



# **DRAFT EXPLANATORY MEMORANDUM: 3.2**

**DECARBONISATION**

## **Cory Decarbonisation Project**

PINS Reference: EN010128

**May 2025**

Revision B

## CORY DECARBONISATION PROJECT ORDER 202\*

---

### EXPLANATORY MEMORANDUM

---

#### 1. GLOSSARY

<b>1968 Act</b>	The Port of London Act 1968
<b>1990 Act</b>	The Town and Country Planning Act 1990 (as amended).
<b>1991 Act</b>	The New Roads and Street Works Act 1991 (as amended).
<b>1994 Agreement</b>	The agreement under section 106 of the Town and Country Planning Act 1990 dated 21 January 1994 between (1) The Mayor and Burgesses of the London Borough of Bexley and (2) Thames Water Utilities Limited.
<b>2005 Agreement</b>	The agreement made under section 106 (planning obligations) of the 1990 Act between the Mayor and Burgesses of the London Borough of Bexley, Tilfen Land Limited and Gallions Housing Association Limited dated 24 January 2005.
<b>2008 Act</b>	The Planning Act 2008 which is the legislation that governs applications for nationally significant infrastructure projects and Projects of National Significance, including preapplication consultation and publicity, the examination of applications and decision making by the Secretary of State.
<b>Access and Rights of Way Plans</b>	The plans, which accompany the Application, referred to in Schedule 13 of the Order ( <b>AS-008</b> ).
<b>Applicant</b>	Cory Environmental Holdings Limited (company number 05360864), also referred to as "Cory". In the Order, the Applicant is referred to as the "undertaker".

**APFP Regulations**

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

**Application**

The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Scheme. A DCO is required pursuant to the Section 35 Direction given by the Secretary of State pursuant to section 35(1) of the 2008 Act. The Section 35 Direction states that that the Proposed Scheme should be treated as development for which development consent under the 2008 Act is required, as a Project of National Significance (PNS).

**Associated Development to the PNS development**

Defined under section 115(2) of the 2008 Act as development which is associated with the principal development (i.e. the PNS) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.

**Authorised navigational channel of the river Thames**

The authorised navigational channel of the river Thames located within the boundaries of the authorised navigational channel shown on the works plans.

**Book of Reference**

The Book of Reference (**as submitted at Deadline 7**), which accompanies the Application (and which will be updated throughout the Examination), which is a reference document providing details of all land ownership interests within the Order limits with reference to the Land Plans (**REP4-003**).

**Carbon Capture Facility**

Infrastructure to capture 95% of CO<sub>2</sub> emissions from Riverside 1 and 95% of CO<sub>2</sub> emissions from Riverside 2 once operational, which is equivalent to approximately 1.3Mt CO<sub>2</sub> per year.

**Cory**

Cory Environmental Holdings Limited (Company number 05360864), the Applicant for the DCO. In the Order, Cory is referred to as the “undertaker”.

**Deemed Marine Licence (DML)**

A Deemed Marine Licence is required as the Proposed Scheme involves activities which are licensable under Part 4 of the Marine and Coastal Access Act 2009, namely the Proposed Jetty and its related

	dredging. This states that “No person may (a) carry on a licensable marine activity, or (b) cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority”.
<b>DCO</b>	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a PNS.
<b>EIA</b>	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Scheme undertaken in accordance with the EIA Regulations.
<b>EIA Regulations</b>	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of projects consented under the 2008 Act must be carried out and the procedures that must be followed.
<b>Environmental Statement</b>	The Environmental Statement ( <b>APP-050 – APP-120</b> , as amended during Examination) which accompanies the Application, documenting the findings of the EIA.
<b>Explanatory Memorandum</b>	This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks.
<b>Extended Crossness Local Nature Reserve (LNR)</b>	The proposed extension of a network of ditches and open water, scrub and rough grassland that is Crossness Local Nature Reserve to incorporate the Mitigation and Enhancement Area.
<b>Land Plans</b>	The plans which accompany the Application, showing the Order ( <b>REP4-003</b> ).
<b>London Borough of Bexley (LBB)</b>	The local authority in whose administrative area the Proposed Scheme is located. In the Order, LBB is defined as the “relevant planning authority” and the “relevant highways authority”.
<b>Mitigation and Enhancement Area</b>	Land within the Site identified to provide habitat, recreation and access mitigation, compensation and enhancement (including). The Mitigation and

	Enhancement Area provides a valuable opportunity to improve access for users of the Crossness Local Nature Reserve (LNR).
<b>Model Provisions</b>	As set out in The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. For further information please refer to PINS Advice Note Thirteen (February 2019 (version 3)).
<b>MMO</b>	The Marine Management Organisation.
<b>Order</b>	The Cory Decarbonisation Order 202 <sup>[*]</sup> , being the DCO that would be made by the Secretary of State authorising the Proposed Scheme, a draft of which has been submitted as part of the Application <b>(as submitted at Deadline 7)</b> .
<b>Order Land</b>	The land over which the Order would authorise compulsory acquisition and compulsory acquisition of rights, as shown on the Land Plans <b>(REP4-003)</b> .
<b>Order limits</b>	The limits of the land to which the Application relates and as shown on the Works Plans <b>(REP6-003)</b> .
<b>Other Consents and Licences Statement</b>	The Other Consents and Licences Statement <b>(APP-043)</b> , which accompanies the Application, that explains the Applicant's approach to obtaining all other necessary consents to deliver the Scheme beyond the Order.
<b>Permit Scheme</b>	The permit scheme contained in the Schedule to the Traffic Management (London Borough of Bexley) Permit Scheme 2012(b) or any replacement permit scheme which applies to streets within the Order limits that is made under Part 3 (Permit Schemes) of the Traffic Management Act 2004.
<b>PLA</b>	The Port of London Authority.
<b>PLA General Directions</b>	The general directions made under section 111 of the 1968 Act and under the provisions of the Pilotage Act 1987 which came into force on 1 November 2024.
<b>Project of National Significance (PNS)</b>	A project that, as a result of a direction under section 35 of the 2008 Act, has been classified as a development for which development consent is required.

<b>Proposed Jetty</b>	A new and dedicated export structure within the River Thames is required to export the CO2 captured by the Carbon Capture Facility.
<b>Proposed Scheme</b>	The development to which the Application relates and which is described in Schedule 1 to the Order. In Schedule 1, the Scheme is described as the "authorised development."
<b>REPL</b>	Riverside Energy Park Limited (company number 11536739) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF.
<b>REP Order</b>	The Riverside Energy Park Order 2020 (2020/419), which was amended by the Riverside Energy Park (Correction) Order 2021 (2021/273) and the Riverside Energy Park (Amendment) Order 2023 (2023/165).
<b>Riverside 1</b>	An energy from waste (EfW) facility generating up to 80.5 megawatt (MW) of electricity. Riverside 1 has been operational since 2011. Riverside 1 is owned and operated by RRRL.
<b>Riverside 2</b>	Riverside 2, an EfW facility with a generating capacity of up to 96MW. Riverside 2 is currently under construction and anticipated to be operational by 2026. Riverside 2 is owned and will be operated by REPL.
<b>Riverside Heat Network</b>	A heat network planned to be constructed to distribute heat from Riverside 1, Riverside 2 and in time the Proposed Scheme to developments in the locality.
<b>RRRL</b>	Riverside Resource Recovery Limited (company number 03723386) whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF
<b>Secretary of State</b>	The Secretary of State for Energy Security and Net Zero, who will determine the Application.
<b>Section 35 Direction</b>	A direction under section 35(1) of the Planning Act 2008 from the Secretary of State, which provides that a development will be treated as a development for which development consent is required.

### Supporting Plant

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

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

### Works Plans

The plans, which accompany the Application, showing the Order limits and the numbered works that form the Scheme and as described in Schedule 1 to the Order (**REP6-003**).

## 2. INTRODUCTION

- 2.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of the provisions of the draft Riverside Decarbonisation Order 202\* (**the Order**), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended). This document should be read alongside the Order and the other documents submitted in respect of this application for the Order.
- 2.2 This Memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (**the model provisions**). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still important and relevant to note and explain variations made in the Order compared to the model provisions.

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

### *Project of National Significance*

- 3.1 Cory Environmental Holdings Limited (**Cory**) has made an application pursuant to the Planning Act 2008 (as amended) (**the 2008 Act**) to the Secretary of State for Energy Security and Net Zero (**the Secretary of State**) for a development consent order for the construction, operation and maintenance of the Riverside Decarbonisation Project (referred to in the Order as "**the authorised development**", and in this document also as the **Proposed Scheme**).
- 3.2 By way of letter dated 6th October 2022, the Secretary of State made a Direction, under Section 35(1) of the 2008 Act (**the Section 35 Direction**), that the Proposed Scheme

should be treated as development for which development consent under the 2008 Act is required and therefore a Project of National Significance (**PNS**). The Secretary of State was satisfied that:

- 3.2.1 *“The Proposed Project is in the field of energy and development and will be wholly within England;*
- 3.2.2 *The Proposed Project does not currently fall within the existing definition of a “nationally significant infrastructure project” and therefore it is appropriate to consider use of the power in section 35(1) of the Planning Act 2008; and*
- 3.2.3 *Cory’s request constitutes a “qualifying request” in accordance with section 35ZA(11) of the Planning Act 2008.”*
- 3.3 In coming to this conclusion, the Secretary of State noted that the *“Proposed Project relates to the construction of post combustion carbon capture, storage, and transfer equipment; and the construction of hydrogen facilities and thus sits within one of qualifying infrastructure fields listed in section 35(2)(a)(i) – energy - of the Planning Act”*.
- 3.4 The Secretary of State highlighted that one of the reasons that the Proposed Scheme should be considered as a PNS is that:
  - 3.4.1 *“The carbon capture element of the Proposed Project would provide and support the decarbonisation of energy from waste derived CO<sub>2</sub> emissions in the UK, delivering over a million tonnes of CO<sub>2</sub> savings per annum, and supporting the achievement of a fully de-carbonised district heating network that crosses local authority areas”*.
- 3.5 The scope of the Direction made on 6 October 2022 included proposed hydrogen production facilities, as a separate PNS development to the carbon capture and storage elements of the Proposed Scheme. As a result of further project design development, Cory has made a commercial decision not to pursue the hydrogen production element of the Proposed Scheme in the immediate future and, in particular, for it not to form part of the application for development consent which this document forms part of. Whilst Cory is still considering options for how to deliver these hydrogen elements, Cory has decided to focus its immediate efforts on securing the delivery and associated benefits of the carbon capture (and associated buffer storage) elements of the Proposed Scheme as soon as possible in this application.
- 3.6 The Secretary of State confirmed that the Proposed Scheme remains in the ambit of the Section 35 Direction in a letter dated 28 January 2024, which is appended to the Planning Statement (**REP6-009**).
- 3.7 As a result of the Section 35 Direction, development consent must be obtained in order to carry out the development in Work No. 1 and an application for a development consent order must be made to the Secretary of State (section 37 of the 2008 Act).

#### *The Proposed Scheme*

- 3.8 Cory is part of the Cory Group, one of the UK's leading resource management companies with an extensive river logistics network in London. Its core activity, recovering energy from residual waste, is undertaken at the Riverside Campus, located adjacent to the River Thames at Belvedere in the London Borough of Bexley (**“LBB”**). Riverside 1, an energy from waste (**“EfW”**) facility generating up to 80.5 megawatt (MW) of electricity, has been operational since 2011. Riverside 2, an EfW facility with a generating capacity of approximately 76MW, is currently under construction and anticipated to be operational in 2026.



- 3.9 Riverside 1 and Riverside 2 will provide over 1.5 million tonnes per annum (tpa) of residual waste management capacity, making a substantial contribution to addressing the waste needs of London and Southeast England.
- 3.10 Cory intends to construct and operate the Proposed Scheme to be linked with the River Thames. The authorised development comprises the following key components:
- 3.10.1 The Carbon Capture Facility (including Supporting Plant and Ancillary Infrastructure): the construction of infrastructure to capture a minimum of 95% of carbon dioxide (CO<sub>2</sub>) emissions from Riverside 1 and 95% of CO<sub>2</sub> emissions from Riverside 2 once operational, which is equivalent to approximately 1.3Mt CO<sub>2</sub> per year. The Carbon Capture Facility will be one of the largest carbon capture projects in the UK.
  - 3.10.2 The Proposed Jetty: a new and dedicated export structure within the River Thames as required to export the CO<sub>2</sub> captured as part of the Carbon Capture Facility.
  - 3.10.3 The Mitigation and Enhancement Area: land identified as part of the Outline Landscape, Biodiversity and Recreation Strategy Delivery Plan (**AS-094**) to provide improved access to open land, habitat mitigation, compensation and enhancement (including forming part of the drainage system and Biodiversity Net Gain delivery proposed for the Proposed Scheme) and planting. The Mitigation and Enhancement Area provides the opportunity to improve access to outdoor space and to extend the area managed as the Crossness Local Nature Reserve (LNR).
  - 3.10.4 Temporary Construction Compounds: areas to be used during the construction phases for activities including, but not limited to office space, warehouses, workshops, open air storage and car parking, as shown on the Works Plans (**REP6-003**). These include the core Temporary Construction Compound, the western Temporary Construction Compound and the Proposed Jetty Temporary Construction Compound.
  - 3.10.5 Utilities Connections and Site Access Works: The undergrounding of utilities required for the Proposed Scheme in Norman Road and the creation of new, or the improvement of existing, access points to the Carbon Capture Facility from Norman Road.
- 3.11 The Proposed Scheme demonstrates Cory's status as a leader within the decarbonisation agenda and the UK's drive towards net zero, and the Proposed Scheme is the next stage of the company's ambitions to continue to drive forward innovation.

*Matters for which development consent is sought*

- 3.12 The development authorised by the Order, all located within LBB, can be summarised as follows:
- 3.12.1 Carbon Capture Facility (Work No. 1 (including Work No. 1A, 1B, 1C, 1D, and 1E) which includes Carbon Capture Plant, Absorber Column and Stack, carbon dioxide processing plants, LCO<sub>2</sub> Buffer Storage Area and the Supporting Plant.
  - 3.12.2 Modifications to Riverside 1 and Riverside 2: being the areas where connections and interconnection to the existing Riverside 1 and Riverside 2

facilities will take place, which is Work No. 2 (including Work No. 2A, 2B and 2C) in Schedule 1 of the draft DCO).

- 3.12.3 Utilities Connections Corridor and provisions of access from Norman Road (Work No. 3).
- 3.12.4 Proposed Jetty (including Liquid Carbon Dioxide (LCO<sub>2</sub>) including:
  - (a) the modification or removal of the existing Belvedere Power Station Jetty (Work No. 4A).
  - (b) works to create the jetty and its associated Access Trestle (Work No. 4B);
  - (c) dredging associated with creating the jetty (Work No. 4C);
- 3.12.5 LCO<sub>2</sub> Connection Corridor (Work No. 5)
- 3.12.6 Temporary Construction Compounds (Work No. 6).
- 3.12.7 Mitigation and Enhancement Area (Work No. 7).
- 3.12.8 Potential relocation of existing access road to the adjacent Thames Water site (Work No. 8).
- 3.12.9 Protective works to land if required as a result of the authorised development (Work No. 9).
- 3.13 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The third limb - paragraph (c) - is not relevant for the Proposed Scheme. All the development in the Order must therefore come within either Section 115(1)(a) or 115(1)(b), in order for the Secretary of State to have the power to grant development consent for it.
- 3.14 By virtue of the Section 35 Direction, Work No. 1 falls under section 115(1)(a) of the 2008 Act.
- 3.15 The Section 35 Direction refers to the Proposed Scheme encompassing:
  - 3.15.1 *"the delivery of "associated development" (within the meaning of section 115(1)(b) of the Planning Act including, but not limited to, jetty facilities, dredging, hydrogen storage facilities, temporary working sites, temporary and permanent utilities and highway diversions and environmental mitigation ("the associated development to the PNS developments"); and*
  - 3.15.2 *ancillary matters ("the ancillary development to the PNS developments")".*
- 3.16 Work Numbers 2-9 fall within section 115(1)(b) of the 2008 Act, as they comprise development that is associated with Work Number 1 and that is required in order to carry out Work Number 1.
- 3.17 It is clear that all of the development set out in Work Nos. 2 to 9 in Schedule 1 to the Order falls within the policy and criteria set out in the 'Guidance on associated development applications for major infrastructure projects' (Department for Communities and Local Government, April 2013) (**the AD Guidance**) and is capable of

being granted development consent by the Secretary of State under section 115(1)(b) of the 2008 Act. Work Numbers 2 to 9 are all:

- 3.17.1 directly associated with the PNS, as they are all required for the construction, operation or maintenance of the PNS, or to mitigate its impacts (paragraph 5(i) of the Guidance);
  - 3.17.2 subordinate to the PNS - none of them are an aim in themselves (paragraph 5(ii));
  - 3.17.3 not necessary as a source of additional revenue for Cory, in order to cross-subsidise the cost of the PNS (paragraph 5(iii));
  - 3.17.4 proportionate to the nature and scale of the PNS (paragraph 5(iv)); and
  - 3.17.5 of a nature which is typically brought forward alongside the PNS (paragraph 6).
- 3.18 Schedule 1 to the Order also includes details of further ancillary and related development that may be carried out in connection with Work Nos. 1 to 9. The further ancillary and related development listed in Schedule 1 is not exhaustive and other works required in connection with Work Nos. 1 to 9 may be carried out provided they are within the parameters that have been assessed in the EIA and do not lead to materially new or materially different effects which are worse than those reported in the Environmental Statement (**APP-050 – APP-120**, as amended during Examination) .
- 3.19 In conclusion, all of the works described in Schedule 1 are either development for which development consent is required or associated development for which development consent may be granted (in accordance with section 115 of the 2008 Act, and taking account of the AD Guidance) and, accordingly, may lawfully form part of an application for an order granting development consent under the 2008 Act.
- 3.20 A more detailed description of the various elements of the Proposed Scheme is provided in Chapter 2 of the Environmental Statement (**Rep6-008**).
- Ancillary Matters*
- 3.21 The Order also contains several ancillary matters, i.e. provisions not consisting of development.
- 3.22 In accordance with sections 120(3) and 122 of, and Schedule 5 to, the 2008 Act, the Order would authorise the acquisition of land and rights over land. The Book of Reference (**as submitted at Deadline 7**) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (**APP-020**) and the Land Rights Tracker (as submitted at Deadline 7) which accompanies this Application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the Land Plans (**REP4-003**).
- 3.23 The Order also seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.
- 3.24 Other ancillary matters include the permanent stopping up of streets and private means of access, the temporary prohibition of use of streets and public rights of way, and the application and disapplication of legislation relating to the authorised development.

#### 4. THE PROVISIONS OF THE ORDER

4.1 The Order consists of 54 operative provisions, each referred to as Articles, and 16 Schedules. This part of the Explanatory Memorandum refers to the “undertaker” as defined in the draft Order (see further below).

#### 4.2 Part 1 (preliminary)

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

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

##### *Article 2 (interpretation)*

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

4.2.3 Definitions to note include:

- (a) "apparatus" is defined as having the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), heat pipework, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the undertaker may need to carry out.
- (b) “commence” has been defined to exclude “permitted preliminary works” which are separately defined in Article 2. Where appropriate the Requirements (in Schedule 2, see paragraphs 4.6.5 to 4.6.40 below) are drafted so that the permitted preliminary works can be carried out without discharging certain Requirements. Where the permitted preliminary works need to be regulated by the relevant Requirement, they are not excluded from it – this is reflected in the drafting of the Requirement. The works identified in the “permitted preliminary works” are considered appropriate as to the nature of these works, and the Environmental Statement (**APP-050 – APP-120**, as amended during Examination) has assessed the Proposed Scheme on the basis that the permitted preliminary works may be carried out prior to certain Requirements being discharged or triggered. The controls to be imposed instead are set out in Appendix 2.1 of the Environmental Statement (**REP4-006**). A similar structure and wording is widely precedented, including in the **West Burton Solar Project Order 2025**, **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **Longfield Solar Farm Order 2023** and the **REP Order** (albeit in the latter “pre-commencement works” is the definition used, rather than “permitted preliminary works”).
- (c) “authorised development” is used and referred to throughout the Order. As there are no ancillary works included in the Order, the

concept within the model provisions of an “authorised project” has not been used in the Order (there are however “ancillary matters” as defined in section 120(4) of the 2008 Act including compulsory purchase powers).

(d) “the 1994 agreement”, “crossness local nature reserve as extended” and “crossness local nature reserve byelaws” are terms used to facilitate Article 50 (Crossness Local Nature Reserve), which provides for the Extended Crossness Local Nature Reserve to be created and the creation of a refreshed system of management, and ensuring the previous regime no longer applies.

(e) “maintain” has been added to Article 2 to make clear what activities are authorised under Article 5 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or materially different environmental effects which are worse than those identified in the Environmental Statement **(APP-050 – APP-120, as amended during Examination)**.

(i) The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required whilst enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built into what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology, including efficiency.

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

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

**(2) Repair/Refurbish/Replace:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced.

**(3) Adjust and Alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions.

- (4) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed.
- (5) **Reconstruct:** If, for example, a moving part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed.
- (6) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old moving part and replacing it with a new, more efficient moving part.

(iii) The development consent granted by virtue of Article 4 and Schedule 1 does not extend beyond the "authorised development" and the Order limits. In addition, the activities are restricted to those that do not give rise to materially new or materially different environmental effects which are worse than those assessed in the Environmental Statement (**APP-050 – APP-120**, as amended during Examination ).

- (f) "Order land" means the land shown coloured pink and the land shown coloured blue on the Land Plans (being the land to be compulsorily acquired, or land over which rights are to be compulsorily acquired) (**REP4-003**), which is described in the Book of Reference (**as submitted at Deadline 7**).
- (g) "Order limits" means the limits of land to be acquired permanently or used temporarily as shown on the Land Plans (**REP4-003**), and the limits of land within which the authorised development, as shown on the Works Plans (**REP6-003**) may be carried out.
- (h) "undertaker" is defined as Cory Environmental Holdings Limited, who has the benefit of the provisions of the Order, subject to Article 9 (Consent to transfer benefit of the Order).

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

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

4.2.6 Articles 2(4) and (5) define measurements and areas as approximate. This is required as, for example, in the Book of Reference (**as submitted at Deadline 7**) the plot areas are given in square metres, and each measurement is rounded up to the nearest whole square.

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

entirety of the numbered work in question, so numbered work 1A to 1E inclusive.

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

*Article 3 (Electronic communications)*

- 4.2.9 Article 3 (Electrical communications) confirms that references to any document(s) in the Order include documents in electronic form and confirms that reference to communications being in writing include electronic communications.
- 4.2.10 Article 3(2) sets out conditions that must be satisfied in order for an electronic communication to be treated as valid.
- 4.2.11 Articles 3(3) to (5) set out the arrangements for sending paper copies and the revocation of consent by recipients to the use of electronic communications.

4.3 **Part 2 (Work Provisions)**

***Principal Powers***

*Article 4 (development consent granted by the Order)*

- 4.3.1 This Article confers the principal power to construct the authorised development, to be carried out and decommissioned within the Order limits, subject to the provisions of the Order and the Requirements. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development.
- 4.3.2 Article 4(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (**REP6-003**) and within limits of deviation which are also specified on the Works Plans.
- 4.3.3 The purpose of this Article is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development, within the set limits.

*Article 5 (maintenance of the authorised development)*

- 4.3.4 This Article provides for the maintenance of the authorised development. Article 5(1) closely reflects the terms of the model provisions. Article 5(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised.
- 4.3.5 A definition of "maintain" has been included in Article 2 so that it is clear what the term involves (see paragraph 4.2.3(e) above for the explanation). The Environmental Statement (**APP-050–APP-120**, as amended during Examination ) accompanying this application has assessed maintenance as it is defined in the Order.

*Article 6 (operation of the authorised development)*

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

*Article 7 (disapplication of legislative provisions)*

- 4.3.7 This Article disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCO to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the disapplication provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020** and in the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

- 4.3.8 Article 7 provides for the disapplication of the following specified provisions:

- (a) Part V(b) of the Port of London Act 1968 which deals with river works licencing for works in, under or over the Thames or which involve cutting its banks other than those referred to in section 73 (Licensing of dredging, etc.) and dredging licencing. The regime to replace these provisions is set out in article 7 of the DCO and the PLA's Protective Provisions;
- (b) section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority, being LBB;
- (c) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;
- (f) Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) or a water activity permit(s) is required; and
- (g) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under Articles 37 (Temporary use of land for carrying out the authorised development) and 38 (Temporary use of land for maintaining the authorised development) of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act



2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant Articles of the Order. This approach has precedent and has been accepted by the Secretary of State; see for example the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

- 4.3.9 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency (Part 3 of Schedule 12 (protective provisions) to the Order). Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Proposed Scheme.
- 4.3.10 Section 150 of the 2008 Act only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. These consents have been given by the Environment Agency and London Borough of Bexley, as seen in their Statements of Common Ground ([**REP5-021**] and [**REP5-019**] respectively)
- 4.3.11 In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3 (legislation to be disapplied), which relates to local watercourses, flood prevention, local docks and other local authority legislation. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the Order, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6 disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are incompatible with how the powers in the Order can be exercised.
- 4.3.12 Sub-paragraph (2) confirms that the disapplication of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 by Schedule 3 does not affect the Environment Agency's ability to use the powers vested in it under that Act against any person, other than the undertaker and any other person exercising a power under this Order, provided that the use of those powers vested in the Environment Agency does not interfere with the construction or operation of the authorised development. Following discussions with the EA and amendments to their Protective Provisions, the EA has agreed to the disapplication of this Act.

#### *Article 8 (Interaction with the 1968 Act)*

- 4.3.13 Article 8(1) provides that any works licence granted by the PLA under section 66 of the 1968 Act which includes within its scope the belvedere power station jetty and still having effect immediately before the Order comes into force shall be varied so that from the date of commencement of Work No. 4A (modifications to or removal of the belvedere power station jetty and

improvements to the England Coast Path), such a licence shall no longer apply to the belvedere power station jetty.

- 4.3.14 Article 8(2) requires the undertaker to notify the owner of the BPSJ licence at least 30 business days' prior to commencing Work No. 4A of the works that are intended to be carried out on the belvedere power station jetty and any other existing structures that are the subject of the BPSJ licence. A copy of the notice must be given to the PLA.
- 4.3.15 Article 8(3) requires the undertaker to notify the PLA at least 30 business days' following the commencement of Work No. 4A of the date of commencement of those works. Article 8(4) requires the undertaker to provide an update on the programme of Work No. 4 on the anniversary of the notice given under Article 8(3).
- 4.3.16 Article 8(5) provides that the undertaker must provide the PLA with such information as the PLA may reasonably require to confirm any changed physical extent or entire removal of those existing structures which are not the belvedere power station jetty and are the subject of the BPSJ licence. If this notice provides that there has been a change as a result of Work No. 4, then Article 8(8) requires the PLA to issue a variation to the licence within 30 business days of the PLA receiving the notification under Article 8(5).
- 4.3.17 Article 8(6) confirms that any works carried out to existing structures which are not the belvedere power station jetty and are the subject of the BPSJ licence shall not constitute a breach of the BPSJ licence.
- 4.3.18 Article 8(7) provides that the PLA must issue a new licence to the holder of the BPSJ licence within 30 business days of the PLA being notified under Article 8(3), to reflect: (a) that the belvedere power station jetty shall no longer form part of the licence; (b) any changes to the conditions of the works licence that the PLA considers necessary to meet the requirements of the 1968 Act; (c) the PLA's duties under the 1968 Act; and (d) Articles 8(9)(e) and (9)(f) shall apply in respect of the new licence (see below).
- 4.3.19 Article 8(9) provides that to the extent any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act, other than the BPSJ licence, and still having effect immediately before this Order comes into force includes within its scope existing structures within the limits of deviation of Work No. 4 and which are required to be removed or altered as a result of the carrying out of Work No. 4—
  - (a) shall not constitute a breach of that works licence;
  - (b) the undertaker must notify the holder of that works licence of the works that are intended to be carried out, at least 30 business days before the works. A copy of the notice must be given to the PLA;
  - (c) within 30 business days following the completion of the works, the undertaker must provide the PLA with such information as the PLA may reasonably require as to the changed physical extent of the existing structures or to confirm the entire removal of those existing structures;
  - (d) where existing structures which are the subject of the works licence are not removed in their entirety, whether within or outside the limits of deviation of Work No 4, the PLA must within 30 business days of

receipt of the information issue a new licence to the holder of the works licence, to reflect the physical changes to the existing structures that are the subject of the works licence and any changes to the conditions of the works licence the PLA considers necessary to reflect the physical changes and to meet the requirements of the 1968 Act and the PLA's duties under it;

- (e) the holder of the works licence for the existing structures shall have the right to appeal the conditions of any new licence;
  - (f) if within 28 days of the issue of the new licence no appeal has been made to the Department for Transport or, where an appeal has been made from the date that the appeal has been determined — (i) the new licence (with any amendments directed by the Department for Transport) shall apply to the changed extent of the remaining existing structures; (ii) the existing works licence shall be revoked; (iii) the holder of the licence must comply with the conditions of the new licence; and (iv) the 1968 Act shall apply to the existing structures and works authorised by the new licence; and
  - (g) the undertaker must compensate the holder of the works licence for any reasonable increase to the costs of complying with the conditions of the new works licence.
- 4.3.20 Article 8(10) provides that the undertaker must pay the reasonable costs of the PLA in complying with Articles 8(7), (8) and (9)(d) and in participating in any appeal under sub-paragraph (1)(b) of section 69 (appeal to board of trade) of the 1968 Act made in connection with a varied or new works licence issued under Articles 8(8) or (9), but not Article 8(7).
- 4.3.21 To the extent that any works licence granted by the PLA under section 66 (licensing of works) of the 1968 Act and still having effect immediately before this Order comes into force only includes within its scope existing structures within the limits of deviation of Work No. 4 which are required to be removed in their entirety as a result of the carrying out of Work No. 4, Article 8(11) sets out that Articles 8(9)(a) to (9)(c) shall apply in respect of those existing structures; and following the completion of the works to remove those existing structures in their entirety, the relevant works licence shall be extinguished so that such a licence shall no longer apply to those structures and the PLA must within 30 business days of receipt of the information pursuant to Article 8(9)(c) issue to the holder of the works licence notice of such extinguishment.
- 4.3.22 Article 8(12) provides that any existing structure within the limits of deviation for Work No. 4 and for which a works licence no longer subsists as a consequence of Article 8(1) may remain in the river Thames under the authority of and subject to the terms of the Order. It also provides that the requirement to obtain a works licence under the 1968 Act does not apply.
- 4.3.23 Article 8(13) provides that the PLA must not grant or vary a river works licence, a dredging licence, or permit to moor granted under the 1968 Act licensing or permitting any works or dredging or mooring within the limits of deviation for Work Nos. 4A or 4B and within the area of dredging within the limits of deviation of Work No 4.C that is approved by the PLA under Part 5 of Schedule 12 (from the date that such approval is given) without the consent of the undertaker, such consent not to be unreasonably withheld or delayed. In any event such consent or refusal must be issued to the PLA no longer than 65 days from the date of the PLA notifying the undertaker that it has received an application for a river works licence under section 66 (licensing of works) of

the 1968 Act, a dredging licence under section 73 (licensing of dredging, etc.) of the 1968 Act, or if the Port of London Harbour Revision Order is made, a mooring permit under section 66A (permitting of mooring) of the 1968 Act, to which sub-paragraph (13) applies. Article 8(14) confirms that this does not apply to the authorised navigational channel of the river Thames.

- 4.3.24 Article 8(15) makes clear that despite section 66(1)(b) of the 1968 Act, the grant or variation by the PLA of a river works licence to a part of the river Thames within the limits of deviation of Work No. 4 that belongs to the PLA, and in respect of land the undertaker has a proprietary interest, is not, without the consent of the undertaker, deemed to give the licence holder rights enabling the holder to enjoy the benefit of the licence.
- 4.3.25 Article 8(16) provides the undertaker must not unreasonably withhold or delay consent under sub-paragraph (13) or (15) of the Article but may require reasonable modifications to the proposed works or dredging or mooring or impose reasonable terms and conditions on them. In considering whether to grant consent, require modifications or impose terms and conditions, the undertaker must have regard only to the matters set out in Article 8(17).
- 4.3.26 Article 8(18) sets out that if the undertaker necessitates the PLA having to refuse a licence application from a third party (under Article 8(13)); or requires modification or imposes conditions (under Article 8(16)), which the PLA then places onto a licence granted to a third party; section 69 of the 1968 Act (appeal to board of trade) does not apply to that refusal, modification or imposition of conditions.
- 4.3.27 Article 8(19) provides that any exclusion zone established pursuant to paragraph 17.1(a) of the PLA General Directions within the Order limits, or established pursuant to paragraph 17.1(b) of PLA General Directions in respect of an applicable vessel berthed at the jetty constructed as part of Work No. 4B (or any equivalent provisions in any replacement of those directions), shall not apply to vessels, tugs or barges transiting to or from the Middleton Jetty or any structures constructed as part of Work No. 4B for operational reasons to transit to or from vessels, mooring or berths within that exclusion zone; to undertake works or dredging consented by the PLA under the 1968 Act; or for navigational safety or emergency reasons.
- 4.3.28 Article 8(20) confirms that “BPJS licence” means the licence referred to by Article 8(1).
- 4.3.29 The objective of these provisions, taken as a whole, is to ensure that the DCO provides a one stop shop for the regulation of the marine aspects of the Proposed Scheme. It wipes the slate clean of existing consents and ensures that all matters moving forward are dealt with under the DCO. This approach and drafting has been discussed and agreed with the PLA as set out in their SoCG (**REP3-016**). The overall approach taken in this article is precedent in the **Port of Tilbury (Expansion) Order 2019** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

*Article 9 (benefit of this Order)*

- 4.3.30 This Article makes it clear that, subject to Articles 9(2) and (3), it is the undertaker who may take the benefit of the Order. The “undertaker” is defined in Article 2 as Cory Environmental Holdings Limited (as explained in paragraph 4.2.3(h) above).

- 4.3.31 Article 9(2) provides that Work Number 2 is for the benefit of both the undertaker and REPL and RRRL. This is because Work Number 2 is the electrical connection to Riverside 1 and Riverside 2, which may be installed by any of these three parties, given that the connection is between both of the two existing facilities and the Carbon Capture Facility.
- 4.3.32 Article 9(3) provides that Work Numbers 1E(iv)–(vi), 2A(i)–(ii), and 3(b) is for the benefit of both the undertaker and a company operating a relevant heat network as defined by section 216 of the Energy Act 2023. This is because these works are likely to become part of the Riverside Heat Network, which may be installed by the operator of a district heat network or a communal heat network as defined by section 216 Energy Act 2023, as part of the wider development of that overall network.

*Article 10 (consent to transfer benefit of the Order)*

- 4.3.33 This Article makes detailed provision for the transfer of the benefit of the Order and supplements Article 9 (benefit of this Order). Under Article 10, the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order, but such consent is not required where:
- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989. This is to allow electricity licenced companies to carry out the works to electrical networks instead of Cory. This is preceded in many Orders including the **REP Order**. This is not limited to just the connections corridor (Work No. 3 and as identified above) as work to electrical infrastructure could take place across the Order limits (pursuant to the works listed at the end of Schedule 1);
  - (b) if the transfer is in respect of Work Numbers 1D and 4B only, the transferee or lessee is the holder of a licence under section 7 (power to grant licences) of the Energy Act 2023. This is a carbon transport and storage operator. Depending on the final contractual and governmental-sanctioned arrangements between Cory and that transport and storage operator, it is possible that that operator may be required to and operate the LCO<sub>2</sub> Buffer Storage Area, LCO<sub>2</sub> Pipework and the Proposed Jetty and so would need the benefit of the DCO in such an instance. That party would have been tested by Government through the licensing process. The logic is similar to that for electricity companies as discussed above;
  - (c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker. This is to allow for corporate restructuring within the Cory Group to be undertaken, without the need for further consent. This may be the case given the connectivity of the carbon capture infrastructure with Riverside 1 and Riverside 2 meaning the Cory bodies operating those plants may want to 'take on' the CCS facilities.
  - (d) in relation to a transfer or lease of any works within a highway, the transferee or lessee is a highway authority responsible for the highways within the Order limits; or
  - (e) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

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

*Article 11 (guarantees in respect of payment of compensation)*

- 4.3.37 This Article relates to the funding mechanism for compulsory acquisition. This requires that before the powers in Articles 28, 30, 32, 37, 38 and 39 of the Order are exercised, the undertaker must put in place either a guarantee or an alternative form of security. This wording follows, as is applicable to the authorised development, that used in the **REP Order** and similar wording has been used in **The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.

**Streets**

*Article 12 (Application of the permit scheme)*

- 4.3.38 This Article deals with the relationship between the Order powers and the permit scheme contained in the Schedule to the Traffic Management (London Borough of Bexley) Permit Scheme 2012. It has been introduced following the experience of the Applicant on the implementation of the Riverside 2 DCO.
- 4.3.39 Article 12(1) confirms that the Permit Scheme applies and will be used in connection with the construction, maintenance and decommissioning of the authorised development, subject to the qualifications in Articles 12(2) and (3).
- 4.3.40 Article 12(4) clarifies that the procedure for appeals in Schedule 14 of the Order is capable of applying to any refusal to grant a permit, or to any decision to grant a permit subject to conditions, but not so as to limit any other appeal mechanism available under the permit schemes or otherwise.

*Article 13 (street works)*

- 4.3.41 This Article is a model provision intended to permit in certain streets (as specified in Schedule 4 (streets subject to street works)) the carrying out of street works for the purposes of the authorised development. Article 13(3) applies sections 54 to 106 of the 1991 Act to any street works carried out pursuant to Article 13(1). This provides protection for the street authority for the street in question. The items in Schedule 4 relate to the works sought to be authorised through Work No. 3. This provision is necessary to deal with the highways law aspects of undertaking such works.

*Article 14 (power to alter layout etc. of streets)*

- 4.3.42 This Article allows the undertaker to temporarily or permanently alter the layout of a street or carry out any works in the street as are set out in Schedule 5 (streets subject to permanent or temporary alteration of layout) and shown on the access and rights of way plan without the requirement for street authority approval, with the consent of the street authority.
- 4.3.43 Article 14(2) allows for the alteration of the layout of any street for the purposes of the authorised development, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. This is well precedented, for example see the West Burton Solar Project Order 2025, The Viking CCS Carbon Dioxide Pipeline Order 2025 and The North Lincolnshire Green Energy Park Order 2025.

4.3.44

*Article 15 (permanent stopping up of specified street and private means of access)*

- 4.3.45 This Article allows the undertaker to stop up the street and private means of access as shown on the Access and Rights of Way Plan (**AS-008**) and as are set out in Schedule 6 (permanent stopping up of street and private means of access and provision of new street and private means of access), subject to the provision of a new substitute street and private means of access set out in Articles 15(2) and 15(3) respectively. This is to provide for the highway law matters pertaining to the works sought to be authorised through Work No. 8, namely the diversion of the Thames Water Crossness STW secondary access road. This power is subject to the consent of Thames Water in their Protective Provisions.
- 4.3.46 Article 15(4) provides that where a street or private means of access has been stopped up under the Article, the rights of way or private means of access are extinguished and the undertaker may appropriate and use for the purposes of the authorised development so much of the side of the street or private means of access as is bounded on both sides by land owned by the undertaker.
- 4.3.47 Article 15(5) makes provision for compensation pursuant to the use of these powers and article 15(6) provides that the powers in the Article are subject to Article 40 (apparatus and rights of statutory undertakers in stopped up streets).
- 4.3.48 The drafting of this article is well precedented, including for example the **A303 (Amesbury to Berwick Down) Development Consent Order 2023** and with similar drafting in the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

*Article 16 (temporary prohibition or restriction of use of streets, private means of access and public rights of way and authorising vehicular use on public rights of way)*

- 4.3.49 This Article provides for the temporary prohibition of the use, restriction of the use, alteration or diversion, of streets or public rights of way and allows the undertaker to authorise the temporary use of motor vehicles on public rights of way for the purposes of carrying out the authorised development.
- 4.3.50 The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets (set out in Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way) to the Order).
- 4.3.51 Article 16(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 14(1), to use such a street as a temporary working site.
- 4.3.52 Article 16(5) confirms that any authorisation given by the undertaker for the use of motor vehicles on public rights of way during construction of the authorised development constitutes lawful authority for the purposes of section 34 of the Road Traffic Act 1988. This was something proposed in relation to the Mallard Pass Solar Farm DCO, and it is noted that permanent use of motor vehicles in such a way was authorised in the **Longfield Solar Farm Order 2023**.
- 4.3.53 The specified diversions in Schedule 7 have been assessed in the Environmental Statement, but in any event, article 16(6) provides that, in respect of the public rights of way set out in Schedule 7 (temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way and authorising vehicular use on public rights of way), the power cannot be exercised for the construction of the authorised development until a code of construction practice for the phase of the authorised development in which the public right of way is situated has been approved under Requirement 7 to Schedule 2 (requirements) to the Order (see paragraph 4.6.17 below). If the power is to be exercised for the decommissioning of the authorised development, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated must have been approved under Requirement 23 to Schedule 2 (requirements) to the Order (see paragraph 4.6.39 below), before it can be exercised.
- 4.3.54 The unspecified use of this power is subject to street authority consent. This ensures that there are appropriate controls on the use of this power. Article 16(7) provides for compensation to apply where relevant.
- 4.3.55 Similar wording has been used in other made Orders, including the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025**, the **A122 (Lower Thames Crossing) Development Consent Order 2025**, **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **REP Order** and the **Millbrook Gas Fired Generating Station Order 2019**, however this goes further by providing for the additional protection of Code of Construction Practice overall.

*Article 17 (permanent closure and diversion of, and creation of new public rights of way and authorising vehicular use on public rights of way)*



- 4.3.56 This Article allows the undertaker to, in connection with the authorised development, permanently stop up public footpath 2 within the London Borough of Bexley between the points H and L, as shown on the Access and Rights of Way Plan **(AS-008)**.
- 4.3.57 Article 17(2) provides that the undertaker must not permanently stop up the public right of way until it has:
- (a) agreed with LBB (as the relevant highway authority) the route for the substitute public right of way between points H and L;
  - (b) gained approval for the landscape, biodiversity, access and recreation strategy delivery strategy which relates to the land on which the substitute public rights of way is to be provided under Requirement 12 of Schedule 2 to the Order (see paragraph 4.6.22 below).
- 4.3.58 Article 17(3) provides that the undertaker may construct new public footpaths at two locations specified in that sub-paragraph.
- 4.3.59 These provisions have been put forward to reflect the commitments made in the Outline Landscape, Biodiversity, Access and Recreation Delivery Strategy **(AS-094)** for access improvements.
- 4.3.60 Article 17(4) states that the undertaker must not exercise the powers in Article 17(3) until the landscape, biodiversity, access and recreation delivery strategy which relates to the land on which the substitute public rights of way is to be provided has been approved under requirement 12 (landscape, biodiversity, access and recreation delivery strategy).
- 4.3.61 Article 17(5) provides that the undertaker may authorise the use of motor vehicles on the current route, the alternative route created under Article 17(2), on any public footpath created under Article 17(3), as well as on four other footpaths referred to in Article 17(4) by reference to the Access and Rights of Way Plan **(AS-008)**. As noted above, such an approach has precedent in the **Longfield Solar Farm Order 2023**.
- 4.3.62 Article 17(5) confirms that Article 17(4) and any authorisation given under it constitutes lawful authority for the purposes of section 34 of the Road Traffic Act 1988.
- 4.3.63 Article 17(6) provides that following the opening for public use of a public right of way constructed under Article 17, where it is permanently altered or permanently diverted under the powers conferred by the Order, the undertaker must supply the surveying authority with detailed plans and a statement of the modifications required to the definitive map and statement. This is to ensure that the mechanisms in the DCO dovetail with the process for updating the definitive map. It has precedent in the **A66 Northern Trans-Pennine Development Consent Order 2024**.
- 4.3.64 This Article is not a model provision, and its precise drafting is bespoke to this Order to allow for discussions to continue post consent with LBB as to the substitute route to be provided as part of the overall proposals for the Extended Crossness Local Nature Reserve, which will follow post-DCO consent. However, similar provisions for the permanent closure and diversion of public rights of way have been included in the **Hornsea Four Offshore Wind Farm Order 2023** (Article 11).

*Article 18 (access to the authorised development)*

- 4.3.65 This Article is based on the model provision (albeit it is named “access to works” in the model provisions) which permits the undertaker to form new or to improve existing means of access from Norman Road, with the approval of the highway authority. The text of the model provision has been amended to reflect the specific circumstances of this Order. Other means of access or works can also be provided in other locations reasonably required for the authorised development. This power dovetails with article 14.
- 4.3.66 Article 18(2) provides that the undertaker may, for the purposes of the authorised development, utilise the (a) temporary or permanent means of access from the public highway constructed under the Order and (b) temporary means of access from the public highway constructed under the REP Order as permanent means of access (and must notify LBB if it intends to use this latter power).
- 4.3.67 Article 18(4) provides that where Article 16(2) applies, the undertaker shall not be required to:
- (a) remove temporary accesses created under the REP Order being used during the construction of the authorised development, or afterwards as permanent means of access; and
  - (b) restore any alterations to the layout to streets that were undertaken to facilitate the creation of temporary access from the public highway under the REP Order being used during the construction of the authorised development, or afterwards as permanent means of access.
- 4.3.68 Article 18(4) also confirms that it will not be a breach of the terms of the REP Order if such temporary accesses are not removed and alterations to streets are not restored.
- 4.3.69 Article 18(5) confirms that for the purposes of Article 18, “the REP Order undertaker” has the same meaning as the undertaker defined by Article 2 (interpretation) of the REP Order.
- 4.3.70 These latter paragraphs are specific to the Proposed Scheme and its interaction with the REP project. Temporary accesses have been provided from Norman Road, with the agreement of the street authority, to land that is being used for REP construction compounds, that are likely also to be used for the Proposed Scheme at construction and operation stage. The drafting here authorises this to happen and ensures there is no breach of the REP Order where it does so.

*Article 19 (agreements with street authorities)*

- 4.3.71 This Article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the **REP Order**, the **Viking CCS Carbon Dioxide Pipeline Order 2025**, the **Net Zero Teesside Order 2024** and the **Boston Alternative Energy Facility Order 2023**.

#### *Article 20 (traffic regulation measures)*

- 4.3.72 This Article allows the undertaker to regulate traffic to the extent that is necessary for the purposes of, in connection with, the authorised development, in the ways and in the locations set out in article 20(1). Article 20(2) provides a non-specific power more generally but article 20(4) makes this latter power subject to street authority consent.
- 4.3.73 Article 20(3) provides that no speed limit imposed by or under the Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011 when in accordance with regulation 3(5) of those regulations.
- 4.3.74 Article 20(5) provides that the use of any powers under this article is subject to the identified management plan being approved prior to the use of that power.
- 4.3.75 The Article also makes it clear that any prohibition, restriction or other provision made by the undertaker under Article 20(1) or (2) has effect as if duly made by the traffic authority under the Road Traffic Regulation Act 1984 or the local authority under the Road Traffic Regulation Act 1984.
- 4.3.76 The Article is not in the general model provisions but there is a precedent for it in the **REP Order**, the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025**, the **A122 (Lower Thames Crossing) Development Consent Order 2025**, the **Longfield Solar Farm Order 2023** and the **Millbrook Gas Fired Generating Station Order 2019**.

#### ***Supplementary powers***

#### *Article 21 (discharge of water)*

- 4.3.77 This Article is a model provision and sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.
- 4.3.78 The effect of this Article is that discharge can only be done with the consent of the owner, but consent cannot be withheld or delayed unreasonably.
- 4.3.79 Article 21(6) makes clear that this Article does not obviate the need for an environmental permit for such discharge where this is relevant.
- 4.3.80 The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 4.3.81 This Article has precedent in many orders, including, for example, in the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025**, and the **A122 (Lower Thames Crossing) Development Consent Order 2025** and is necessary for the authorised development in order to establish and regulate the undertaker's authority to discharge water.

#### *Article 22 (authority to survey and investigate the land)*

- 4.3.82 This Article gives the undertaker the power to enter certain land for the purpose of surveying and investigating. It provides that the undertaker must

give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.

- 4.3.83 This Article is based on the model provisions, although Article 22(1) has been extended to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development.
- 4.3.84 Article 22(6) applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.

*Article 23 (Protective works to buildings)*

- 4.3.85 The purpose of this Article (which is included in the model provisions and the majority of made orders to date) is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.
- 4.3.86 Article 23(11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.
- 4.3.87 Given the industrial area in which the authorised development is to be constructed, the Article is necessary to make appropriate provision to carry out protective works in the unlikely event that the need to do so arises.

*Article 24 (felling or lopping of trees)*

- 4.3.88 This Article allows any tree or shrub within, or overhanging land within, the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.3.89 The Article is included to ensure that the undertaker has adequate powers to construct, operate and maintain the authorised development, including in particular its proposals in the Mitigation and Enhancement Area.
- 4.3.90 The undertaker does not have any other statutory powers available to it in order to fell or lop trees or shrubs and so the Article is considered necessary to ensure that trees or shrubs do not obstruct the construction, operation or maintenance of this nationally significant infrastructure. This article is well precedented, including in the **REP Order** and recently in the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

*Article 25 (Works in the river Thames: conditions)*

- 4.3.91 This article provides for the suspension of the public right of navigation over the River Thames situated within the Order limits where necessary to construct the authorised development.

- 4.3.92 Articles 25(2) to 25(8) deal with the mechanics of suspending the public right of navigation. This involves giving notice to the PLA, getting PLA approval and the PLA then issuing a notice to mariners. This wording has precedent in **The Port of Tilbury (Expansion) Order 201**.
- 4.3.93 Article 25(9) imposes certain controls over the suspension of the public right of navigation over the River Thames, by providing that construction must be carried out so that the suspension applies to no more than is necessary; all reasonable steps are taken to secure that period of suspension is kept to a minimum; and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part where the public right of navigation is so suspended.
- 4.3.94 Article 25(10) requires the undertaker to notify the owner of any mooring and the owner or master of any vessel or structure likely to be materially affected by the exercise of any powers under the Order at least 35 days prior to exercising those powers unless in the case of emergency.
- 4.3.95 Article 25(11) provides that the undertaker will pay costs reasonably incurred by the owner of any mooring if in exercise of the powers of the Order any such owner incurs costs for the alteration, removal, re-sitting, repositioning or reinstating of that mooring, laying down and removing substitute mooring or buoys or carrying out dredging operations. The owner of the mooring must give the undertaker not less than 28 days' notice of its intention to incur such costs and take into account representations from the undertaker given within 14 days of receipt of the notice.
- 4.3.96 Article 25(12) provides that the undertaker's written consent is required for a person to use any work constructed or used in connection with the authorised development for the purposes of landing or embarking persons or land or loading goods or to remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised development.
- 4.3.97 The wording at Articles 25(10) to 25(12)) has precedent in **The Silvertown Tunnel Order 2018**.

*Article 26 (oversailing rights)*

- 4.3.98 This Article provides the undertaker with the power to oversail any booms, cranes and similar or associated plant or machinery over land within, or adjacent to, the Order limits, as is required for the construction, operation, maintenance or decommissioning of the authorised development. Article 26(5) defines "oversail" as meaning that the bottom of the equipment oversailing must be at least 8 metres higher than the ground level of the land that it is oversailing.
- 4.3.99 Where the land that is to be oversailed is not within the Order limits, Article 26(2) provides that the undertaker must serve notice of the intended oversailing on the owners and occupiers of the land at least 14 days before the oversailing is due to commence. This notice must set out the proposed duration of the oversailing, the hours of use of the equipment that is intended to oversail the land and a map of showing the location of the works which require the oversail.
- 4.3.100 Article 26(3) provides that, before oversailing powers over highway land can be exercised, a code of construction practice for the part of the authorised development for which the oversailing is required must have been approved

under Requirement 7 to Schedule 2 (requirements) to the Order (see paragraph 4.6.17 below), where the oversailing relates to the construction of the authorised development. Where the oversailing relates to the decommissioning of the authorised development, a decommissioning environmental management plan for the phase of the authorised development for which the oversailing is required must have been approved under Requirement 23 Schedule 2 (requirements) to the Order (see paragraph 4.6.36 below). This ensures that the typical concerns of the highways authority would be able to be dealt with prior to the use of the powers.

4.3.101 Article 26(4) also provides that compensation is payable to owners and occupiers for any loss or damage that arises as a result of the exercise of the powers.

4.3.102 This Article is not included in the model provisions; however, it is considered necessary to include these powers in order for the authorised development to be constructed and decommissioned in a timely and efficient manner. Notably, this development is within the urban environment of London and without this article, a variety of oversailing agreements would be necessary, delaying the construction of this nationally significant infrastructure.

#### *Article 27 (power to dredge)*

4.3.103 This Article provides the undertaker with the power to dredge within any part of the limits of deviation for Work No.4 for the purpose of maintaining and operating the Proposed Scheme. Without this, the normal dredging licence requirements would apply, which goes against the intention of the Order forming a single operational regime for the carrying out of the authorised development.

4.3.104 Article 27(3) provides that materials dredged under the powers of this Order may not be disposed of in the UK marine licensing area except in accordance with an approval from:

- (a) the MMO (under the deemed marine licence); and
- (b) the Port of London Authority (under the provisions for the protection of the Port of London Authority contained in Part 7 to Schedule 12 (protective provisions)) where such disposal is on the bed of the river Thames.

4.3.105 Article 27(4) provides that the exercise of powers is subject to the Requirements of Part 5 of Schedule 12 (protective provisions) as to the PLA's approval of dredging proposals and the payment of compensation for grudged material.

4.3.106 Article 27(5) deems that the Order is legislation falling within section 75(3) of the Marine and Coastal Access Act 2009 for the purpose of dredging activities falling within Article 27(1). This means that the exemption from the need to obtain a licence for dredging is applied to the Order and as a result maintenance dredging does not need to be listed as a licensable activity in any required marine licence.

4.3.107 This article is not a model provision, however, similar a similar article is included in the **Port of Tilbury (Expansion) Order 2019**.

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

*Article 28 (compulsory acquisition of land)*

- 4.4.1 This Article provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 28 (compulsory acquisition of land) makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 32 (private rights). A similar approach was taken in the **REP Order, the West Burton Solar Project Order 2025 and in the Viking CCS Carbon Dioxide Pipeline Order 2025**.

*Article 29 (time limit for exercise of authority to acquire land compulsorily)*

- 4.4.2 This Article gives the undertaker seven years to issue 'notices to treat' or to execute 'general vesting declarations' to acquire the land that is subject to the power of compulsory acquisition. These are the two procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. Seven years from the date of the Order "coming into force" has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order.
- 4.4.3 Seven years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Requirement 1 of Schedule 2 to the Order. These time limits have been put in the application in light of the uncertainty in the competitive process of the CCS process and that the Applicant would not wish to be timed out in delivering the benefits of the Proposed Scheme by delays in any success in that process. The Proposed Scheme is one of the first projects to be a non-pipeline CCS project and the Government has acknowledged in its CCS Vision that its regulation of such projects is not as well advanced as it is for pipeline related projects. In that context, whilst the Applicant stands ready to deliver the benefits the Proposed Scheme brings as soon as it is put in a position by Government (through consenting and support decisions) to do so, it is considered prudent that a longer time limit for commencement is given to allow for the uncertainty of the timing of that process to play out.
- 4.4.4 The Article also provides that land subject to the power of temporary possession for the carrying out of the authorised development, under Article 37 (temporary use of land for carrying out the authorised development), may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order. Such an Article is included in the model provisions and the majority of made orders to date.

*Article 30 (compulsory acquisition of rights)*

- 4.4.5 This Article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land. The Article also allows for restrictive covenants to be imposed.
- 4.4.6 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 28 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is

usual in Transport and Works Act Orders and Hybrid Bills and has been followed in a number of development consent orders, for example the **REP Order**, the **Millbrook Gas Fired Generating Station Order 2019**, the **Drax Power (Generating Stations) Order 2019**, the **West Burton Solar Project Order 2025** and in the **Viking CCS Carbon Dioxide Pipeline Order 2025**.

- 4.4.7 Article 30(2) provides that, for the land described in Schedule 8 (land in which only new rights etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 8 (land in which only new rights etc. may be acquired).
- 4.4.8 The nature of the restrictions are described in Schedule 8 (land in which only new rights etc. may be acquired) to the Order as a right to prevent any works on or uses of the land which may interfere with, damage or restrict access to the relevant infrastructure, including a right to prevent or remove the buildings, structures, works and other things. This is to ensure there is certainty, as has been required by the Secretary of State in previous DCO decisions on similar articles.
- 4.4.9 Article 30(3) provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 4.4.10 Article 30(4) introduces Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) which modifies the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the Compensation Code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 4.4.11 Article 30(5) to (7) allows for the acquisition of new rights or the imposition of restrictive covenants in respect of changes to apparatus to be transferred to statutory undertakers with the Secretary of State's consent subject to the same restrictions, liabilities and obligations as the undertaker. Consent is not required where the statutory undertaker is one named under Article 8, on the basis that the acceptability of that statutory undertaker having the benefit of the Order would already have been accepted in granting the Order with that article within it.
- 4.4.12 This Article and Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the **Silvertown Tunnel Order 2018** and followed in the Orders that have followed, such as the **Longfield Solar Farm Order 2023**, the **West Burton Solar Project Order 2025** and in the **Viking CCS Carbon Dioxide Pipeline Order 2025**.

*Article 31 (acquisition of subsoil or airspace only)*

- 4.4.13 This Article permits the undertaker to acquire only the subsoil of or the airspace over the land which is to be compulsorily acquired or subject to



compulsory acquisition of rights, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision. This Article is preceded in **Sizewell C (Nuclear Generating Station) Order 2022** and followed in the **West Burton Solar Project Order 2025** and in the **Viking CCS Carbon Dioxide Pipeline Order 2025**.

*Article 32 (private rights)*

- 4.4.14 This Article applies to extinguish private rights generally. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development. It also provides for the extinguishment of private rights over such parts of the Order land as are already in the ownership of the undertaker, when any activity authorised by the Order interferes with or breaches those rights. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, existing rights or restrictive covenants are extinguished only to the extent that the continued exercise of the existing right or the burden of the existing restrictive covenant would be inconsistent with the enjoyment by the undertaker of the rights acquired, or restrictive covenants imposed, compulsorily.
- 4.4.15 Article 32(6) provides for exceptions to this power which account for the wider uses in and around the Proposed Scheme at Riverside 1 and Riverside 2. The scope of the exception to the interests of WRWA is still a matter of discussion at the end of Examination. The parties are still discussing this, and will provide an update prior to the decision on the Order.
- 4.4.16 This approach is proportionate and draws on the precedents of the **REP Order**, the **West Burton Solar Project Order 2025**, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024** and in **Viking CCS Carbon Dioxide Pipeline Order 2025**.

*Article 33 (power to override easements and other rights)*

- 4.4.17 This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4) of the 2008 Act, and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 32 of the **Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014** and Article 24 of the **Silvertown Tunnel Order 2018**. This precedent has been followed in Article 26 of the **West Burton Solar Project Order 2025** and Article 17 of the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**. This Article is supplementary to Articles 28 (compulsory acquisition of land) and 30 (compulsory acquisition of rights) and is necessary and expedient to give full effect to development consent under Article 3 (development consent granted by the Order). The Article makes it clear that any “authorised activity”, as defined in Article 33(2), is authorised notwithstanding that it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. Compensation is also payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

*Article 34 (application of the 1981 Act)*

- 4.4.18 This Article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order. Vesting declarations are one of two procedures for the compulsory acquisition of land (the other being by means of serving a notice to treat). Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 4.4.19 Such an article has been included in the model provisions and the majority of orders made to date but the drafting used in the Order has been adapted to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in numerous made orders including the **REP Order**, the **Cleve Hill Solar Park Order 2020** and the **Drax Power Station Bioenergy with Carbon Capture, Storage Extension Order 2024** and the **Viking CCS Carbon Dioxide Pipeline Order 2025**.

*Article 35 (modification of Part 1 of the 1965 Act)*

- 4.4.20 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016. Articles 35(1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and Article 35(5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Articles 37 and 38 of this Order. These modifications have broad precedent in Schedule 14 to the **High Speed Rail (London – West Midlands) Act 2017** and numerous made Orders including the **West Burton Solar Project Order 2025**, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, **Net Zero Teesside Order 2024** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

4.4.21

*Article 36 (rights under or over streets)*

- 4.4.22 This Article is a model provision which has been included in most made Orders to date and allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **REP Order** and followed in orders such as the **West Burton Solar Project Order 2025**, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, **The A122 (Lower Thames Crossing) Development Consent Order 2025** and in **Viking CCS Carbon Dioxide Pipeline Order 2025**.
- 4.4.23 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in Article 36(3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

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

### ***Article 37 (temporary use of land for carrying out the authorised development)***

- 4.4.24 This Article allows the land specified in Schedule 10 (land of which temporary possession may be taken) to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way and provisions around giving 14 days' notice and restoration of the land following the temporary works.
- 4.4.25 Wording is included in Article 37(1)(a)(ii) in order to allow the provisions of the Article to be applicable in the context of land which may be the subject of compulsory acquisition, prior to any such compulsory acquisition taking place. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 4.4.26 Wording is also included in Articles 37(3) and (4) to take in to account that the undertaker may, pursuant to Article 37(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. This is also subject to a one year limit beginning with the date of final commissioning of the authorised development, and a requirement to pay compensation for any loss or damage arising from the exercise of these rights (Article 37(5)). Should the undertaker compulsorily acquire the land that it is in temporary possession of, then the undertaker should remain in possession of such land, and Article 37(1)(d) clarifies that the undertaker will be able to carry out the works authorised by the Order on such land.
- 4.4.27 Article 37(9) makes clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land under Articles 30 (compulsory acquisition of rights), 31 (acquisition of subsoil only) or 36 (rights under or over streets). This approach has precedent in a number of made Orders, including the **Drax Power (Generating Stations) Order 2019**, the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025** and the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.

### ***Article 38 (temporary use of land for maintaining the authorised development)***

- 4.4.28 This Article provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 4.4.29 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders in connection with generating stations, including the **Drax Power (Generating Stations) Order 2019**, **Immingham Open Cycle Gas Turbine Order 2020**, the **West Burton Solar Project Order 2025**, the **Viking**

**CCS Carbon Dioxide Pipeline Order 2025 and the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.**

***Supplementary***

*Article 39 (statutory undertakers)*

- 4.4.30 This Article allows the undertaker to extinguish rights of statutory undertakers, and remove and reposition their apparatus. Reference is made to the Order Land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans **(REP4-003)** and described in the Book of Reference **(as submitted at Deadline 7)**. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order Land is required.
- 4.4.31 As the land where this power may be exercised is shown on the Land Plans **(REP4-003)**, and the beneficiaries of such rights are identified in the Book of Reference **(as submitted at Deadline 7)**, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 4.4.32 The exercise of this Article is subject to the protective provisions contained in Schedule 12 (protective provisions).
- 4.4.33 This Article has precedent in numerous made Orders, for example, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, the **Immingham Open Cycle Gas Turbine Order 2020**, the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025**, and the **REP Order**.

*Article 40 (apparatus and rights of statutory undertakers in stopped up streets)*

- 4.4.34 This Article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that Articles 40(2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 12 (protective provisions). It has been included in most made Orders to date.

*Article 41 (recovery of costs of new connections)*

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

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

*Article 42 (deemed marine licence)*

- 4.5.1 This Article constitutes deemed consent (as provided for under section 149A of the 2008 Act) under section 65 of the Marine and Coastal Access Act 2008, the successor provision to section 34 of the Coast Protection Act 1949.

Schedule 11 (deemed marine licence) sets out the terms on which the licence would be granted. The overall structure of this licence reflects that found in Schedule 13 of the **Eggborough Gas Fired Generating Station Order 2018** and Schedule 8 to the **Cleve Hill Solar Park Order 2020**.

- 4.5.2 However, Article 42(2) has been added to clarify that any decision made by the MMO under conditions 29(2)(b) and 29(2)(c) is deemed to be a decision able to be appealed under the Marine Licensing (Licence Application Appeals) Regulations 2011. Although the Applicant acknowledges this is unprecedented, this has been added in the context that the MMO contends that it should not be subject to the provisions of article 48 or arbitration. The Applicant therefore considers that a dispute resolution process should be open to it, and that the 2011 Regulations, which are a mechanism the MMO is used to dealing with, are an appropriate process.

*Article 43 (application of landlord and tenant law)*

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

*Article 44 (defence to proceedings in respect of statutory nuisance)*

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

*Article 45 (protective provisions)*

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

*Article 46 (certification of plans etc.)*

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

*Article 47 (service of notices)*

- 4.5.8 This Article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices

served under the 2008 Act itself and do not apply to notices served under the Order. This Article has precedent in a number of orders, for example, the **REP Order**, the **West Burton Solar Project Order 2025** and the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.

*Article 48 (procedures in relation to certain approvals etc.)*

- 4.5.9 This Article provides that Schedule 14 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals required or contemplated by any provision of the Order, except for in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 12 (protective provisions), any approvals required under the deemed marine licence contained in Schedule 11 (deemed marine licence), or any dispute under Article 23(6) (protective work to buildings) or Article 32(6)(b) (private rights) (as those provisions make clear what procedure should be followed).
- 4.5.10 Article 48(2) confirms that where this Article applies, such consent, agreement or approval must not be unreasonably withheld or delayed

*Article 49 (arbitration)*

- 4.5.11 This Article is an arbitration provision and it is a departure from the model provisions. This drafting, and that in the associated Schedule 15 (arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019**, **Longfield Solar Farm Order 2023**, the **Viking CCS Carbon Dioxide Pipeline Order 2025** and the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 4.5.12 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- 4.5.13 It applies Schedule 15 (arbitration rules) to the Order, which sets out further detail of the arbitration process. The detail of Schedule 15 (arbitration rules) is set out at paragraphs 4.6.55 to 4.6.58 below.
- 4.5.14 In addition, Article 49(2) provides that any matter for which the consent or approval of the Secretary of State or MMO is required under the Order is not subject to arbitration.

*Article 50 (Crossness Local Nature Reserve)*

- 4.5.15 Article 50 provides for the extension of Crossness Local Nature Reserve to incorporate the Mitigation and Enhancement Area, which forms part of the ecological mitigation and enhancement commitments of the authorised development.
- 4.5.16 Article 50(1) provides that the undertaker must notify the relevant planning authority when it has completed the carrying out of Work No. 7 (the Mitigation and Enhancement Area) no later than 20 business days after it is completed.

- 4.5.17 Article 50(2) provides that, from the date of the notice given under Article 50(1), the Extended Crossness Local Nature Reserve will constitute a nature reserve for the purpose of section 21 (establishment of nature reserves by local authorities) of the National Parks and Access to the Countryside Act 1949. Section 21 of the 1949 Act provides local authorities with the power to provide, or secure the provision of, nature reserves on any land in their area, and is the power pursuant to which the Crossness Local Nature Reserve was created.
- 4.5.18 Article 50(2) also abrogates clause 4 of the 1994 Agreement (which relate to TWUL land within the Mitigation and Enhancement Area) and clause 24 of the 2005 Agreement (which relates to Norman Road Field within the Mitigation and Enhancement Area. Clause 4 of the 1994 Agreement contains provisions relating to an area within the Order limits and the Crossness Local Nature Reserve (identified as “Conservation Land” in the 1994 Agreement) and the management of this land through a management plan agreed between LBB and Thames Water Utilities Limited. Clause 4 requires the Conservation Land to be maintained and enhanced for a period of 99 years from the approval of the management plan. Clause 24 of the 2005 Agreement includes provisions on the permissions and section 106 obligations which relate to the Norman Road Field. Although the Applicant and LBB consider that these provisions are no longer in force, the Applicant has included this power to ensure there is no doubt that they do not apply here.
- 4.5.19 The Order abrogates clause 4 of the 1994 Agreement and clause 24 of the 2005 Agreement respectively to ensure that the powers sought in the Order applying to the land covered by the 1994 Agreement or 2005 Agreement do not result in a breach of the agreements. It is Cory’s view that the conservation objectives in the 1994 Agreement or 2005 Agreement will not be compromised if clause 4 and clause 24 respectively are abrogated. This is because Cory considers that the requirement for the undertaker to produce and implement the Landscape, Biodiversity Access and Recreation Delivery Strategy (as approved by LBB) (**AS-094**) secured through Requirement 12 (landscape, biodiversity, and recreation strategy delivery plan) of Schedule 2 to the Order will ensure that the authorised development results in equivalent, or indeed improved, safeguarding of the conservation objectives. This means that the Extended Crossness Local Nature Reserve will only have one operating management regime – that set out in the Landscape, Biodiversity Access and Recreation Delivery Strategy (**AS-094**). This has been the subject of much discussion in Examination, and is further discussed in the Applicant’s Closing Submission.
- 4.5.20 The Strategy approved pursuant to Requirement 12 must contain the undertaker’s proposals for the Crossness Local Nature Reserve byelaws.
- 4.5.21 Article 50(3) provides that the carrying out of the authorised development on the Extended Crossness Local Nature Reserve shall not constitute a breach of the 1994 Agreement or 2005 Agreement (in their entirety), or planning permission numbers 91/1318U, 02/03373/OUTEA, 07/08166/FULM, 08/01834/FUL, 10/00063/OUTEA and 10/00063/OUTEA13 granted by LBB (the permission to which the 1994 Agreement and 2005 Agreement relates) to cover the authorised development activities taking place in the intermediate period before the new management regime is in place.

*Article 51 (planning permission, etc)*

- 4.5.22 Article 51(1) permits certain development authorised by a planning permission granted under the 1990 Act that is within the Order limits to be carried out

pursuant to the terms of the planning permission without breaching the Order. This provision ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. These provisions have precedent in the **M20 Junction 10a Development Consent Order 2017**, **A30 Chiverton to Carland Cross Development Consent Order 2020** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

- 4.5.23 Article 51(2) provides that the land within the Order limits in which the undertaker holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the 1990 Act. The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the authorised development will benefit from certain permitted development rights on that land in connection with the operation of the road. The **A19/A184 Testo’s Junction Alteration Development Consent Order 2018** (article 37), the **A30 to Chiverton to Carland Cross Development Consent Order 2020** (article 42) and the **A122 (Lower Thames Crossing) Development Consent Order 2025** (Article 56) followed the same approach. Other DCOs often have this provision as a separate article. Cory has chosen to include this provision in this article as it relates to “planning permissions” under the 1990 Act, and so is regarded as neater, more concise drafting than having a separate article.
  
- 4.5.24 Article 51(3) addresses the Supreme Court’s ruling in *Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]*. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.
  
- 4.5.25 Article 51(3) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act or DCO made under the 2008 Act or consent granted by the Secretary of State pursuant to section 36 of the Electricity Act 1989 which are inconsistent with the works and exercise of powers under the Order. The provision is based on Article 3(3) of the **Lake Lothing (Lowestoft) Third Crossing Order 2020** and the **A122 (Lower Thames Crossing) Development Consent Order 2025** (Article 56(3)). However, it differs from that precedent in that the provision which reflects the terminology used by their Supreme Court in the Hillside case, and confirms that relevant permissions which conflict with the Proposed Scheme can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Proposed Scheme and the development authorised under a planning permission. In addition, it makes clear that the provision also applies to DCO made under the 2008 Act and section 36 consents under the Electricity Act 1989 (notwithstanding that this was not at issue in the *Hillside* judgment). It is considered this is necessary to confirm that developments are not prevented.
  
- 4.5.26 Article 51(4) has been inserted to deal with the converse situation covered by Article 51(3) and confirms that development under other consents is not to prevent activity authorised under the Order.
  
- 4.5.27 Without Articles 51(3) or (4) there is a significant risk of the Proposed Scheme or other permissions and consents being undeliverable or subject to enforcement action. This is a particular issue for the Proposed Scheme given



the existing consents for Riverside 1 and Riverside 2. This article therefore works in tandem with Article 7.

- 4.5.28 Article 51(5) treats works carried out under this Order as being immediately required for the purpose of carrying out development authorised by a planning permission for the purposes of a tree felling license. This provision is based on article 54(3)(c) of the **Great Yarmouth Third River Crossing Development Consent Order 2020** and can also be seen in a similar fashion in the **A122 (Lower Thames Crossing) Development Consent Order 2025 (Article 56(5))**. This is required as section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disappplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Article 51(5) extends the exception to any trees felled as a result of the authorised development.
- 4.5.29 Article 51(6) provides that works carried out this Order are deemed to be work requiring development consent under section 31 of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010. At the time of writing, this Schedule is not yet in force, although it is anticipated that it will be brought into force later in 2024, and so this paragraph has been included in advance of it coming into force. Paragraph 7(3) of Schedule 3 makes clear that that the Schedule does not apply to work requiring development consent under section 31 of the 2008 Act (i.e. nationally significant infrastructure projects). The legislation is silent on the position for Projects of National Significance which have been directed into the 2008 Act regime by the Secretary of State, as is the case for the Proposed Scheme. The Applicant considers this to be a lacuna in the Flood and Water Management Act 2010, as it does not consider there to be a legal or practical reason why a Project of National Significance should be treated differently to a NSIP requiring development consent under section 31 of the 2008 Act.
- 4.5.30 Article 51(7) defines “enforcement action” to make clear what this term means under the 1990 and 2008 Acts, to aid clarity for all Interested Parties.

*Article 52 (no double recovery)*

- 4.5.31 This Article provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.
- 4.5.32 This Article has precedent in numerous made Orders, including the **North London Heat and Power Generating Station Order 2017** the **REP Order**, the **West Burton Solar Project Order 2025**, the **Viking CCS Carbon Dioxide Pipeline Order 2025** and the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

*Article 53 (Byelaws relating to the Crossness Local Nature Reserve)*

- 4.5.33 This Article provides the undertaker or the London Borough of Bexley with the power to make byelaws in relation to the Crossness Local Nature Reserve.
- 4.5.34 Article 53(1) specifies the purposes for which the byelaws may be made, including to regulate the maintenance of order in the Crossness Nature Reserve; and the conduct of persons in the Crossness Nature Reserve.

- 4.5.35 Article 53(2) confirms that byelaws made under Article 53(1) must not prevent, prohibit or restrict the construction, maintenance, operation or decommissioning of the authorised development.
- 4.5.36 The London Borough of Bexley also has the power under Article 53(3) to vary or revoke any byelaws made by the undertaker in exercise of this power.
- 4.5.37 Article 53(6) confirms that byelaws made under this Article are enforceable by the London Borough of Bexley and any authorised person.
- 4.5.38 Article 53(7) provides that a person who breaches a byelaw made under this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Article 54 (Fixed penalty notices relating to byelaws)*

- 4.5.39 Article 54 sets out a fixed penalty notice procedure to be followed in the event that it appears that a person has committed an offence under the byelaws made under Article 53. This power can be undertaken by an authorised person, defined to be a person employed by LBB.

## 4.6 Schedules

*Schedule 1 (authorised development)*

- 4.6.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (**REP6-003**) to delineate the area within which each "work" can be constructed, maintained and operated (see Articles 3 (development consent granted by the Order) and 4 (maintenance of authorised development)).
- 4.6.2 Paragraph 3.12 of this Explanatory Memorandum summarises the authorised development. A more detailed description of the various elements of the authorised development is provided in Chapter 2 of the Environmental Statement (**REP6-008**).
- 4.6.3 The mechanics of the drafting in Schedules 1 (authorised development) and 2 (requirements) ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement (**APP-050 – APP-120**, as amended during Examination). This is achieved through a number of mechanisms in the Order which together ensure:
  - (a) Article 4 (development consent granted by the Order) and Schedule 1 (authorised development) provide the power to build the authorised development. Pursuant to Article 4(2), each numbered work must be situated within the area delineated on the Works Plans (**REP6-003**) – thus, for example, the Carbon Capture Facility can only be built within the area for Work Number 1. Given these overarching constraints, there is certainty as where each element can be built;
  - (b) The relevant parameters secured via Requirement 4(2) and set out in Schedule 16 (design parameters) set maximums and, where

applicable, minimums for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the Environmental Statement (**APP-050 – APP-120**, as amended during Examination ). These parameters are based on the application of the Rochdale Envelope principle, such that maximum and, where applicable, minimum building dimensions have been presented and assessed in the Environmental Statement, recognising that the final building sizes may differ from (but will never be materially larger than) these maxima depending on the technology selected;

- (c) In terms of detailed design, Requirement 4(1) of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the layout, scale and external appearance of Work Number 1 prior to commencing that work. These details submitted for approval must include a statement to confirm how the design principles and design code (**REP5-009**) have been taken into account in the details that have been submitted.

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

*Schedule 2 (requirements)*

- 4.6.5 This Schedule sets out the requirements which apply to the construction, operation (including maintenance) and decommissioning of the authorised development under the Order. The requirements closely relate to the mitigation set out in the Mitigation Schedule (**REP1-010**) and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' or 'framework' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.

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

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

- (a) necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement (**APP-050 – APP-120**, as amended during Examination );
- (b) enforceable and precise in their language; and
- (c) reasonable in all other respects.

- 4.6.8 Paragraph 1 of Schedule 2 sets out a number of definitions that are used solely in this Schedule rather than in the Order more widely. This includes a definition of "ground conditions investigations and assessments strategy", which is a strategy for investigating, assessing, assessing and (where necessary) remediating ground conditions, contamination and ground

stability; “mitigation schedule”, which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified); a definition of “jetty works environmental design scheme”, which is a scheme setting out the details of the undertaker's proposals for Work Number 4A; and a definition of “National Highways” to identify the appropriate entity for the purposes of Requirement 9 (Construction Traffic Management Plan) and Requirement 24 (Decommissioning Traffic Management Plan).

- 4.6.9 **Requirement 2: Time limits.** This requirement provides that the authorised development must not begin later than 7 years from the date of the Order coming into force. This time limit is discussed further in the explanation of article 29 above. The requirement uses the term 'begin', rather than 'commence', so that any material operation (as defined in section 155 of the 2008 Act) is sufficient for the purposes of satisfying this time limit including any of the “permitted preliminary works”. This aligns with the approach taken on the **A66 Northern Trans-Pennine Project**.

4.6.10

- 4.6.11 **Requirement 3: Approved details and amendments to them.** This requirement provides that where any documents have been certified under Article 46 (certification of plans etc.) and where any plans, details or schemes have been approved by LBB (or any other body responsible for approval under the Order), the undertaker may submit for approval in writing any amendments to those documents, plans, details or schemes and, if approved by the approving body, those documents, plans, details or schemes are to be taken to include the amendments approved by the approving body. Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the Environmental Statement. This approach has precedent in the **Longfield Solar Farm Order 2023**, noting that the ability to amend approved documents generally is well preceded across many Orders.

- 4.6.12 Sub-paragraph (3) provides that sub-paragraph (1) does not apply to the Book of Reference (**as submitted at Deadline 7**) and the Land Plans (**REP4-003**) given that this would impact compulsory acquisition powers.

- 4.6.13 **Requirement 4: Detailed design.** This requirement provides that no part of Work No. 1, Work No. 2 (except for internal modifications to existing plant, equipment and apparatus under Work No. 2A(iii), 2B(iii) and 2C(ii)) or Work No. 5 may commence until details of the layout, scale and external appearance for those Work Nos. have been submitted to and approved by the LBB in writing. The authorised development must be designed and constructed in accordance with the design parameters set out in Schedule 16 (design parameters) and item 1.12(a) of the mitigation schedule. The authorised development must be designed and constructed in accordance with the design principles and design code and the detailed design of the authorised development must take into account the climate variables considered in the Environmental Statement (**APP-051**). Any part of the authorised development may be designed and constructed to deviate from the design parameters if the Applicant has first sought and obtained approval for such deviations from the relevant planning authority prior to the commencement of that part of the authorised development.

- 4.6.14 **Requirement 5: Permitted preliminary works.** This requirement requires the permitted preliminary works must be carried out in accordance with

appendix 2.1 of the Environmental Statement ( **APP-050 – APP-120**, as amended during Examination).

- 4.6.15 **Requirement 6: Notice of date of final commissioning.** This requirement requires the undertaker to provide LBB, the PLA and the Environment Agency with notice of the date of final commissioning, within seven days of the completion of the commissioning of Work No. 1.
- 4.6.16 **Requirement 7: Code of construction practice.** This requirement prevents any part of the authorised development from commencing until a code of construction practice for that part of the authorised development has been submitted to and approved by LBB in writing, in consultation with the WRWA and, where the code of construction practice submitted relates to construction activities in the river Thames, emergency planning or opportunities to use the river Thames to transport equipment or materials during construction, the PLA. The requirement is drafted to enable the undertaker to submit the code in respect of the part of the authorised development that it wants to "commence", without having to provide a code covering all parts. Therefore, the requirement could be discharged through one code or multiple codes. The requirement requires the submitted code or codes to be substantially in accordance with the outline code of construction practice (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The code/codes is/are to be implemented as approved. The requirement also lists the following details that the code (or codes, to the extent that they are applicable to the part of the authorised development that the code relates to) must be accompanied by or contain:
- (a) construction lighting measures;
  - (b) a biosecurity management plan;
  - (c) a community engagement plan;
  - (d) a dust management plan;
  - (e) a materials management plan;
  - (f) a pollution prevention plan;
  - (g) a site waste management plan (to be substantially in accordance with the outline site waste management plan); and
  - (h) a surface water management plan.
- 4.6.17 **Requirement 8: Construction Hours:** This requirement provides that construction of the authorised development must not take place on specified days or outside specified hours. The Requirement also provides that these restrictions do not apply to certain construction works, including those carried out within existing building or buildings constructed as part of the authorised development, are carried out with the prior approval of the relevant planning authority, are associated with an emergency, or are associated with slip form working. The hours set out here are those found in the **REP Order**.
- 4.6.18 **Requirement 9: Construction traffic management plan.** This requirement prevents any part of the authorised development from commencing until a construction traffic management plan has been submitted to and approved by

LBB, in consultation with the local highways authority (which is also LBB), Dartford Borough Council, Kent County Council, National Highways and WRWA. The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plans. The requirement requires the submitted plan or plans to be substantially in accordance with the Framework Construction Traffic Management Plan **(REP5-015)** (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)), and it must contain a construction worker travel plan (which must be substantially in accordance with the construction worker management measures included in the Framework Construction Traffic Management Plan). The construction of each part of the authorised development must be undertaken in accordance with the approved plan for that part.

- 4.6.19 **Requirement 10: Emergency preparedness and response plan.** This requirement prevents Work Nos. 1 and 4 from being fully commissioned until an emergency preparedness and response plan has been submitted to and approved by LBB in writing, in consultation with the Environment Agency, lead local flood authority, the London Fire Brigade and, in respect of Work No. 4 only, the PLA. The plan must be substantially in accordance with the Outline Emergency Preparedness and Response Plan **(REP6-033)** (which is a certified document under Article 46 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved and maintained throughout the operation of the relevant part of Work Nos. 1 or 4 to which the plan or plans relate.
- 4.6.20 **Requirement 11: Lighting strategy.** This requirement prevents any part of the authorised development from commencing until a lighting strategy has been submitted to and approved by LBB in writing, in consultation with the PLA. The strategy must be substantially in accordance with the Outline Lighting Strategy **(REP5-011)** (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates.
- 4.6.21 **Requirement 12: Landscape, biodiversity and recreation strategy delivery plan.** This requirement prevents any part of the authorised development from commencing until a landscape, biodiversity and recreation strategy delivery plan has been submitted to and approved by LBB in writing, in consultation with Thames Water Utilities Limited. The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one strategy or multiple plans. The plan must be substantially in accordance with the Outline Landscape, Biodiversity, Access and Recreation Delivery Strategy **(AS-094)** (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)) and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates. The plan must include the following information (insofar as it is relevant to the part of the authorised development to which the strategy relates):
- (a) the location, number, species, size and planting density of any proposed planting including the proposed times of such planting;

- (b) cultivation, importing of materials and other operations to ensure plant establishment;
  - (c) existing trees to be retained;
  - (d) an implementation timetable;
  - (e) how the plan proposals for that part will, with the exception of the intertidal environment, contribute to the achievement of a minimum of 10% biodiversity net gain in area habitat units and a minimum of 10% biodiversity net gain in watercourse units for all of the authorised development for thirty years from the date of commissioning of the authorised development and the metric that has been used to calculate that those percentages will be reached;
  - (f) how the landscaping and ecological measures proposed in the plan will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to Requirement 23 (decommissioning environmental management plan);
  - (g) the flora, fauna and habitat surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of, or inform, the mitigation, management and monitoring measures to be taken forward following those initial surveys;
  - (h) the proposals for the establishment of compensatory open mosaic habitat;
  - (i) the final routing, specification and maintenance regime for permissive paths and the public rights of way referred to in article 15(1) and article 15(3);
  - (j) provision for graziers, including details of accesses and access routes (including their surfacing);
  - (k) the final routing, specification and maintenance regime for the diversion and improvement of existing watercourses and the creation of new watercourses;
  - (l) a statement to confirm how the design principles and design code have been complied with; and
  - (m) the undertaker's proposals for a management plan for the crossness local nature reserve as extended.
- 4.6.22 Sub-paragraph (4) of the requirement also enables the strategy to include measures or mechanisms for the creation, improvement or management of habitats outside of the Order limits, or the payment of credits.
- 4.6.23 Sub-paragraph (5) provides that the strategy must be accompanied by a report setting out the engagement activities that the undertaker has undertaken and how the undertaker has had regard to the feedback received during that engagement.

- 4.6.24 Sub-paragraph (6) enables the undertaker to, within five years after the planting has been undertaken, replace any planting undertaken as part of the approved strategy that has been removed, has died or has become damaged or diseased in the first available planting seasons with a specimen of the same species and size as that originally planted.
- 4.6.25 **Requirement 13: Surface and foul water drainage.** This requirement provides that no part of the authorised development may commence until details of the surface and foul water drainage strategy for that part have been submitted to and approved by LBB in writing in consultation with the local lead flood authority. The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. It also required the details submitted under this Requirement to be consistent with those submitted under Requirement 12. The requirement requires the submitted strategy or strategies to be substantially in accordance with the Outline Drainage Strategy (**REP6-030**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The strategy/strategies is/are to be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the strategy relates.
- 4.6.26 **Requirement 14: Operational environmental management plan.** This requirement prevents Work No. 1 from being fully commissioned until an operational environmental management plan has been submitted to and approved by LBB in writing. The approved plan must include measures set out in identified measures in the Mitigation Schedule (**REP1-010**) and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.
- 4.6.27 **Requirement 15: Skills and employment plan.** This requirement prevents Work No. 1 from commencing until a skills and employment plan has been submitted to and approved by LBB in writing. The plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates and must include the relevant measures identified in the Mitigation Schedule (**REP1-010**)
- 4.6.28 **Requirement 16: Jetty works environmental design scheme.** This requirement provides that Work No. 4 must not commence until a jetty works environmental design scheme has been submitted to and approved by LBB in writing, in consultation with the Environment Agency. The construction and maintenance of Work No.4 must be in accordance with the approved jetty works environmental design scheme. The requirement also provides that LBB must not refuse an application for approval of a jetty works environmental design because it disagrees with the undertaker's choice as to whether or not to remove the Belvedere Power Station Jetty.
- 4.6.29 **Requirement 17: River wall.** This requirement provides that no part of Work No.4 may commence until a river wall condition survey on those parts of the river wall within the Order limits has been submitted to and approved by the Environment Agency in writing, in consultation with LBB. The river wall condition survey must, where appropriate, identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years. The remedial works required to bring the defence up to good standard must be carried out within 2 years of when the condition survey is approved or such other time period as is agreed by the Environment



Agency. A river wall condition survey is not required to the extent that any parts of the river wall has been assessed as part of a survey pursuant to Requirement 20 of the REP Order.

- 4.6.30 **Requirement 18: Flood risk mitigation.** This requirement provides that the authorised development must be carried out and operated in accordance with paragraphs 8.3.20 to 8.3.33 and 8.6.9 of the Flood Risk Assessment (**ES Appendix 11-2**) (which is a certified document under Article 44 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified)). The requirement provides for the undertaker to submit for written approval by the Environment Agency an updated flood risk assessment, in the event that the undertaker anticipates that the operation of Work Number 1 (the Carbon Capture Facility) will continue past the 50th anniversary of the date of final commissioning. The updated flood risk assessment must assess the flood risk arising from the continued operation of Work Number 1 past the 50th anniversary of the date of final commissioning; contain details of any mitigation or compensation measures required and an implementation timetable for such measures. These measures must be implemented as approved in accordance with the approved implementation timetable no later than the 50th anniversary of the date of final commissioning of Work Number 1 or such other time period as is agreed with the Environment Agency, and must be retained for the lifetime of Work Number 1. This is an approach agreed with the Environment Agency on the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.
- 4.6.31 **Requirement 19: Navigation risk assessment.** This requirement provides that commencement of Work No. 4 cannot take place until the undertaker has updated the Preliminary Navigation Risk Assessment (**AS-092**) to take account of the detailed design and construction methodology of Work Number 4 and submitted the updated navigation risk assessment to the PLA for its written approval, which must not be unreasonable withheld or delayed. The Preliminary Navigation Risk Assessment (**AS-092**) is a certified document under Article 46 (certification of plans etc.) and Schedule 13 (Documents and plans to be certified). The updated navigation risk assessment must also be approved by the PLA (with such approval not to be unreasonably withheld). Construction and operation of the authorised development must be carried out in accordance with the approved updated navigation risk assessment.
- 4.6.32 **Requirement 20: Control of noise during operation.** This requirement provides that, prior to commissioning any part of Work No.1, a written noise monitoring scheme must be submitted to and approved by LBB in writing, to achieve levels at certain receptors identified in the Requirement. The undertaker must operate the authorised development in accordance with the approved noise mitigation plan, except in the case of an emergency or with the prior approval of LBB. In the event that the level of noise at a monitoring location exceeds the maximum permitted level specified because of an emergency, the undertaker is required to submit a statement to LBB explaining the nature of the emergency, and if it is expected to last more than 24 hours, it must also inform local residents and businesses.
- 4.6.33 **Requirement 21: Ground conditions investigations and assessment strategy.** This requirement provides that no part of the authorised development may commence until a ground conditions investigations and assessments strategy for that part has been submitted to and approved by LBB in writing, in consultation with the Environment Agency, the WRWA, and where the ground conditions investigations and assessments strategy submitted covers investigations and assessments to be carried out in the river

Thames, the PLA. The authorised development must be carried out in accordance with the approved strategy.

- 4.6.34 **Requirement 22: Archaeological mitigation strategy.** This requirement provides that no part of the authorised development may commence until an archaeological mitigation strategy for that part has been submitted to and approved by LBB in writing, in consultation with the PLA and the MMO. The requirement also details the matters the archaeological mitigation strategy must cover, to the extent that those matters are relevant to the part of the authorised development which the archaeological mitigation strategy is covering. The requirement also provides for the approval of any further written schemes of archaeological investigation that are identified as necessary in the archaeological mitigation strategy.
- 4.6.35 **Requirement 23: Decommissioning environmental management plan.** This requirement provides that, within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with the Environment Agency and if the decommissioning environmental management plan to be submitted relates to decommissioning works within the river Thames, the PLA and the MMO, a decommissioning environmental management plan for that part. Only after that plan has been approved can the undertaker commence decommissioning works for the relevant part. The requirement is drafted to enable the undertaker to submit a plan in respect of the part of the authorised development that it wants to decommission, without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plan.
- 4.6.36 The plan must be implemented and maintained as approved and must contain details of:
- (a) the buildings to be demolished;
  - (b) the means of removal of the materials resulting from the decommissioning works;
  - (c) the phasing of the demolition and removal works;
  - (d) any restoration works (including the proposed finished levels of the land following those works and any proposals for the restoration of habitats and watercourses lost as a result of the construction of the authorised development) to restore the land within the limits of deviation of Work No. 1 to a condition (including ecological outcomes) agreed with the relevant planning authority;
  - (e) the phasing of any restoration works; and
  - (f) a timetable for the implementation of the plan.
- 4.6.37 The plan submitted and approved be accompanied by, or include, a site waste management plan which demonstrates how the waste hierarchy will be followed in respect of the decommissioning works.
- 4.6.38 **Requirement 24: Decommissioning traffic management plan.** This requirement provides that within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to LBB for its written approval, after consultation with

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

- 4.6.39 The plan must be implemented and maintained as approved and must contain details of route diversions and routing of abnormal loads and HGVs.
- 4.6.40 **Requirement 25: Heat Strategy.** This requirement provides that no part of the authorised development may be commenced until the undertaker has submitted a heat strategy to LBB for its written approval. Sub-paragraph (2) confirms what the heat strategy must include, whilst sub-paragraph (3) confirms that this requirement must not require the undertaker to repeat actions already undertaken pursuant to other named requirements and conditions. The heat strategy must be implemented as approved and such implementation does not constitute a breach of the documents, conditions and requirements referred to in sub-paragraphs (3)(a) to (3)(f).

*Schedule 3 (legislation to be disapplied)*

- 4.6.41 This Schedule lists out the legislation that the Order disapplies relating to watercourses, flood prevention, docks and local authority legislation in the vicinity of the Order limits in so far as such legislation is in force and is incompatible with the powers contained within the Order.

*Schedule 4 (streets subject to street works)*

- 4.6.42 This Schedule sets out the streets that would be subject to street works (including reference to the Access and Rights of Way Plan (**AS-008**) the location and the specific street). The Schedule relates to Article 13 (street works).

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

- 4.6.43 This Schedule sets out the streets to be permanently or temporarily altered, by reference to the Access and Rights of Way Plan (**AS-008**). The Schedule relates to Articles 14 (power to alter layout etc., of streets) and 18 (access to the authorised development). Part 1 relates to those which will not require street authority consent, and Part 2 to those that will.

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

- 4.6.44 This Schedule sets out the street (Part 1) and private means of access (Part 2) that the undertaker has the power to permanently stop up in connection with the construction of the authorised development, as shown on the Access and Rights of Way Plan (**AS-008**). Part 1 and Part 2 include provision for substitutes to be provided where the street or private means of access respectively are to be permanently stopped up. This schedule relates to Article 15 (permanent stopping up of specified street and private means of access).

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

- 4.6.45 Part 1 of this Schedule sets out the streets that will be subject to temporary alteration, prohibition, diversion or restriction and the public rights of way that will be subject to temporary alteration, prohibition, diversion or restriction (including reference to the relevant Access and Rights of Way Plan (**AS-008**), the location and the extent of the temporary prohibition or restriction). Part 2 of this Schedule sets out the public rights of way where temporary vehicular use is authorised (including reference to the relevant Access and Rights of Way Plan (**AS-008**), the location and the extent of the vehicular measures authorised). The Schedule relates to Article 16 (temporary prohibition or restriction of use of streets and public rights of way).

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

- 4.6.46 This Schedule specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans (**REP4-003**), and the nature of the rights and restrictive covenants in column 2 is explained by defined terms set out in that Schedule. The Schedule relates to Article 29 (compulsory acquisition of rights).

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

- 4.6.47 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made orders (the **REP Order**, for example) and reflects the necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 29 (compulsory acquisition of rights).

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

- 4.6.48 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 37 (temporary use of land for carrying out the authorised development) and Article 38 (temporary use of land for maintaining the authorised development). This land is shown yellow on the Land Plans (**REP4-003**), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans (**REP6-003**).

*Schedule 11 (Deemed marine licence)*

- 4.6.49 This Schedule contains the terms of the deemed marine licence pursuant to Article 42 (deemed marine licence) and contains details of the licenced marine activities that may be carried out by the undertaker.

*Schedule 12 (Protective provisions)*

- 4.6.50 This Schedule includes protective provisions for the following:
- (a) Part 1 – for the protection of electricity, gas, water and sewerage undertakers;
  - (b) Part 2 – for the protection of operators of electronic communications code networks;
  - (c) Part 3 - for the protection of the Environment Agency;

- (d) Part 4 - for the protection of Thames Water Utilities Limited;
- (e) Part 5 – for the protection of the PLA;
- (f) Part 6 – for the protection of UK Power Networks Limited, London Power Networks PLC and South Eastern Power Networks PLC;
- (g) Part 7 - for the protection of Southern Gas Networks PLC as gas undertaker.
- (h) Part 8 – for the protection of REPL; and
- (i) Part 9 – for the protection of each RRRL entity.

All Protective Provisions are agreed with the aforementioned parties, save for Thames Water Utilities Limited. The elements of dispute with that party are set out in the **Schedule of Changes to the DCO** (as submitted at Deadline 7).

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

- 4.6.51 This Schedule lists the documents that the undertaker must have certified pursuant to Article 46 (certification of plans etc.).

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

- 4.6.52 This Schedule, which relates to Article 48 (procedures in relation to certain approvals etc.), sets out the procedure for the discharge of all consents, agreements or approvals contemplated by the Order, save where any discrete part of the Order provides for a different procedure. The Schedule sets out time periods within which decisions must be made, and provides for deemed approval in certain circumstances.
- 4.6.53 The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Schedules similar to Schedule 14 (Procedure in relation to certain approvals etc.) have been included in various made orders (including the **REP Order**). The drafting of this Schedule has had regard to PINS Advice Note 15 (July 2018). The process is required in order to ensure that decisions are dealt with efficiently so that the delivery of this project of national significance, which will support the UK's transition to a net zero economy, is not unduly delayed.

*Schedule 15 (arbitration rules)*

- 4.6.54 This Schedule relates to Article 49 (arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. In addition, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for the delivery of carbon capture infrastructure, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.
- 4.6.55 Schedule 15 (arbitration rules) refers to the person who commenced the arbitration as the "Claimant" and the other party as the "Respondent".
- 4.6.56 The timetable for the process is as follows:

- (a) Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
  - (b) Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
  - (c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a statement of reply.
- 4.6.57 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

*Schedule 16 (design parameters)*

- 4.6.58 This Schedule sets out the design parameters that various Work Areas must be carried out in accordance with for the purposes of Requirement 4 of Schedule 2 (Requirements).
- 4.6.59 The Schedule includes details of the relevant component/building/area, the works area, maximum numbers, maximum height in metres of component/building/area, maximum height in metres and any further parameters.



## DECARBONISATION

10 Dominion Street  
Floor 5  
Moorgate, London  
EC2M 2EF  
Contact Tel: 020 7417 5200  
Email: [enquiries@corygroup.co.uk](mailto:enquiries@corygroup.co.uk)  
**[corygroup.co.uk](http://corygroup.co.uk)**