



Stonestreet Green Solar

Explanatory Memorandum

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



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1 Introduction

1.1 Introduction

- 1.1.1 EPL 001 Limited (the ‘Applicant’) has made an application (the ‘Application’) for a development consent order (‘DCO’) from the Secretary of State for Energy Security and Net Zero to authorise the Stonestreet Green Solar project (the ‘Project’) which is described at Schedule 1 (Authorised Development) to the **Draft Development Consent Order (‘DCO’) (Doc Ref. 3.1(B))** which accompanies the Application and is entitled the Stonestreet Green Solar Order 202[] (the ‘Order’).
- 1.1.2 The site of the Project is land at Aldington to the south-east of Ashford in Kent. The site is entirely within the administrative boundary of Kent County Council and Ashford Borough Council.
- 1.1.3 This memorandum explains the purpose and effect of each Article of, and the Schedules to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (‘APFP Regulations’). In particular, it sets out (where relevant):
- the source of the provision (whether it is a model provision, bespoke or based on a precedent contained in a made DCO); and
 - the reasons why the Article is relevant to the proposed development and considered important/essential to the delivery of the Project.
- 1.1.4 This memorandum should be read alongside the **Draft DCO (Doc Ref. 3.1(B))** and the various documents submitted in respect of the Application.
- 1.1.5 The Order and this memorandum have both been prepared in accordance with:
- The Planning Inspectorate's Advice Note Thirteen: preparation of a draft order granting development consent and explanatory memorandum (Version 3, February 2019);
 - The Planning Inspectorate's Advice Note Fifteen: drafting Development Consent Orders (Version 2, July 2018); and
 - The Department of Levelling Up, Housing and Communities guidance note: Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (published 30 April 2024).

1.2 The Purpose of the Order

- 1.2.1 Section 15 of the Planning Act 2008 (‘PA 2008’) provides that a DCO is required to the extent that a development is, or forms part of, a nationally significant infrastructure project (‘NSIP’).

- 1.2.2 The Project is an NSIP under sections 14(1)(a) and 15 of the PA 2008 because it comprises a generating station with a gross electrical output of over 50 megawatts ('MW') and is located in England.
- 1.2.3 Accordingly, the Applicant has made the Application in order to secure development consent for the Project. The Order is part of the Application.

Development authorised by the Order

- 1.2.4 A detailed description of the Project can be found in **ES Volume 2, Chapter 3: Project Description (Doc. Ref. 5.2(A))**. It comprises a generating station of more than 50 MW, being the NSIP, and is described in Work No. 1 in Schedule 1 to the Order. The Project also includes associated development, which comprises Work Nos. 2-8 in Schedule 1 to the Order.
- 1.2.5 The NSIP is as follows:
- **Work No. 1 - a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 MW including –**
 - (a) solar PV panels; and
 - (b) mounting structures.
- 1.2.6 The description of Work No. 1 refers to a gross electrical output of over 50 MW. This is consistent with sections 14 and 15 of the PA 2008 which stipulates that a generating station which exceeds an electrical capacity of 50 MW will be a NSIP and therefore development for which development consent is required.
- 1.2.7 Work No. 1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Project will be constrained, and it is on this basis which the **Environmental Statement (Doc Ref. 5.1 – 5.4)** has been prepared.
- 1.2.8 There is no reason to limit the electrical output capacity of the Project provided those parameters are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.
- 1.2.9 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Project within the assessed parameters, but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources. The approach taken has precedent in the **Cleve Hill Solar Park Order 2020**, the **Little Crow Solar Park Order 2022** and the **Longfield Solar Farm Order 2023**.
- 1.2.10 The associated development for the purposes of section 115 of the PA 2008 comprises Work Nos. 2 to 9 of the Project as provided for in Schedule 1 to the Order. This comprises the following elements:

- **Work No. 2 — Balance of system and BESS works including:**
 - a) inverter stations;
 - b) BESS;
 - c) DC-DC converters;
 - d) intermediate substations;
 - e) fire hydrants;
 - f) bunding and other water retention features; and
 - g) acoustic barriers.
- **Work No. 3 — Project substation and associated works including:**
 - a) project substation, including switchroom and control room buildings, circuit breakers, 132 kilovolt bus-bars, pad mounted transformers, earthing circuits, office facilities (to include welfare unit, water closet, cesspit) and ancillary equipment;
 - b) monitoring and control systems for Work No. 1, Work No. 2 and Work No. 3;
 - c) car parking;
 - d) metal palisade security fencing with gates;
 - e) access track with separate access provision;
 - f) geotechnical works and retaining structures;
 - g) drainage and water retention system works;
 - h) acoustic barriers; and
 - i) two spare parts storage containers.
- **Work No. 4 — Works to lay high voltage electrical cables and extend Sellindge Substation to facilitate grid connection including:**
 - a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings;
 - b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
 - c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
 - d) crossing of Network Rail infrastructure either—
 - i. using existing electrical ducts; or
 - ii. through the installation of new cable ducts;
 - (a) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; and
 - (b) extension of the Sellindge Substation including—

- i. installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;
- ii. laying down of access tracks, ramps, means of access, footpaths and roads;
- iii. construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
- iv. fencing, gates, boundary treatment and other means of enclosure;
- v. provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
- vi. drainage works;
- **Work No. 5 — Works including:**
 - (a) fencing, gates, boundary treatment and other means of enclosure;
 - (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure;
 - (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
 - (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
 - (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
 - (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; and
 - (g) equipment and materials storage during construction and decommissioning phases;
- **Work No. 6 — Works to provide site access including:**
 - (a) creation of accesses from the highway;
 - (b) creation of visibility splays;
 - (c) upgrading and repairing of existing accesses; and
 - (d) highways improvements;
- **Work No. 7 — Construction and decommissioning works including:**
 - (e) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding; and

- (f) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
 - **Work No. 8 — Works to create, enhance and maintain green infrastructure, boundary treatments and crossing structures including:**
 - (a) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
 - (b) mitigation and biodiversity enhancement planting;
 - (c) landscape reinforcement works;
 - (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; and
 - (e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains.
- 1.2.11 Section 115(1) of the PA 2008 provides that development consent may be granted for ‘(a) development for which development consent is required, or (b) associated development.’.
- 1.2.12 Guidance on associated development has been issued by the Government. In this guidance, associated development is described as being ‘typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project’ and which ‘requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts’ (paragraph 5).
- 1.2.13 Consent is also sought for ‘further associated development’ as set out in Work No. 9 of Schedule 1 to the Order (referred to as ‘Site Wide Works’) as may be necessary or expedient for the purposes of or in connection with the authorised development which is within the Order limits and falls within the scope of works assessed by the **Environmental Statement (Doc Ref. 5.1 – 5.4)** including:
- a) site preparation works and site clearance, including vegetation removal;
 - b) earthworks;
 - c) remediation of contamination;
 - d) alteration to locations of services and utilities infrastructure;
 - e) works for the benefit or protection of land affected by the authorised development; and
 - f) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8.
 - g) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
 - h) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; and

- i) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management.
- 1.2.14 The Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 1.2.15 Section 120(3) of the PA 2008 provides that an order can make a provision *'relating to, or to matters ancillary to, the development'* and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the PA 2008. Section 120(5) also allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO, include any provision that appears necessary or expedient to giving full effect to any other provision in the DCO, and include any incidental, consequential or transitional provisions or savings.
- 1.2.16 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(3) of the PA 2008, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the PA 2008. A justification for these powers is set out in the **Statement of Reasons (Doc Ref. 4.2(A))** that accompanies the Application.
- 1.2.17 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the PA 2008, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.
- 1.2.18 Other ancillary matters include the stopping up of lengths of existing highways and public rights of way ('PRoW') and traffic regulation measures.

2 Part 1 - Preliminary

2.1 Overview

2.1.1 Articles 1 (Citation and commencement) and 2 (Interpretation) of the Order contain preliminary provisions.

2.2 Article 1 (Citation and commencement)

2.2.1 Article 1 provides for the citation of the Order and provides the date on which it comes into force.

2.3 Article 2 (Interpretation)

2.3.1 The purpose of Article 2 is to define various terms used in the Order.

2.3.2 Definitions to note include:

- The definition of ‘apparatus’ has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Riverside Energy Park Order 2020** and the **Longfield Solar Farm Order 2023**;
- A definition of ‘commence’ has been included within the Order, which excludes the pre-commencement activity of ‘site enabling works’. The effect of the definition is that the site enabling works can be carried out prior to the requirements contained in Schedule 2 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are ‘carved out’ would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The Applicant notes the definition of ‘commence’ was deleted by the Secretary of State when the **A160/A180 (Port of Immingham Improvement) Order 2015** was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of ‘commence’ had ‘the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this was a correctable error for the purposes of Schedule 4 to the PA 2008’;
- ‘first export date’ is defined as the date on which the authorised development first exports electricity to the national grid on a commercial basis, but excluding

the generation of electricity during commissioning and testing. This date is used as the trigger point for commencement of the 40 year operational lifetime of the Project, as secured in Requirement 2 in Schedule 2 to the Order (see paragraph 10.9 below). Use of this definition and mechanism for time limiting the operational lifetime of the authorised development has precedent in the **Little Crow Solar Park Order 2022** and so is considered appropriate for this Order.

- A definition of ‘maintain’ is included to clarify what is authorised under Article 4 (see below) so as to provide the Applicant with certainty. In particular it does not permit the Applicant to carry out any maintenance operations which would cause materially new or materially different environmental effects to those identified in the **Environmental Statement (Doc Ref. 5.1 – 5.4)**. The approach taken is clearly established in precedent, including in the **Little Crow Solar Park Order 2022** (Article 2(1)) and the **Cleve Hill Solar Park Order 2020** (Article 2(1));
- ‘site enabling works’, which comprises the specific list of activities and works that can be carried out prior to development being considered to have ‘commenced’ as previously defined. This is similar to the definition of ‘permitted preliminary works’ in the **Longfield Solar Farm Order 2023**; and
- ‘undertaker’ is defined as EPL 001 Limited or any person who has the benefit of the Order in accordance with Articles 6 (Benefit of the Order) and 7 (Consent to transfer benefit of the Order) (see below).

3 Part 2 – Principal Powers

3.1 Article 3 – Development consent etc. granted by the Order

- 3.1.1 This Article grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development into different works enables the Order to refer to different parts of the authorised development by citing the relevant work number for that area.
- 3.1.2 Article 3(2) requires that the works authorised by the Order are situated in the areas shown on the **Works Plans (Doc Ref. 2.3(B))**. The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development within the set limits.
- 3.1.3 Flexibility is appropriate in the current Order as it serves to precisely define the authorised development by reference to Schedule 1, while preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology to the extent shown on the **Works Plans (Doc Ref. 2.3(B))**. The **Environmental Statement (Doc Ref. 5.1 – 5.4)** accompanying the Application has assessed the authorised development within the full envelope provided by the **Works Plans (Doc Ref. 2.3(B))**, and so development within this envelope will not create new or different effects that exceed the worst-case scenario assessed in the Environmental Statement.

3.2 Article 4 – Maintenance of authorised development

- 3.2.1 This Article is necessary to ensure that any required maintenance activities can be carried out. Article 4 reflects the terms of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the 'model provisions').

3.3 Article 5 – Authorisation of use

- 3.3.1 Article 5 provides that, once constructed, the undertaker has the authority to operate and use the authorised development. However, this power does not relieve the undertaker of its obligation to obtain other operational consents that may be needed in addition to the Order as expressly stated in Article 5(2). This Article has been inserted for the avoidance of doubt and in accordance with section 120(3) of the PA 2008.

3.4 Article 6 – Benefit of the Order

- 3.4.1 Article 6 provides that EPL 001 Limited has the sole benefit of the powers and rights granted by the Order, except in respect of Work No. 3 for which the benefit of the Order is granted to EPL 001 Limited and UK Power Networks and in respect of Work No. 4 for which the benefit of the Order is granted to EPL 001 Limited, National Grid and UK Power Networks. These works constitute in each case infrastructure which, while necessary to facilitate the development of the Project, is highly likely to be carried out and owned by these named parties. This is explained further in the **Grid Connection Statement (Doc Ref. 7.3)** [\[APP-148\]](#).
- 3.4.2 Paragraph (2) further provides that nothing in paragraph (1) should be read as meaning that other parties expressly stated to benefit from the Order should be excluded from such benefits.
- 3.4.3 This Article overrides section 156(1) of the PA 2008 (as permitted by 156(2) of the PA 2008) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the specified parties and not any other person with an interest in the Order land (unless provided under Article 7).
- 3.4.4 Precedent for the use of similar provisions to paragraph (1) can be found in Article 6 of the **Immingham Open Cycle Gas Turbine Order 2020**, where powers to carry out particular works were given to National Grid, the **Riverside Energy Park Order 2020** where London Power Networks was granted the power to carry out certain works, and the **Longfield Solar Farm Order 2023** where UK Power Networks and National Grid were granted the power to carry out works relating to a substation. Paragraph (2) has multiple precedents, including Article 7(2) of the **Great Yarmouth Third River Crossing Development Consent Order 2020**.

3.5 Article 7 – Consent to transfer benefit of the Order

- 3.5.1 This is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the benefit of the provisions of the Order except where:
- a) the transferee or lessee is National Grid or UK Power Networks (as both are defined in Article 2(1) of the Order;
 - b) the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
 - c) the compensation provisions for the acquisition of land or effects on land have elapsed.
- 3.5.2 Article 7(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 3.5.3 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily

acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims.

- 3.5.4 Article 7(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State, the local planning authority and Kent County Council in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 7(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017**.
- 3.5.5 Article 7(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
 - c) the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 3.5.6 Article 7 is preceded in the **Cleve Hill Solar Park Order 2020**, the **Little Crow Solar Park Order 2022** and the **Longfield Solar Farm Order 2023**.

3.6 Article 8 – Disapplication, application and modification of legislative provisions

- 3.6.1 Article 8 disapplies a number of statutory provisions. Section 120 of the PA 2008 makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the PA 2008's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought under this Article for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020** and the **Longfield Solar Farm Order 2023**.
- 3.6.2 Article 8 provides for the disapplication of the following specified provisions:
- a) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within the Order; and
 - b) the provisions of the Neighbourhood Planning Act 2017 insofar as they relate to the temporary possession of land under articles 31 (Temporary use of land

for carrying out the authorised development) and 33 (Temporary use of land for maintaining the authorised development) of the Order.

- 3.6.3 At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being Articles 31 (Temporary use of land for carrying out the authorised development) and 33 (Temporary use of land for maintaining the authorised development). This approach has precedent and has been accepted by the Secretary of State in the **Drax Power (Generating Stations) Order 2019**, the **Millbrook Gas Fired Generating Station Order 2019**, the **Cleve Hill Solar Park Order 2020**, and the **Norfolk Boreas Offshore Wind Farm Order 2021**.
- 3.6.4 Article 8 also applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission, but not to development authorised by a DCO. Paragraph (3) of Article 8 therefore extends the exception to the context of the DCO and any trees felled as a result of the authorised development. Similar amendments are made in Article 8 to the Hedgerows Regulations 1997. These amendments bring the position for DCO development in line with the position under other planning permissions or deemed permissions (such as under the Transport and Works Act 1992). This is considered appropriate for a DCO project with national importance. This approach has precedent in the **Great Yarmouth Third River Crossing Development Order 2020** and the **Norfolk Boreas Offshore Wind Farm Order 2021**.
- 3.6.5 Article 8(4) disapplies section 141 of the Highways Act 1980. This section places restrictions on planting in or near carriageways. It has been disapplied to the extent that any tree or shrub planted has been planted with the agreement of the highway authority. It is preceded in the **Sizewell C (Nuclear Generating Station) Order 2022**.
- 3.6.6 Article 8(5) clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any buildings within the authorised development fall within the exemption under regulation 6 and will not to be considered as 'development' for the purposes of levying the community infrastructure levy. The rationale for this disapplication is that the authorised development is in its own right a piece of nationally significant infrastructure, and the undertaker will be obliged to provide all of the mitigatory infrastructure (in the form of transport infrastructure in particular) to mitigate its effects. Therefore, it would not be justifiable for the levy to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts. This provision is preceded in Article 6(3) the **Longfield Solar Order 2023**, Article 6(3) of the **Cottam Solar Project Order 2024** and Article 6(5) of the **Mallard Pass Solar Farm Order 2024**.

- 3.6.7 Article 8(6) confirms that Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 has been disapplied to avoid any future planning enactments undermining the powers and rights provided to the undertaker under the Order. This provision is included in the **Northampton Gateway Rail Freight Interchange Order 2019**.
- 3.6.8 Article 8(7) provides that any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of the Order. The Applicant considers that, in the context of the Project being of national significance, the Order should be the predominant authorising instrument for the works. This approach has precedent in the **A47 Wansford to Sutton Development Consent Order 2023**, the **A57 Link Roads Development Consent Order 2022** and the **A417 Missing Link Development Consent Order 2022**.

3.7 Article 9 – Planning Permission

- 3.7.1 This Article clarifies the relationship between the application of planning permissions granted under the Town and Country Planning Act 1990 ('1990 Act') (or permitted development rights deemed to be granted under it) and the development powers granted by the Order. It addresses any potential uncertainty that may result from the Supreme Court's decision 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 (or continue to 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.
- 3.7.2 Article 9(1) provides that the works authorised by the DCO (authorised development) may be carried out or may continue to be carried out notwithstanding the initiation of any development pursuant to a planning permission granted or deemed to be granted pursuant to the 1990 Act which may be physically incompatible with the authorised development.
- 3.7.3 Article 9(2) provides that any conditions of any planning permission granted prior to the date of the Order that are incompatible with the requirements of the Order or the authorised development shall cease to have effect from the date the authorised development is commenced. This provision also includes use of any permitted development rights.
- 3.7.4 Article 9(3) provides that where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages Article 9(2), it must notify the local planning authority as soon as reasonably practicable.
- 3.7.5 Article 9(4) makes clear that nothing in the Order restricts the future grant of planning permissions under the 1990 Act for works within the Order limits, or exercise of permitted development rights. This provision is included for the avoidance of doubt to make clear that the local planning authority is not prevented, following the grant

of the DCO, from granting planning permission for development on land within the Order Limits that would not conflict with the DCO. This provision is necessary to ensure that minor works can be separately consented without needing to rely on an amendment to the Order which would be disproportionate and impractical in the circumstances.

3.8 Article 10 – Defence to proceedings in respect of statutory nuisance

- 3.8.1 Article 10 provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise if the noise is created in the course of constructing, operating, maintaining or decommissioning the authorised development and for which notice has been given under Section 60 or consent obtained under Section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 10 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Project and for this reason it is necessary to include the Article in the Order. It is preceded in numerous made DCOs. The rationale is that if works are authorised under the Order, they are subject to appropriate levels of controls and should be permitted to proceed to construction and operation (and eventually decommissioning). As stated at paragraph 9.3.17 below, requirement 13 of the Order provides that, prior to the operation of the authorised development that comprises Work No. 2 or Work No. 3, an operational noise mitigation and monitoring scheme ('ONMMS') must be submitted to and approved by the local planning authority. The ONMMS must include details of the plant specification, noise mitigation measures and monitoring procedures and demonstrate that, with those noise mitigation measures and monitoring procedures in place, the authorised development is not likely to result in any materially new or materially different noise effects from those assessed in **ES Volume 2, Chapter 14: Noise (Doc Ref. 5.2) [APP-038]**. Noise is further controlled via the mitigation secured in Section 4.4 of the **Outline Construction Environmental Management Plan (Doc Ref. 7.8(A))** (Requirement 6), Table 3.8 of the **Outline Operational Management Plan (Doc Ref. 7.11(A))** (Requirement 12) and Section 4.4 of the **Outline Decommissioning Environmental Management Plan (Doc Ref. 7.12) [APP-157]** (Requirement 14). In addition, a **Statutory Nuisance Statement (Doc Ref. 7.2) [APP-147]** has been prepared and submitted as part of the Application.

4 Part 3 – Streets

4.1 Article 11 – Street works and temporary closure of streets and private means of access

- 4.1.1 Article 11(1) allows the undertaker to carry out certain works in and to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 (streets subject to street works) sets out the streets that are subject to street works thereby clarifying the extent of the powers. Article 11(1) is a model provision but has been extended in sub-paragraph (1)(e) to provide for works which may be required to any culvert under a street.
- 4.1.2 Article 11(3) provides that sections 54 to 106 of the New Roads and Street Works Act 1991 ('1991 Act') apply to any street work carried out pursuant to Article 11(1). This provides protection for the street authority for the street in question.
- 4.1.3 Equivalent provisions to the powers in Articles 11(1) to (3) can be found in other made DCOs which also require works within public streets, such as Article 10 of the **Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014**, Article 11 of the **Southampton to London Pipeline Development Consent Order 2020** and Article 14 of the **Sizewell C (Nuclear Generating Station) Order 2022**.
- 4.1.4 Article 11(4) allows the undertaker to temporarily close, alter or divert any street or private means of access. It also allows the undertaker for any reasonable time to divert the traffic and prevent all persons from passing along the street. In the event that pedestrian access is prevented, Article 11(6) requires the undertaker to provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street if there would otherwise be no such access.
- 4.1.5 Article 11(5) allows the undertaker to use any street or private means of access that has been temporarily closed, altered or diverted as a temporary working site. This is considered appropriate and necessary to facilitate construction of the authorised development and allow the undertaker to avoid having to acquire additional interests to accommodate additional construction lay-down or compound areas.
- 4.1.6 This is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in Paragraph 17 of Schedule 5 to the PA 2008, which states that a DCO can provide for the closure or diversion of highways, which in this context would include any 'street' as defined in Article 1 of the Order.
- 4.1.7 Precedent for Articles 11(4) to (6) can be found in the **National Grid (Hinkley Point C Connection Project) Order 2016**, Article 17 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and **Article 19 of the Sizewell C (Nuclear Generating Station) Order 2022**.

4.2 Article 12 – Power to alter layout, etc., of streets

4.2.1 This Article allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 (alteration of streets) sets out the permanent alterations to the streets specified in that Schedule that the Order authorises the undertaker to conduct. This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street for the purposes of constructing, operating, maintaining or decommissioning the authorised development) require the consent of the street authority before they can be exercised. Article 12 has precedent and appears in the **Drax Power (Generating Stations) Order 2019**, the **South Humber Bank Energy Centre Order 2021** and the **Sizewell C (Nuclear Generating Station) Order 2022**.

4.3 Article 13 – Construction and maintenance of altered streets

4.3.1 Article 13 provides that any permanent alterations to the streets listed in Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the street authority (paragraph (1)).

4.3.2 Articles 13(3) and (4) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (5) provides the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in the **Drax Power (Generating Stations) Order 2019**.

4.4 Article 14 – Use of private roads

4.4.1 This Article authorises the temporary passage by the undertaker, in common with other permitted users, over private roads within the Order limits by persons or vehicles for the purposes of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development. The Article creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner. This Article is necessary because the undertaker will need to use private roads inside the Order Limits.

4.4.2 Article 14(2) provides that the undertaker will compensate any person who has suffered loss or damage as a result of the exercise of this power.

- 4.4.3 Article 14(3) clarifies that any dispute as to a person's entitlement to compensation, or as to the amount of compensation, is to be determined under Part 1 of the Land Compensation Act 1961.
- 4.4.4 Precedent for this Article is in Article 13 of the **Silvertown Tunnel Order 2018** and Article 20 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

4.5 Article 15 – Access to works

- 4.5.1 This Article is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 6 (access to works) to the Order. This Article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. The Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the local planning authority, in consultation with the highway authority. Similar provisions to this Article are contained in Article 21 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

4.6 Article 16 - Agreements with street authorities

- 4.6.1 Article 16 is a model provision which authorises a street authority and the undertaker to enter into agreements relating to construction, strengthening, improvement, repair or reconstruction of any street; the maintenance of the structure of any bridge or tunnel carrying a street over or under the authorised development; stopping up, prohibition, restriction, alteration or diversion of any street; works authorised under Articles 11 (street works and temporary closure of streets and private means of access), 12 (power to alter layout, etc. of streets) and 13 (construction and maintenance of altered streets) of the Order; the adoption of works; and such works as the parties may agree. This provision has precedent in the **Riverside Energy Park Order 2020**, the **South Humber Bank Energy Centre Order 2021** and the **Longfield Solar Farm Order 2023** and is required so that the undertaker may enter into agreements with the relevant street authorities.

4.7 Article 17 – Traffic regulation measures

- 4.7.1 Article 17 provides the undertaker with powers to place temporarily traffic signs and signals in the extents of the roads specified in Schedule 7 (traffic regulation measures). This Schedule identifies the relevant roads and specifies the extents of the roads that will be subject to temporary traffic signal and banksman control areas. These specific measures are required to safely regulate traffic during the construction or decommissioning of the Project.
- 4.7.2 Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Project. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the

general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of or decommissioning of the authorised development for the undertaker to put in place some temporary restrictions on road usage. For these reasons it is similarly considered necessary to include this article in this Order.

- 4.7.3 The powers under this Article are provided for in section 120(5)(a) of the PA 2008. For example, similar provision is contained within the **Network Rail (Norton Bridge Area Improvements) Order 2014**, the **National Grid (Hinkley Point C Connection Project) Order 2016** and more recently in the **Great Yarmouth Third River Crossing Development Consent Order 2020** and **Longfield Solar Farm Order 2023**.

5 Part 4 – Public Rights of Way

5.1 Article 18 – Public rights of way – stopping up and vehicular use on public rights of way

5.1.1 This Article has been included in the Order to allow for the creation, diversion and stopping up of PRow affecting land within the Order limits. It is necessary for some PRow to be stopped up in order for the authorised development to be carried out.

5.1.2 Section 136 of the PA 2008 stipulates that the Order may include the stopping up of a PRow provided that an alternative right of way will be provided, or an alternative is not required. This Article makes provision for alternative PRow to be created for the majority of the existing PRow that are to be stopped up.

5.1.3 Article 18(1) allows the undertaker, in connection with the carrying out of the authorised development to:

- stop up permanently (i.e. during and beyond the lifetime of the Project) the PRow listed in Part 1 of Schedule 8 (public rights of way to be permanently stopped up for which a substitute is to be provided) and provide a substitute, as set out in that Schedule;
- stop up temporarily (i.e. for the lifetime of the Project) the PRow listed in Part 2 of Schedule 8 (public rights of way to be temporarily stopped up for which a substitute is to be provided) and provide a substitute, as set out in that Schedule;
- stop up temporarily (i.e. for the lifetime of the Project) PRow to the extent agreed with the relevant highway authority and provide a substitute agreed with that authority;
- stop up permanently (i.e. during and beyond the lifetime of the Project) PRow listed in Part 3 of Schedule 8 (public rights of way to be permanently stopped up for which no substitute is to be provided) without providing a substitute; and
- for any reasonable time, authorise the use of motor vehicles on classes of PRow where there is otherwise no public right to use motor vehicles.

5.1.4 Part 1 of Schedule 8 (public rights of way to be permanently stopped up for which a substitute is to be provided) specifies the extent of the permanent stopping up, along with the new PRow that are to be created and their classification.

5.1.5 Part 2 of Schedule 8 (public rights of way to be temporarily stopped up for which a substitute is to be provided) specifies the extent of the temporary stopping up, along with the new PRow that are to be created and their classification.

5.1.6 Part 3 of Schedule 8 (public rights of way to be permanently stopped up for which no substitute is to be provided) identifies the PRow which will be permanently stopped up for which no substitute is to be provided.

- 5.1.7 The Schedule fixes terminus points for the new PRow to be created. However, the exact alignment of the PRow between those points is to be agreed by the relevant highway authority and the existing PRow may not be stopped up until substitute PRow has first been provided to the reasonable satisfaction of the relevant highway authority.
- 5.1.8 In respect of any diversion, Article 18(4) provides that the undertaker must provide appropriate clear signage of the diverted route. The Article (in paragraph (6)) also provides that any person suffering loss due to the exercise of powers contained in the Article will be entitled to compensation.
- 5.1.9 Precedent for this Article can be found in Article 28 of the **A417 Missing Link Development Consent Order 2022** and Article 12 of the **East Midlands Gateway Rail Freight Interchange and Highway Order 2016**.
- 5.1.10 The explanation of the Applicant's strategy in respect of PRow affected by the Project and justification for the powers sought in this article is set out in the **Outline Rights of Way and Access Strategy (Doc Ref. 7.15)**. For further details, see paragraph 10.18 below.

5.2 Article 19 – Status of public rights of way created or improved

- 5.2.1 This Article sets out the status that PRow created or improved under the Order will have upon completion.
- 5.2.2 PRow identified as 'public rights of way created or improved' in Schedule 9 (status of public rights of way created or improved) will have the status identified in column 2 of that Schedule from the date that the highway authority is satisfied that they have been created or improved to the standard specified in a rights of way strategy.
- 5.2.3 This Article only deals with the status of the PRow created or improved (which in all cases is a footpath). It does not provide for the creation or stopping up of PRow as this is dealt with under Article 18 (public rights of way – stopping up and vehicular use on public rights of way) of the Order. Article 19 is therefore limited to determining the status of these PRow to avoid duplication with Article 18 of the Order.
- 5.2.4 This Article is provided for under section 120(3) of the PA 2008. It is required in this Order to make clear what status all of the PRow created or improved using powers under the Order will have. Precedent for this Article can be found in Article 16 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 17 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

6 Part 5 – Supplemental Powers

6.1 Article 20 – Discharge of water

- 6.1.1 Article 20 is a modified model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, operation, maintenance or decommissioning of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions.
- 6.1.2 The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 inserted instead. The Article has also been updated to reflect the current approach to the drafting of statutory instruments and so that if the undertaker makes an application for consent under the provisions of the Article but the relevant party does not provide notification of its decision within 28 days of the undertaker's application then consent will have been deemed to have been given.
- 6.1.3 Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 to Schedule 5 of the PA 2008. During Issue Specific Hearing 1, the ExA asked the Applicant to update this Explanatory Memorandum to explain the relationship between Article 20 and section 146 of the PA 2008. Article 20 authorises the undertaker to discharge water into (inter alia) any watercourse or underground strata subject to the provisions therein.
- 6.1.4 As a consequence, section 146 of the PA 2008 is engaged. Section 146 relates orders which authorise the discharge of water into inland waters (which would include a watercourse) or underground strata and has the effect that the person to whom the order is granted does not also acquire the power to take water or require discharges to be made from such watercourses or underground strata.
- 6.1.5 The effect of section 146 is to make it explicit that although the DCO may confer power on the undertaker to put water into a watercourse or underground strata, the undertaker cannot then take water back out or require discharges to be made from such watercourse or underground strata under this Article.
- 6.1.6 There is precedent for this article in the majority of made Orders to date. Recently, it has been included in Article 9 of the **Little Crow Solar Park Order 2022** and Article 25 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

6.2 Article 21 – Authority to survey and investigate the land

- 6.2.1 Article 21 is a modified model provision which allows the undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days'

notice to be given and is subject to the payment of compensation. This power has been included in the Order because the undertaker may need to exercise this power in order to carry out the authorised development expediently in the event that voluntary agreement cannot be obtained from an owner and/or occupier of the land.

- 6.2.2 The model provision has been modified so that trial holes may not be made in a highway or private street without the consent of the highway authority or street authority (as applicable). If a highway authority or street authority after having received an application to make trial holes within a highway fails to notify the undertaker within 28 days of having received the application it will have been deemed to have provided consent. This approach has been adopted in the **Hornsea Two Offshore Wind Farm Order 2016**, the **Cleve Hill Solar Farm Order 2020** and the **Sizewell C (Nuclear Generating Station) Order 2022**.

7 Part 6 – Powers of Acquisition and Possession of Land

7.1 Article 22 – Compulsory acquisition of land

- 7.1.1 This Article provides the undertaker with the powers to compulsorily acquire any land within the Order land where that land is either required for construction, operation, maintenance and decommissioning of the authorised development, or is required to facilitate or is incidental to those activities. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development.
- 7.1.2 This Article is subject to Article 25 (time limit for exercise of authority to acquire land compulsorily), Article 26 (compulsory acquisition of rights and imposition of restrictive covenants), Article 29 (acquisition of subsoil and airspace only), Article 31 (temporary use of land for carrying out the authorised development), Article 42 (crown rights) and Schedule 13 (protective provisions). These Articles all impose restrictions on the exercise of powers under Article 22.
- 7.1.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the PA 2008, together with Paragraph 1 of Schedule 5 to the PA 2008, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in Article 24 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 28 of the **Sizewell C (Nuclear Generating Station) Order 2022**. Similar provisions are also included in the **Longfield Solar Farm Order 2023**.

7.2 Article 23 – Compulsory acquisition of land – incorporation of the mineral code

- 7.2.1 Article 23 incorporates Parts 2 and 3 of Schedule 2 (Minerals) of the Acquisition of Land Act 1981. By incorporating both parts of Schedule 2, this Article prohibits the undertaker from also acquiring rights to any mines underneath the acquired land (unless they are expressly purchased), and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions.
- 7.2.2 Part 3 of the Acquisition of Land Act 1981 sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, Article 23 provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.
- 7.2.3 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground

stability) as well as the undertaker's ability to carry out authorised development pursuant to Article 3 (development consent etc. granted by the Order).

- 7.2.4 This restriction is provided for under sections 120(3) and (4) together with paragraph 4 of Schedule 5 to the PA 2008, which relate to the carrying out specified mining operations within a specified area. Precedent for this approach is found in other made DCOs, such as Article 20 of the **Silvertown Tunnel Order 2018** and Article 22 of the **Longfield Solar Farm Order 2023**.

7.3 Article 24 – Statutory authority to override easements and other rights

- 7.3.1 This Article provides that the undertaker may interfere with rights or breach restrictive covenants in the course of carrying out or using the authorised development (Article 24(1)), rather than automatically cleansing the title to land required for the authorised development of all third party rights. The recourse of an affected landowner in such circumstances is specified by Article 24(4) and 24(5) of the Order to be section 10 of the Compulsory Purchase Act 1965 ('1965 Act').
- 7.3.2 The Applicant considers that this power (in essence the protection for the undertaker of statutory authority in carrying out or using the authorised development) is sufficient and less draconian than provisions in a number of DCOs which expunge all rights from title, regardless of whether interference or breach of covenant is necessary to execute the project.
- 7.3.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122, together with paragraph 1 of Schedule 5 to the PA 2008, as they relate to the compulsory acquisition of land. This Article replicates Article 25 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 30 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

7.4 Article 25 – Time limit for exercise of authority to acquire land compulsorily

- 7.4.1 This Article provides that the undertaker must exercise its power to acquire land or interests within five years of the Order being made. This ensures that landowners within the Order land have certainty as to whether or not their land is to be acquired, or rights over their land acquired, within a set period of time.
- 7.4.2 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the PA 2008, together with paragraph 1 of Schedule 5 to the PA 2008, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in other made DCOs, such as Article 26 of the **Hinkley Point C (Nuclear Generating Station) Order 2013**, Article 16 of the **East Anglia THREE Offshore Wind Farm Order 2017**, Article 23 of the **M20 Junction 10a Development Consent Order 2017**, and Article 20 of the **North London Heat and Power Generating Station Order 2017**.

7.5 Article 26 – Compulsory acquisition of rights and imposition of restrictive covenants

- 7.5.1 This Article provides the undertaker with the ability to acquire compulsorily such rights over the land within the Order land or impose restrictive covenants over this land as may be required for any purpose for which that land may be acquired under Article 22. Where the undertaker acquires a right over land or the benefit of a restrictive covenant, it is not required to acquire a greater interest in the land (paragraph (3)).
- 7.5.2 Article 26 includes the power to impose restrictive covenants over land so that the undertaker can avoid having to acquire an interest in land where a restrictive covenant can provide the necessary protections. This is a more proportionate exercise of compulsory acquisition powers and would be exercised, for example, in instances where the undertaker has underground infrastructure or where the undertaker carries out above-ground mitigation works that cannot later then be changed or removed by the landowner.
- 7.5.3 Article 26(2) introduces Schedule 10 (land in respect of which only rights etc may be acquired), which specifies Order land over which the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column 2 of that Schedule.
- 7.5.4 Article 26(4) introduces Schedule 11 (modifications of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) that makes modifications to certain compulsory purchase and compensation enactments to allow landowners to claim compensation where the undertaker has created and acquired new rights over, or imposed restrictions on, land. Without this, the compensation provisions would not apply.
- 7.5.5 Article 26(5) provides that where the undertaker acquires a right or imposes a restriction over the apparatus of a statutory undertaker, it may, with the consent of the Secretary of State, transfer that right or benefit to the statutory undertaker. An example of this power would be where the undertaker requires the apparatus to be diverted or relocated for the purposes of the authorised development and acquires rights over the new alignment.
- 7.5.6 Article 26(6) provides that the exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply if that power were exercised by the undertaker. Article 26(7) provides that the exercise of powers under Article 26 is subject to Article 42 (crown rights).
- 7.5.7 The powers under this Article are provided for under sections 120(3) and (4), together with paragraph 1 of Schedule 5 to the PA 2008, as they relate to the interference with rights over land. Regarding Article 26(3) of the Order specifically, section 126(2) of the PA 2008 (which allows a DCO to modify the application of compensation provisions) is relevant but note that such provisions are modified in the Order only to the extent necessary to ensure that they apply properly to the acquisition of rights, and would not affect the amount of compensation which landowners would be entitled to. This Article follows a similar approach to that taken

in, for example, Article 18 of the **Wrexham Gas Fired Generating Station Order 2017** and Article 18 of the **Triton Knoll Electrical System Order 2016**.

7.6 Article 27 – Private rights

- 7.6.1 This Article is a modified model provision which has appeared in numerous made Orders. It provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the Order. In so far as the Applicant acquires land or creates new rights over land under the Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
- 7.6.2 Paragraph (3) provides that all private rights over land which the undertaker takes temporary possession of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
- 7.6.3 Paragraphs (4) to (7) make provision for compensation and for circumstances where rights are preserved.
- 7.6.4 Paragraph (8) sets out a list of matters deemed to be private rights.
- 7.6.5 Article 27 differs from the model provisions in the following key respects:
- It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land;
 - Paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker;
 - Paragraph (3) is included to clarify the position where the Applicant takes temporary possession of land;
 - Sub-paragraph (6)(a)(i) is amended to also refer to the acquisition of rights or imposition of restrictive covenants; and
 - Paragraph (8) sets out what are considered to be ‘private rights over land’. This is necessary to clarify the nature of the private rights to which this article applies.

7.7 Article 28 – Application of the 1981 Act

- 7.7.1 Article 28 provides for the application of the Compulsory Purchase (Vesting Declarations) Act 1981 (‘the 1981 Act’), containing the vesting procedures for land subject to compulsory purchase. It allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act. Vesting declarations allow title in land concerned to pass to the acquirer more quickly than using the notice to treat procedure. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure. This Article also clarifies that the undertaker will

be a body or person authorised to acquire land for the purposes of the vesting declaration procedure.

- 7.7.2 In particular, the Article modifies specific provisions of the Acquisition of Land Act 1981 so that it is consistent with the five-year timeframe under Article 25 (time limit for exercise of authority to acquire land compulsorily) of the Order for the exercise of compulsory acquisition powers in relation to the Order land (compared to the usual timeframe of three years for vesting declarations to be executed).
- 7.7.3 The modification to the Acquisition of Land Act 1981 under Article 28 is provided for under section 120(5)(a) of the PA 2008 which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order). Article 28 of the Order follows the approach in Article 26 of the **Silvertown Tunnel Order 2018**, Article 28 of the **M20 Junction 10a Development Consent Order 2017** and Article 22 of the **Longfield Solar Farm Order 2023**.

7.8 Article 29 – Acquisition of subsoil and airspace only

- 7.8.1 Article 29 authorises the undertaker to acquire the subsoil (as defined in Article 2) and airspace, or rights in it, of any land acquired under Article 22 (compulsory acquisition of land) instead of acquiring the whole of the land.
- 7.8.2 Under certain circumstances it may be necessary for the undertaker to only acquire a stratum of land below the surface (for example for the construction of underground cabling) and therefore Article 29 confirms that where any subsoil is required, the undertaker is not required to acquire any greater interest in any other part of the land (i.e. the sub-surface). The purpose of Article 29 is to minimise so far as is possible the extent of interests the undertaker needs to acquire, resulting in less impact on landowners and lower compensation payments.
- 7.8.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the PA 2008, together with paragraph 1 of Schedule 5 to the PA 2008, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in other made DCOs, such as Article 26 of the **Port of Tilbury (Extension) Order 2019**, Article 22 of the **Wrexham Gas Fired Generating Station Order 2017** and Article 30 of the **Hinkley Point C (Nuclear Generating Station) Order 2013**.

7.9 Article 30 – Modification of the 1965 Act

- 7.9.1 Articles 30(2) to (5) amend the provisions of the 1965 Act so they are consistent with the terms and timeframes under the Order and the PA 2008. Article 30(6) makes it clear that the counter-notice process under Part 2 of Schedule 2A to the 1965 Act, introduced by the Housing and Planning Act 2016, does not apply to the temporary possession or use of land under Articles 21 (authority to survey and investigate the land), 31 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development) or 39 (use of subsoil and airspace within the Order limits) of this Order. This is because Schedule 2A has two processes for the serving and

determination of counter-notices depending on whether or not the acquiring authority is in possession of the land. This interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under Articles 21, 31, 33 or 39.

- 7.9.2 Article 30 modifies the provisions of Part 1 of the 1965 Act as applied to the Order by section 125 of the PA 2008. The powers under this Article are provided for under section 120(5)(a) of the PA 2008 which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order). Similar provisions can be found in Article 25 of the **Silvertown Tunnel Order 2018** and Article 25 of the **Longfield Solar Farm Order 2023**.

7.10 Article 31 – Temporary use of land for carrying out the authorised development

- 7.10.1 The purpose of this Article is to allow the temporary possession of any Order land in respect of which no notice to treat has been served or vesting declaration made.
- 7.10.2 The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus Article 22 (compulsory acquisition of land) with Article 31 makes it possible for the undertaker to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Project as constructed. The benefits of this are reduced impacts on landowners and lower costs to the undertaker, which is in the public interest. In line with this, subparagraph (1)(e) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.
- 7.10.3 Paragraph (2) requires the undertaker to give at least 28 days' notice prior to entering on and taking temporary possession of land under paragraph (1).
- 7.10.4 Paragraph (3) provides that the undertaker may not (without the agreement of the owner of the land) remain in possession under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry or vesting declaration in relation to that land.
- 7.10.5 Paragraph (4) provides that, subject to certain exceptions, the undertaker will be required to remove works from land subject to temporary possession and restore that land to the reasonable satisfaction of the owner of the land before giving up possession of the land.
- 7.10.6 Paragraph (5) provides that the undertaker must pay compensation to the owners and occupiers of land of which temporary possession has been taken for any loss or damages arising from the temporary possession. Paragraph (6) provides that disputes in relation to compensation are to be determined under Part 1 of the Land Compensation Act 1961.

- 7.10.7 Paragraph (7) provides that any dispute about removal of works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land. Paragraph (8) provides that this Article does not affect liability to pay compensation under section 152 of the PA 2008 or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- 7.10.8 Paragraph (9) clarifies that the undertaker is not required to acquire any land, or interest in land, that it takes temporary possession of. Paragraph (10) provides that the provisions of the 1965 Act will apply to the refusal by the owner of the land to give possession of the land to the undertaker under Article 31. Lastly, paragraph (11) clarifies that the power to take temporary possession of land under paragraph (1) may be exercised more than once in relation to the same parcel of land.
- 7.10.9 Similar temporary possession provisions have been included in a large number of made DCOs, including the **Southampton to London Pipeline Development Consent Order 2020** (Article 30), the **Great Yarmouth Third River Crossing Development Consent Order 2020** (Article 35), the **Lake Lothing (Lowestoft) Third Crossing Order 2020** (Article 33), the **M25 Junction 28 Development Consent Order 2022** (Article 34) and the **Sizewell C (Nuclear Generating Station) Order 2022 (Article 39)**.

7.11 Article 32 – Time limit for exercise of authority to temporarily use land for carrying out the authorised development

- 7.11.1 This Article provides that the undertaker may not enter land pursuant to the power of temporary possession in Article 31 (temporary use of land for carrying out the authorised development) at any time after five years from the day on which the Order is made. However, where temporary possession is taken during this period, the undertaker may retain possession after the expiry of this period.
- 7.11.2 This Article is similar in effect to a number of made DCOs and has precedent in Article 40 of the **Sizewell C (Nuclear Generating Station) Order 2022** (as with that DCO, this time limit is provided as a standalone Article, separate from the Article relating to the time limits for exercising powers of compulsory acquisition).

7.12 Article 33 – Temporary use of land for maintaining the authorised development

- 7.12.1 This Article provides the undertaker with the power to enter onto, and temporarily occupy, any Order land for the purposes of maintaining the authorised development, without having to acquire a permanent interest in the land.
- 7.12.2 Before the undertaker can occupy the land, it must provide the landowner and any occupier with not less than 28 days' notice. 28 days' notice is not required if there is a potential safety risk, in which scenario the undertaker may service such notice as reasonably practicable. The undertaker is only permitted to remain in possession of the land for as long as reasonably necessary to carry out the relevant maintenance.

Before it gives up its occupation of the land, the undertaker must reinstate the land to the satisfaction of the landowner.

- 7.12.3 Paragraph (7) provides for the undertaker to pay compensation to the owners and occupiers of land of which temporary possession is taken under this Article for any loss or damage arising from possession.
- 7.12.4 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the first export date 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**. However, in order to be able to carry out the landscaping commitments set out in the landscape and ecological management plan, the maintenance period has been extended to the period in the landscape and ecological management plan approved pursuant to Requirement 8 (see paragraph 10.16 below). A similar provision was included in the **North Wales Wind Farm Connection Order 2016**, the **Drax Power (Generating Stations) Order 2019** and the **Hornsea Three Offshore Wind Farm Order 2020**.

7.13 Article 34 – Statutory undertakers

- 7.13.1 This Article allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or to interfere with their apparatus by removing or repositioning the apparatus within the Order land.
- 7.13.2 The general powers in this Article are subject to Schedule 13 (protective provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus. This power, working alongside the controls and processes set out in Schedule 13 (protective provisions), is considered to be necessary and proportionate to deliver the Project expediently without prejudicing the interests of any affected statutory undertakers.
- 7.13.3 The scope of the undertaker's powers under this Article includes the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under Article 26 (compulsory acquisition of rights and imposition of restrictive covenants).
- 7.13.4 Similar provision can be found in other made DCOs including Article 42 of the **Sizewell C (Nuclear Generating Station) Order 2022** and Article 34 of the **Southampton to London Pipeline Development Consent Order 2020**.

7.14 Article 35 – Acquisition of wayleaves, easements and other rights

- 7.14.1 This Article gives effect to Schedule 12 (acquisition of wayleaves, easements and other rights), which empowers the undertaker to seek to compulsorily acquire wayleaves, easements or other rights necessary to divert or relocate utilities for the purpose of the authorised development. The drafting itself draws upon the drafting of equivalent powers which benefit electricity, gas, water, sewerage and telecoms undertakers under the Electricity Act 1989, the Gas Act 1986, the Water Industry Act 1991 and the Communications Act 2003. These existing statutory powers have been adapted only insofar as necessary to enable the undertaker to act on behalf of such statutory undertakers in seeking wayleaves through a compulsory process should they be needed in future. Save for the fact that all consideration or compensation due to landowners is required to be payable by the undertaker (rather than the relevant statutory undertaker), the processes involved are otherwise unchanged, and continue to reflect the statutory requirements and safeguards on the use of such powers.
- 7.14.2 Experience has shown on other major infrastructure projects (such as Hinkley Point C) that statutory undertakers can be reluctant to exercise their own powers to acquire easements or wayleaves even where this would facilitate the undertaker's delivery of a project, due to the time, expense and compensation involved. The proposed Article would provide an option which may be useful in some circumstances to both the undertaker and the relevant statutory undertaker, and may only be exercised where the relevant statutory undertaker gives their consent to the undertaker. It would facilitate the timely and efficient implementation of the authorised development, and the diversion or relocation of utilities where required, both of which are in the public interest.
- 7.14.3 This Article has precedent at Article 44 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

7.15 Article 36 – Recovery of costs of new connections

- 7.15.1 Article 36 provides that any owner or occupier of properties that are affected by the removal of any apparatus under Article 34 (statutory undertakers) may recover the costs of any new connections from the undertaker.
- 7.15.2 Article 36(3) clarifies that this Article does not apply to apparatus to which Part 3 of the 1991 Act applies as separate compensation provisions are provided under those provisions.
- 7.15.3 This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the PA 2008, which states that a DCO can provide for the removal, disposal and re-siting of apparatus. Precedent for this Article can be found in other made DCOs, such as Article 35 of the **M20 Junction 10a Development Consent Order 2017**, Article 29 of the **North London Heat and Power Generating Station Order 2017**, Article 33 of the **National Grid (Richborough Connection Project) Order 2017** and Article 45 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

7.16 Article 37 – No double recovery

- 7.16.1 This Article provides that compensation will not be paid under both the Order and other compensation regimes in respect of the same loss or damage. It is required so that the Order includes the principle of equivalence, namely that a claimant in a compulsory purchase matter will be compensated for no more than and no less than their loss. This principle is long established and no part of the compensation code conflicts with this principle.
- 7.16.2 The ability to impose this restriction in a DCO is provided for under section 120(5)(a) of the PA 2008. This Article is substantively similar to Article 35 of the **North London Heat and Power Generating Station Order 2017**, Article 48 of the **National Grid (Hinkley Point C Connection Project) Order 2016**, Article 39 of the **Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014** and Article 46 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

7.17 Article 38 – Protective provisions

- 7.17.1 Article 38 is required to give effect to the protective provisions in Schedule 13, which protect the interests of third parties (such as gas, water and electricity undertakers) in the construction, operation and maintenance and decommissioning of the authorised development. Schedule 13 sets out the procedures that will apply in respect of the removal or retention of apparatus within the Order limits as well as compensation provisions.
- 7.17.2 Article 38 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 10 of Schedule 5 to the PA 2008, which states that a DCO can provide for the protection of the property or interest of any person. The provisions included are substantially identical to protective provisions in a number of made DCOs, including Article 47 of the **Sizewell C (Nuclear Generating Station) Order 2022**, Article 20 of the **Little Crow Solar Park Order 2022** and Article 40 of the **Longfield Solar Farm Order 2023**.

7.18 Article 39 – Use of subsoil and airspace within the Order limits

- 7.18.1 Article 39 allows the undertaker to enter on, appropriate and use as much of the subsoil of or airspace over any land within the Order limits as is required for the authorised development or any other ancillary purpose. This right is necessary as landowners also own the subsoil below and airspace above their land. Including this power in the Order avoids the need to obtain a licence in the event that the undertaker occupies subsoil below or airspace above the Order limits that it does not own, or have an interest in.
- 7.18.2 Article 39(2) clarifies that in exercising its rights under the Article, the undertaker will not be required to acquire any part of the land or any easement of right in the land. Under Article 39(4), compensation is payable to any persons affected by the undertaker exercising its powers under this Article.

- 7.18.3 Article 39 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 2 of Schedule 5 to the PA 2008, which states that a DCO can provide for the creation of new rights over land. Article 49 follows Article 25 of the **North London Heat and Power Generating Station Order 2017** and Article 48 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

8 Part 7 – Miscellaneous and General

8.1 Article 40 – Removal of human remains

- 8.1.1 Article 40 disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. Article 40 is based upon Article 17 of the model provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development. This has been included as the undertaker has not been able conclusively to rule out the presence of human remains within the Order Limits given the history of the area.
- 8.1.2 This Article departs from the model provision in that paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the **Crossrail Act 2008**, the **A303 (Amesbury to Berwick Down) Order 2020** and the **Little Crow Solar Park Order 2022**.
- 8.1.3 Article 40(16) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950. The drafting in Articles 40(15) and (16) has precedent in the **Little Crow Solar Park Order 2022**.
- 8.1.4 Taken together, the effect of Article 40 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single Article in the Order. It is required by the undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project. Precedent for the Article is provided by Article 20 of the **River Humber Gas Pipeline Replacement Order 2016** and Article 12 of the **Little Crow Solar Park Order 2022**.

8.2 Article 41 – Operational land for the purposes of the 1990 Act

- 8.2.1 Article 41 is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be 'operational land' under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.

8.3 Article 42 – Crown rights

- 8.3.1 Article 42 contains a saving for Crown rights. It protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that written consent from the Crown is required where any land,

hereditaments or rights are to be taken, used, entered or interfered with as a result of granting the Order.

- 8.3.2 The Article is standard across DCOs where Crown land is included within in the Order limits, including Article 87 of the **Sizewell C (Nuclear Generating Station) Order 2022**, Article 40 of the **Manston Airport Development Consent Order 2022** and Article 36 of the **M25 Junction 28 Development Consent Order 2022**.

8.4 Article 43 – Certification of plans, etc.

- 8.4.1 Article 43 requires the undertaker to submit copies of specific plans and documents to the Secretary of State to be certified as true copies following the making of the Order. The Article introduces Schedule 14 (documents and plans to be certified) which contains the list of documents and plans that must be certified by the Secretary of State under the Article. This Article provides that any plans and documents that are certified under this Article can be used as evidence in any proceedings.
- 8.4.2 The Article has precedent in a number of DCOs including Article 42 of the **A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016**, Article 45 of the **Southampton to London Pipeline Development Consent Order 2020**, Article 82 of the **Sizewell C (Nuclear Generating Station) Order 2022** and Article 14 of the **Little Crow Solar Park Order 2022**.

8.5 Article 44 – Service of notices

- 8.5.1 Article 44 sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This Article is necessary as the service of notice provisions under sections 229 and 230 of the PA 2008 would not apply to notices served under a DCO. Article 44 follows the approach taken in Article 44 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 81 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

8.6 Article 45 – Felling or lopping of trees or removal of hedgerows

- 8.6.1 Article 45 is based on a model provision and is included in numerous made DCOs, including, for example, Articles 35 and 36 of the **Sunnica Energy Farm Order 2024**. It provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or constituting a danger for persons using the authorised development. The Article also allows the undertaker to remove those hedgerows specified in Schedule 15 (hedgerows) along with the specific purpose of each removal.
- 8.6.2 Paragraphs (6) to (9) provide that the undertaker may fell or lop or cut back the roots of any tree which is subject to a Tree Preservation Order ('TPO') to prevent it

obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development. Compensation is provided for any loss or damage is caused. The effect of these paragraphs is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. This approach to TPOs has precedent in the **Cleve Hill Solar Park Order 2020** and the **Longfield Solar Farm Order 2023**.

8.7 Article 46 – Arbitration

- 8.7.1 Article 46 is an arbitration provision and it is a departure from the relevant model provision. This drafting, and that in the associated Schedule 16 (arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019**, the **Cleve Hill Solar Park Order 2020** 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.
- 8.7.2 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.
- 8.7.3 It applies Schedule 16 (arbitration rules) to the Order, which sets out further detail of the arbitration process. In addition, Article 46(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.

8.8 Article 47 – Requirements, appeals, etc.

- 8.8.1 Article 47 (which refers to Part 2 of Schedule 2 to the Order) provides a formal process for dealing with the requirements and means that the undertaker has a right of appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or not determined. Inclusion of this Article and procedure is considered necessary to ensure the expedient delivery of the authorised development. This has been included in a number of made DCOs such as the **East Anglia ONE Offshore Wind Farm Order 2014**, the **Cleve Hill Solar Park Order 2020** and the **Little Crow Solar Park Order 2022**.

8.9 Article 48 – Application of landlord and tenant law

- 8.9.1 Article 48 is a model provision which overrides landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole or any part of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, operation, maintenance or decommissioning of the authorised development. It is preceded in most made DCOs.

8.10 Article 49 – Guarantees in respect of payment of compensation

- 8.10.1 Article 49 provides that the undertaker must not exercise certain powers relating to the compulsory acquisition of land and interests in the land without having first put in place either a guarantee or an alternative form of security, the form and amount of which must be approved by the Secretary of State. Precedent for this provision is found in numerous made DCOs, including the **Longfield Solar Farm Order 2023**.

9 Schedules

9.1 Overview

9.1.1 Schedules 1 to 16 are summarised below.

9.2 Schedule 1 – Authorised development

9.2.1 Schedule 1 specifies numbered works which comprise the authorised development and other associated development works. For a summary of these works see section 2 of this Explanatory Memorandum.

9.2.2 The numbered works should be read alongside the **Works Plans (Doc Ref. 2.3(B))**. All of the authorised development falls within the definition of a ‘generating station’ for the purposes of sections 14 and 15 of the PA 2008, or may be lawfully authorised as part of the DCO on the basis that it meets the definition of ‘associated development’ under the PA 2008 and related guidance.

9.2.3 Schedule 1 also includes a catch-all provision which sets out a number of minor works that are common to a number of work packages, under the heading ‘Site Wide Works’. These include works such as landscaping and drainage, earthworks and utilities installation.

9.3 Schedule 2 – Requirements

9.3.1 Section 120(1) of the PA 2008 provides that a DCO may impose requirements in connection with the development for which consent is granted. Schedule 2 sets out the requirements which are proposed to control the construction, operation, maintenance and decommissioning of the authorised development. The requirements closely relate to the mitigation set out in the **Environmental Statement (Doc Ref. 5.1 – 5.4)** and ensure that the mitigation relied upon for the conclusions of the environmental impact assessment is secured. The Applicant considers that each of the requirements is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects, such that each should be included in the Order.

9.3.2 Many of the requirements require submission of details for approval by the local planning authority. Those requirements are drafted with a view to enabling the undertaker to obtain approval for part of the authorised development and not require it to discharge the requirement for the whole of the authorised development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker and provides an appropriate balance between development not starting until details are approved and allowing other parts of the authorised development (where details are already approved) to be constructed.

9.3.3 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the undertaker will

construct, operate, maintain or decommission the authorised development to be submitted for approval by the local planning authority. The model provisions have been adapted throughout to provide that it is for the local planning authority to approve the relevant document (rather than, as in the model provisions, the Infrastructure Planning Commission).

- 9.3.4 Requirement 1 – Time Limit: The authorised development must not commence later than five years from the date of the Order coming into force.
- 9.3.5 Requirement 2 – Expiry of development consent: This sets a time-limit on the authorised development of 40 years from the first export date, with the undertaker to provide notification of the first export date from the authorised development within one month of its occurrence.
- 9.3.6 Requirement 3 – Phases of authorised development: The authorised development must not be carried out until a scheme setting out the phases and sequencing of construction has been submitted to and approved by the local planning authority. The authorised development must be implemented in accordance with the approved phasing scheme.
- 9.3.7 Requirement 4 – Detailed design approval: No phase of the authorised development may be commenced until the following details for that phase have been submitted to and approved by the local planning authority:
- a) layout;
 - b) scale;
 - c) proposed finished ground levels;
 - d) external appearance;
 - e) hard-surfacing materials;
 - f) vehicular and pedestrian access, parking and circulation areas;
 - g) refuse or other storage units, signs and lighting;
 - h) power and communications cables and pipelines;
 - i) fencing and other means of enclosure;
 - j) security measures; and
 - k) acoustic barriers.
- 9.3.8 The details submitted must be in accordance with the **Design Principles (Doc Ref. 7.5(A))** (which is a certified document). The authorised development in each phase must be carried out in accordance with the approved details for that phase.

- 9.3.9 Requirement 5 – Battery safety management plan: Prior to commencement of the BESS within Work No. 2, a management plan to ensure battery safety management must be submitted to and approved by the local planning authority in consultation with Kent Fire and Rescue Service. The Battery Safety Management Plan ('BSMP') must either accord with the **Outline Battery Safety Management Plan (Doc Ref. 7.16)** [\[APP-161\]](#) or detail such changes as required (which may be applicable in an instance where best practice battery safety technology and processes have changed to such an extent by the time the authorised development is implemented that the BSMP cannot be said to 'accord' with the outline version). The BSMP approved pursuant to sub-paragraph (1) must be implemented as approved.
- 9.3.10 Requirement 6 – Construction environmental management plan: No phase of the authorised development may commence until a construction environmental management plan ('CEMP') (which must be in accordance with the **Outline Construction Environmental Management Plan (Doc Ref. 7.8(A))**) for that phase has been submitted to and approved by the local planning authority. All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CEMP for that phase.
- 9.3.11 Requirement 7 – Construction traffic management plan: No phase of the authorised development may commence until a construction traffic management plan ('CTMP') (which must be in accordance with the **Outline Construction Traffic Management Plan (Doc Ref. 7.9(A))**) for that phase has been submitted to and approved by the local planning authority in consultation with Kent County Council (as the relevant highway authority). All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CTMP for that phase.
- 9.3.12 Requirement 8 – Landscape and biodiversity: The authorised development must not be commenced until a Biodiversity Design Strategy that provides details of how the landscape and biodiversity enhancement works provided as part of the authorised development will comply with the Biodiversity Net Gain Requirement has been submitted to and approved by the local planning authority in consultation with Kent County Council and the relevant statutory nature conservation body (Natural England). The Biodiversity Net Gain Requirement is a requirement to secure a biodiversity net gain of at least 100% for habitat units, at least 10% for hedgerow units and at least 10% for river units. No phase of the authorised development may be commenced until a Landscape and Ecological Management Plan ('LEMP') covering that phase has been submitted to and approved by the local planning authority. The LEMP for each phase must be in accordance with the **Outline Landscape and Ecological Management Plan (Doc Ref. 7.10(A))**, the approved Biodiversity Design Strategy and the **Design Principles (Doc Ref. 7.5(A))** and provide details of the proposed hard and soft landscape and biodiversity enhancement works. All landscape and biodiversity enhancement works associated with the authorised development in each phase must be carried out in accordance with the approved LEMP for that phase. For the purposes of this requirement, the definition of "commence" in Article 2 includes part (b) of that definition (site clearance and/or vegetation works) of the site enabling works.

- 9.3.13 Requirement 9 – Archaeology: No phase of the authorised development may commence until the details listed in sub-paragraph (2) for that phase have been submitted to and approved by the local planning authority in consultation with Kent County Council, such details being generally in accordance with the **Archaeological Management Strategy (Doc Ref. 7.17)**. [\[APP-162\]](#). Any archaeological works or programme of archaeological investigation in a phase must be carried out in accordance with the approved details for that phase.
- 9.3.14 Requirement 10 – Public rights of way: No phase of the authorised development incorporating any part of a PRow to be temporarily closed or permanently stopped up pursuant to Article 18 (public rights of way – stopping up and vehicular use on public rights of way) may be commenced until a rights of way and access strategy ('RoWAS') for the phase has been submitted to and approved by the local planning authority in consultation with Kent County Council. The RoWAS must be generally in accordance with the **Outline Rights of Way and Access Strategy (Doc Ref. 7.15(A))**. The approved RoWAS for each phase must be implemented as approved for that phase.
- 9.3.15 Requirement 11 – Operational surface water drainage strategy: Prior to the commencement of any phase of the authorised development, an operational surface water drainage strategy ('OSWDS') (in accordance with the **Outline Operational Surface Water Drainage Strategy (Doc Ref. 7.14(A))**) for that phase must be submitted to and approved by the local planning authority in consultation with Kent County Council. The OSWDS must be implemented as approved.
- 9.3.16 Requirement 12 – Operational management plan: Prior to the operation of the authorised development, an operational management plan ('OMP') (in accordance with the **Outline Operational Management Plan (Doc Ref. 7.11(A))**) must be submitted to and approved by the local planning authority. The OMP must be implemented as approved.
- 9.3.17 Requirement 13 – Operational noise mitigation and monitoring scheme: Prior to the operation of the authorised development that comprises Work No. 2 or Work No. 3, an operational noise mitigation and monitoring scheme ('ONMMS') must be submitted to and approved by the local planning authority. The ONMMS must include details of the plant specification, noise mitigation measures and monitoring procedures and demonstrate that, with those noise mitigation measures and monitoring procedures in place, the authorised development is not likely to result in any materially new or materially different noise effects from those assessed in **ES Volume 2, Chapter 14: Noise (Doc Ref. 5.2)** [\[APP-038\]](#). The ONMMS must be implemented as approved.
- 9.3.18 Requirement 14 – Decommissioning and site restoration: Decommissioning works must commence no later than the 40th anniversary of the first export date. Prior to commencement of any decommissioning works for any part of the authorised development, a decommissioning environmental management plan ('DEMP') and a decommissioning traffic management plan ('DTMP') for that part must be submitted to and approved by the local planning authority for its approval, in consultation with Kent County Council. The DEMP and DTMP must be in accordance with the **Outline**

Decommissioning Environmental Management Plan (Doc Ref. 7.12) [\[APP-157\]](#) and Outline Decommissioning Traffic Management Plan (Doc Ref. 7.13(A)), respectively. The DEMP and DTMP must be implemented as approved for the relevant part of the authorised development.

- 9.3.19 Requirement 15 – Requirement for written approval: Where any approval, agreement or confirmation is required then such approval, agreement or confirmation must be provided in writing.
- 9.3.20 Requirement 16 – Amendments to approved details: With respect to the documents certified under article 43 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement, the undertaker may submit to the relevant local authority for approval any amendments to such documents, plans, details or schemes and, following approval by the local planning authority, the relevant document, plan, detail or scheme is to be taken to include the approved amendments. Approval for such amendments must not be given except where it has been demonstrated that this is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the **Environmental Statement (Doc Ref. 5.1 – 5.4)**.
- 9.3.21 Schedule 2, Part 2 (procedure for discharge of requirements) sets out how requirements are to be discharged and sets out how the appeal process will run if a decision to discharge a requirement was challenged. Please see paragraph 8.8.1 above for further details.

9.4 Schedule 3 – Legislation to be disapplied

- 9.4.1 Schedule 3 sets out the legislative provisions that will not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the authorised development. This Schedule relates to Article 8 (Disapplication, application and modification of legislative provisions). Please see paragraph 4.17 above for further details.

9.5 Schedule 4 – Streets subject to street works

- 9.5.1 This Schedule sets out the streets that are to be subject to street works. The Schedule relates to Article 11 (Street works and temporary closure of streets and private means of access).

9.6 Schedule 5 – Alteration of Streets

- 9.6.1 This Schedule sets out the streets that are to be permanently altered and maintained by the highway authority or street authority. This Schedule relates to Article 12 (Power to alter layout, etc., of streets).

9.7 Schedule 6 – Access to Works

9.7.1 This Schedule sets out the permanent means of accesses to works to the authorised development. The Schedule relates to Article 15 (Access to works).

9.8 Schedule 7 – Traffic regulation measures

9.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 17 (Traffic regulation measures).

9.9 Schedule 8 – Public rights of way

9.9.1 Schedule 8 sets out:

- The PRow which are to be permanently stopped up pursuant to the Order in accordance with Article 18 (Public rights of way – stopping up and vehicular use on public rights of way) and for which a substitute is to be provided (Part 1);
- The PRow which are to be temporarily stopped up pursuant to the Order in accordance with Article 18 (Public rights of way – stopping up and vehicular use on public rights of way) and for which a substitute is to be provided (Part 2); and
- The PRow which are to be permanently stopped up pursuant to the Order in accordance with Article 18 and for which no substitute is to be provided (Part 3).

9.10 Schedule 9 – Status of public rights of way created or improved

9.10.1 Schedule 9 sets out the new status of any improved or existing PRow. This Schedule relates to Article 19 (Status of public rights of way created or improved).

9.11 Schedule 10 - Land in respect of which only rights etc may be acquired

9.11.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the **Land Plans (Doc Ref. 2.1) [APP-007]** and described in the **Book of Reference (Doc Ref. 4.1) [APP-019]**, the Work No(s). to which the rights relate is set out in column 2, and the nature of the rights in column 3 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 26 (Compulsory acquisition of rights and imposition of restrictive covenants).

9.12 Schedule 11 - Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

9.12.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the **Longfield Solar Farm Order 2023**. This has

been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 26 (Compulsory acquisition of rights and imposition of restrictive covenants).

9.13 Schedule 12 – Acquisition of Wayleaves, Easements and Other Rights

9.13.1 This Schedule makes provision for the undertaker to act on behalf of statutory undertakers in acquiring wayleaves, easements or other rights for the diversion or relocation of electricity, gas, water, sewerage or telecommunication apparatus. It relates to Article 35 (Acquisition of wayleaves, easements and other rights).

9.14 Schedule 13 – Protective Provisions

9.14.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This Schedule relates to Article 38 (protective provisions) and contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2).

9.14.2 In addition, each of Parts 3 to 7 contain provisions for the benefit of a particular body. The relevant bodies are as follows:

- a) Southern Water Services Limited is protected by Part 3;
- b) South Eastern Power Networks Plc is protected by Part 4;
- c) National Grid Electricity Transmission Plc is protected by Part 5;
- d) National Grid Interconnectors Limited is protected by Part 6; and
- e) Network Rail Infrastructure Limited is protected by Part 7.

9.14.3 As at the date of the application, a number of the sets of bespoke protective provisions are still subject to negotiation between the Applicant and the relevant statutory undertaker. Further details of the latest status of these negotiations are set out in Table 3 in the **Schedule of Negotiations (Doc Ref. 4.4(A))**.

9.15 Schedule 14 – Documents and plans to be certified

9.15.1 This Schedule contains a list of the documents and plans that must be certified pursuant to Article 43 (certification of plans, etc). The Schedule has been amended to include a Part 2, which lists substitute documents that have been submitted following acceptance of the Application. This has been updated to reflect amendments to and substitutions of certified documents made at Deadline 1.

9.16 Schedule 15 – Hedgerows

9.16.1 This Schedule sets out the sections of hedgerows to be removed pursuant to Article 45 (felling or lopping of trees or removal of hedgerows), listing at Part 1 the important hedgerows to be removed, and at Part 2 other hedgerows to be removed. The

Schedule refers out to the **Vegetation Removal Plan (Doc Ref. 2.8)** [\[APP-014\]](#) which shows the locations of these removals and is a certified document.

9.17 Schedule 16 – Arbitration Rules

- 9.17.1 This Schedule relates to Article 46 (arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the urgent need for new electricity generating capacity, identified in the Overarching National Policy Statement for Energy (EN-1) (designated January 2024) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) (designated January 2024), it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.
- 9.17.2 Schedule 16 refers to the person who commenced the arbitration as the ‘claimant’ and the other party as the ‘respondent’.
- 9.17.3 The timetable for the process is as follows:
- 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.
 - 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.
 - Within 7 days of receipt of the respondent's documentation the claimant may make a statement of reply.
- 9.17.4 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

10 Glossary

10.1.1 This section sets out the key terms used in this Explanatory Memorandum.

Table 10.1: Glossary of terms

Term	Definition
1965 Act	The Compulsory Purchase Act 1965.
1981 Act	The Compulsory Purchase (Vesting Declarations) Act 1981.
1990 Act	The Town and Country Planning Act 1990.
1991 Act	The New Roads and Street Works Act 1991.
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
Applicant	EPL 001 Limited (company number: 12444050; registered address: 2nd Floor, Regis House, 45 King William Street, London, United Kingdom, EC4R 9AN; registered in England and Wales), which is a subsidiary of Evolution Power Limited.
Application	The application for a DCO to be submitted pursuant to the PA 2008 by the Applicant for the Project.
associated development	Defined in section 115(2) of the PA 2008 as development which is associated with the principal development (i.e. the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
development consent order (DCO)	Development consent is required pursuant to the PA 2008 for NSIPs. A development consent order is the order which grants development consent. For the purposes of this Application, this is the Order.
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
Environmental Statement	The Environmental Statement (Doc Ref. 5.1 – 5.4) submitted as part of the Application, as required by the EIA Regulations.

Term	Definition
Explanatory Memorandum	This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks (Doc Ref. 3.3(B)).
Land Plans	The plans certified by the Secretary of State as the land plans for the purposes of article 43 of the Order (Doc Ref. 2.1) [APP-007] .
local planning authority	Ashford Borough Council
MW	Megawatt, which is a measure of energy.
NSIP	Nationally Significant Infrastructure Project pursuant to the PA 2008.
Order	The Stonestreet Green Solar Order 202[], being the DCO that would be made by the Secretary of State authorising the Project, a draft of which has been submitted as part of the Application (Doc Ref. 3.1(B)).
Order land	The land over which the Order would authorise compulsory acquisition and temporary possession, as shown on the Land Plans (Doc Ref. 2.1) [APP-007] .
Order limits	The limits of the land to which the Application relates and shown on the Works Plans (Doc Ref. 2.3(B)) .
PA 2008	The Planning Act 2008.
Project	The Project comprises the construction, operation, maintenance, and decommissioning of solar PV arrays and energy storage, together with associated infrastructure and an underground cable connection to the existing National Grid Sellindge Substation. The Project is also known as 'Stonestreet Green Solar'.
PV	Photovoltaic.
Secretary of State	The Secretary of State for Energy Security and Net Zero who will determine the Application.
Site	The land at Aldington to the south-east of Ashford in Kent on which the Project will be carried out. The site is entirely within the administrative boundary of Kent County Council and Ashford Borough Council.

Term	Definition
Statement of Reasons	The Statement of Reasons (Doc Ref. 4.2(A)) which accompanies the Application and sets out the justification for the acquisition or interference with the Order land.
Works Plans	The plans, which accompany the Application, showing the Order limits and the numbered works that form the Project and as described in Schedule 1 to the Order (Doc Ref. 2.3(B)).