement provides that the authorised development must not commence later than 7 years from the date of the Order coming into force. This time limit is discussed further in the explanation of article 27 above.
- 4.6.10 **Requirement 3: Approved details and amendments to them.** This requirement provides that where any documents have been certified under Article 44 (certification of plans etc.) and where any plans, details or schemes have been approved by LBB (or any other body responsible for approval under the Order), the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the LBB, those documents, plans, details or schemes are to be taken to include the amendments approved by LBB. Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement. This approach has precedent in the **Longfield Solar Farm Order 2023**, noting that the ability to amend approved documents generally is well preceded across many Orders.
- 4.6.11 Sub-paragraph (3) provides that sub-paragraph (1) does not apply to the Book of Reference (**Document Reference 4.3**) and the Land Plans (**Document Reference 2.2**) given that this would impact compulsory acquisition powers.
- 4.6.12 **Requirement 4: Detailed design.** This requirement provides that Work Number 1 must be carried out in accordance with the design parameters set out in Schedule 16 (design parameters) and the Design Principles and Design Code. The authorised development must be designed and constructed in accordance with the design principles and design code and the detailed design of the authorised development must take into account the climate variables considered in the Environmental Statement (**Document Reference 6.1**).
- 4.6.13 **Requirement 5: Permitted preliminary works.** This requirement requires the permitted preliminary works must be carried out in accordance with appendix 2.1 of the Environmental Statement (**Document Reference 6.1 – 6.4**).
- 4.6.14 **Requirement 6: Notice of date of final commissioning.** This requirement requires the undertaker to provide LBB, the PLA and the Environment Agency with notice of the date of final commissioning, within seven days of the completion of the commissioning of Work No. 1.
- 4.6.15 **Requirement 7: Code of construction practice.** This requirement prevents any part of the authorised development from commencing until a code of construction practice for that part of the authorised development has been submitted to and approved by LBB. The requirement is drafted to enable the undertaker to submit the code in respect of the part of the authorised development that it wants to "commence", without having to provide a code covering all parts. Therefore, the requirement could be discharged through one code or multiple codes. The requirement requires the submitted code or codes to be substantially in accordance with the outline code of construction practice (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The code/codes is/are to be implemented as approved. The requirement also lists the following details that the code (or codes, to the extent that they are applicable to the part of the authorised development that the code relates to) must be accompanied by or contain:

- (a) construction lighting measures;
- (b) a biosecurity management plan;
- (c) a community engagement plan;
- (d) a dust management plan;
- (e) a materials management plan;
- (f) a pollution prevention plan;
- (g) a site waste management plan (to be substantially in accordance with the outline site waste management plan); and
- (h) a surface water management plan.

4.6.16 **Requirement 8: Construction Hours:** This requirement provides that construction works relating to Works Nos. 1, 2, 3, 5 and 6 must not take place on specified days or outside specified hours. The Requirement also provides that these restrictions do not apply to certain construction works, including those carried out within existing building or buildings constructed as part of the authorised development, are carried out with the prior approval of the relevant planning authority, are associated with an emergency, or are associated with slip form working. The hours set out here are those found in the **REP Order**.

4.6.17 **Requirement 9: Construction traffic management plan.** This requirement prevents any part of the authorised development from commencing until a construction traffic management plan has been submitted to and approved by LBB, in consultation with the local highways authority (which is also LBB). The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plans. The requirement requires the submitted plan or plans to be substantially in accordance with the Framework Construction Traffic Management Plan (**Document reference 7.7**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)), and it must contain a construction travel plan (which must be substantially in accordance with the construction worker management measures included in the Framework Construction Traffic Management Plan). The construction of each part of the authorised development must be undertaken in accordance with the approved plan for that part.

4.6.18 **Requirement 10: Emergency preparedness and response plan.** This requirement prevents any part of the authorised development from being commissioned until an emergency preparedness and response plan has been submitted to and approved by LBB, the Environment Agency, lead local flood authority and the London Fire Brigade. The plan must be substantially in accordance with the Outline Emergency Preparedness and Response Plan (**Document reference 7.11**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved.

4.6.19 **Requirement 11: Lighting strategy.** This requirement prevents any part of the authorised development from commencing until a lighting strategy has



been submitted to and approved by LBB. The strategy must be substantially in accordance with the Outline Lighting Strategy (**Document reference 7.3**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved.

4.6.20 **Requirement 12: Landscape, biodiversity and recreation strategy delivery plan.** This requirement prevents any part of the authorised development from commencing until a landscape, biodiversity and recreation strategy delivery plan has been submitted to and approved by LBB. The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one strategy or multiple plans. The plan must be substantially in accordance with the Outline Landscape, Biodiversity, Access and Recreation Delivery Strategy (**Document reference 7.9**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved. The plan must include the following information (insofar as it is relevant to the part of the authorised development to which the strategy relates):

- (a) the location, number, species, size and planting density of any proposed planting including the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained;
- (d) an implementation timetable;
- (e) how the plan proposals for that part will, with the exception of the intertidal environment, contribute to the achievement of a minimum of 10% biodiversity net gain in habitat units and a minimum of 10% biodiversity net gain in watercourse 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;
- (f) how the landscaping and ecological measures proposed in the plan will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to Requirement 23 (decommissioning environmental management plan);
- (g) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of, or inform, the ecological mitigation measures and the monitoring regime to be taken forward following those initial surveys;
- (h) the final routing, specification and maintenance regime for permissive paths;

- (i) the final routing, specification and maintenance regime for the diversion and improvement of existing watercourses and the creation of new watercourses;
  - (j) a statement to confirm how the design principles and design code have been taken into;
  - (k) the undertaker's proposals for the Crossness Local Nature Reserve byelaws; and
  - (l) the undertaker's proposals for a management plan for the crossness local nature reserve as extended.
- 4.6.21 Sub-paragraph (4) of the requirement also enables the strategy to include measures or mechanisms for the creation, improvement or management of habitats outside of the Order limits, or the payment of credits. Sub-paragraph (5) enables the undertaker to, within five years after the planting has been undertaken, replace any planting undertaken as part of the approved strategy that has been removed, has died or has become damaged or diseased in the first available planting seasons with a specimen of the same species and size as that originally planted.
- 4.6.22 **Requirement 13: Surface and foul water drainage.** This requirement provides that no part of the authorised development may commence until details of the surface and foul water drainage strategy for that part have been submitted to and approved by LBB in consultation with the local lead flood authority. The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. It also required the details submitted under this Requirement to be consistent with those submitted under Requirement 12. The requirement requires the submitted strategy or strategies to be substantially in accordance with the Outline Drainage Strategy (**Document reference 7.2**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The strategy/strategies is/are to be implemented as approved.
- 4.6.23 **Requirement 14: Operational environmental management plan.** This requirement prevents Work No. 1 from being fully commissioned until an operational environmental management plan has been submitted to and approved by LBB. The approved plan must include measures set out in identified measures in the Mitigation Schedule (**Document Reference 7.8**) and must be implemented as approved.
- 4.6.24 **Requirement 15: Skills and employment plan.** This requirement prevents any part of the authorised development from being fully commissioned until a skills and employment plan has been submitted to and approved by LBB. The plan must be implemented as approved and must include the relevant measures identified in the Mitigation Schedule (**Document Reference 7.8**).
- 4.6.25 **Requirement 16: Jetty works environmental design scheme.** This requirement provides that Work No. 4 must not commence until a jetty works environmental design scheme has been submitted to and approved by LBB after consultation with the Environment Agency. The construction and maintenance of Work No.4 must be in accordance with the approved jetty works environmental design scheme. The requirement also provides that LBB must not refuse an application for approval of a jetty works environmental

design because it disagrees with the undertaker's choice as to whether or not to remove the Belvedere Power Station Jetty.

- 4.6.26 **Requirement 17: River wall.** This requirement provides that no part of Work No.4 may commence until a river wall condition survey on those parts of the river wall within the Order limits has been submitted to and approved by the Environment Agency, in consultation with LBB. The river wall condition survey must, where appropriate, identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years. The remedial works required to bring the defence up to good standard must be carried out within 2 years of when the condition survey is approved or such other time period as is agreed by the Environment Agency. A river wall condition survey is not required to the extent that any parts of the river wall has been assessed as part of a survey pursuant to Requirement 20 of the REP Order.
- 4.6.27 **Requirement 18: Flood risk mitigation.** This requirement provides that the authorised development must be carried out and operated in accordance with the Flood Risk Assessment (**ES Appendix 11-2**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The requirement provides for the undertaker to submit for approval by the Environment Agency an updated flood risk assessment, in the event that the undertaker anticipates that the operation of Work Number 1 (the Carbon Capture Facility) will continue past the 50th anniversary of the date of final commissioning. The updated flood risk assessment must assess the flood risk arising from the continued operation of Work Number 1 past the 50th anniversary of the date of final commissioning; contain details of any mitigation or compensation measures required and an implementation timetable for such measures. These measures must be implemented as approved in accordance with the approved implementation timetable no later than the 50th anniversary of the date of final commissioning of Work Number 1 or such other time period as is agreed with the Environment Agency, and must be retained for the lifetime of Work Number 1. This is an approach agreed with the Environment Agency on the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.
- 4.6.28 **Requirement 19: Navigation risk assessment.** This requirement provides that commencement of Work No. 4 cannot take place until the undertaker has undertaken a passing vessel mooring interaction survey following consultation with the PLA. The requirement also prevents the commencement of construction of Work Number 4 until the undertaker has, following consultation with the PLA, updated the Preliminary Navigation Risk Assessment (**Document reference Appendix 19.1**) to take account of the final design and construction methodology of Work Number 4, in doing so taking account of the results of the passing vessel mooring interaction survey. The Preliminary Navigation Risk Assessment (**Document reference Appendix 19.1**) is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified). The updated navigation risk assessment must also be approved by the PLA (with such approved not to be unreasonably withheld). Construction and operation of the authorised development must be carried out in accordance with the approved updated navigation risk assessment.
- 4.6.29 **Requirement 20: Control of noise during operation.** This requirement provides that, prior to commissioning any part of Work No.1, a written noise monitoring scheme must be submitted to and approved by LBB, to achieve levels at certain receptors identified in the Requirement. The undertaker must

operate the authorised development in accordance with the approved noise mitigation plan, except in the case of an emergency or with the prior approval of LBB. In the event that the level of noise at a monitoring location exceeds the maximum permitted level specified because of an emergency, the undertaker is required to submit a statement to LBB explaining the nature of the emergency, and if it is expected to last more than 24 hours, it must also inform local residents and businesses.

- 4.6.30 **Requirement 21: Ground conditions investigations and assessment strategy.** This requirement provides that no part of Work No. 1 may commence until a ground conditions investigations and assessments strategy has been submitted to and approved by LBB, in consultation with the Environment Agency. The authorised development must be carried out in accordance with the approved strategy.
- 4.6.31 **Requirement 22: Archaeological mitigation strategy.** This requirement provides that no part of the authorised development may commence until an archaeological mitigation strategy for that part has been submitted to and approved by the relevant planning authority. The requirement also details the matters the archaeological mitigation strategy must cover, to the extent that those matters are relevant to the part of the authorised development which the archaeological mitigation strategy is covering. The requirement also provides for the approval of any further written schemes of archaeological investigation that are identified as necessary in the archaeological mitigation strategy.
- 4.6.32 **Requirement 23: Decommissioning environmental management plan.** This requirement provides that, within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with the Environment Agency, a decommissioning environmental management plan for that part. Only after that plan has been approved can the undertaker commence decommissioning works for the relevant part. The requirement is drafted to enable the undertaker to submit a plan in respect of the part of the authorised development that it wants to decommission, without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plan.
- 4.6.33 The plan must be implemented and maintained as approved and must contain details of:
- (a) the buildings to be demolished;
  - (b) the means of removal of the materials resulting from the decommissioning works;
  - (c) the phasing of the demolition and removal works;
  - (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
  - (e) the phasing of any restoration works; and
  - (f) a timetable for the implementation of the plan.
- 4.6.34 **Requirement 24: Decommissioning traffic management plan.** This requirement provides that within 12 months of the date that the undertaker

decides to decommission any part of the authorised development, the undertaker must submit to LBB for its approval, after consultation with the relevant highway authority (which is also LBB), a decommissioning traffic management plan for that part. Only after that plan has been approved can the undertaker commence decommissioning works for the relevant part. The requirement is drafted to enable the undertaker to submit a plan in respect of the part of the authorised development that it wants to decommission, without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plan.

- 4.6.35 The plan must be implemented and maintained as approved and must contain details of route diversions and routing of abnormal loads and HGVs.

*Schedule 3 (legislation to be disapplied)*

- 4.6.36 This Schedule lists out the legislation that the Order disapplies relating to watercourses, flood prevention, docks and local authority legislation 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.

*Schedule 4 (streets subject to street works)*

- 4.6.37 This Schedule sets out the streets that would be subject to street works (including reference to the Access and Rights of Way Plan (**Document Reference 2.4**), the location and the specific street). The Schedule relates to Article 11 (street works).

*Schedule 5 (streets subject to permanent or temporary alteration of layout)*

- 4.6.38 This Schedule sets out the streets to be permanently or temporarily altered, by reference to the Access and Rights of Way Plan (**Document Reference 2.4**). The Schedule relates to Articles 12 (power to alter layout etc., of streets) and 16 (access to the authorised development). Part 1 relates to those which will not require street authority consent, and Part 2 to those that will.

*Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access)*

- 4.6.39 This Schedule sets out the street (Part 1) and private means of access (Part 2) that the undertaker has the power to permanently stop up in connection with the construction of the authorised development, as shown on the Access and Rights of Way Plan (**Document Reference 2.4**). Part 1 and Part 2 include provision for substitutes to be provided where the street or private means of access respectively are to be permanently stopped up. This schedule relates to Article 13 (permanent stopping up of specified street and private means of access).

*Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way)*

- 4.6.40 Part 1 of this Schedule sets out the streets that will be subject to temporary alteration, prohibition, diversion or restriction and the public rights of way that will be subject to temporary alteration, prohibition, diversion or restriction (including reference to the relevant Access and Rights of Way Plan (**Document Reference 2.4**), the location and the extent of the temporary prohibition or restriction). Part 2 of this Schedule sets out the public rights of way where temporary vehicular use is authorised (including reference to the

relevant Access and Rights of Way Plan (**Document Reference 2.4**), the location and the extent of the vehicular measures authorised). The Schedule relates to Article 14 (temporary prohibition or restriction of use of streets and public rights of way).

*Schedule 8 (land in which only new rights etc. may be acquired)*

- 4.6.41 This Schedule specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans (**Document Reference 2.2**), and the nature of the rights and restrictive covenants in column 2 is explained by defined terms set out in that Schedule. The Schedule relates to Article 27 (compulsory acquisition of rights).

*Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)*

- 4.6.42 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made orders (the **REP Order**, for example) and reflects the necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 27 (compulsory acquisition of rights).

*Schedule 10 (Land of which temporary possession may be taken)*

- 4.6.43 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 35 (temporary use of land for carrying out the authorised development) and Article 36 (temporary use of land for maintaining the authorised development). This land is shown yellow on the Land Plans (**Document Reference 2.2**), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans (**Document Reference 2.3**).

*Schedule 11 (Deemed marine licence)*

- 4.6.44 This Schedule contains the terms of the deemed marine licence pursuant to Article 40 (deemed marine licence) and contains details of the licenced marine activities that may be carried out by the undertaker.

*Schedule 12 (Protective provisions)*

- 4.6.45 This Schedule includes draft protective provisions for the following:
- (a) Part 1 – for the protection of electricity, gas, water and sewerage undertakers;
  - (b) Part 2 – for the protection of operators of electronic communications code networks;
  - (c) Part 3 - for the protection of the Environment Agency;
  - (d) Part 4 - for the protection of Thames Water Utilities Limited;
  - (e) Part 5 – for the protection of the PLA;

- (f) Part 6 – for the protection of UK Power Networks Limited, London Power Networks PLC and South East Power Networks PLC;
- (g) Part 7 - for the protection of Southern Gas Networks PLC as gas undertaker.
- (h) Part 8 – for protection of REPL; and
- (i) Part 9 – for protection of RRRL.

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

- 4.6.46 This Schedule lists the documents that the undertaker must have certified pursuant to Article 44 (certification of plans etc.).

*Schedule 14 (Procedure in relation to certain approvals etc.)*

- 4.6.47 This Schedule, which relates to Article 46 (procedures in relation to certain approvals etc.), sets out the procedure for the discharge of all consents, agreements or approvals contemplated by the Order, save where any discrete part of the Order provides for a different procedure. The Schedule sets out time periods within which decisions must be made, and provides for deemed approval in certain circumstances.
- 4.6.48 The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Schedules similar to Schedule 14 (Procedure in relation to certain approvals etc.) have been included in various made orders (including the **REP Order**). The drafting of this Schedule has had regard to PINS Advice Note 15 (July 2018). The process is required in order to ensure that decisions are dealt with efficiently so that the delivery of this project of national significance, which will support the UK's transition to a net zero economy, is not unduly delayed.

*Schedule 15 (arbitration rules)*

- 4.6.49 This Schedule relates to Article 47 (arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. In addition, 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 the delivery of carbon capture infrastructure, 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.
- 4.6.50 Schedule 15 (arbitration rules) refers to the person who commenced the arbitration as the “Claimant” and the other party as the “Respondent”.
- 4.6.51 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.

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

*Schedule 16 (design parameters)*

4.6.53 This Schedule sets out the design parameters that Work No.1 must be carried out in accordance with for the purposes of Requirement 4 of Schedule 2 (Requirements).

4.6.54 The Schedule includes details of the relevant component/building/area, the works area, maximum numbers, maximum height in metres per component/building/area, maximum height in metres (taking into account of development platform of maximum 3 metres) and any further parameters.





## DECARBONISATION

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