



# Botley West Solar Farm

## Explanatory Memorandum

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# 1. Introduction

## 1.1 Overview

- 1.1.1 This Explanatory Memorandum has been prepared on behalf of SolarFive Ltd (the 'Applicant') and forms part of the Development Consent Order ('DCO') application (the 'Application').
- 1.1.2 The Applicant is seeking development consent for Botley West Solar Farm (the 'Project'), which in summary will comprise the construction, operation, maintenance and decommissioning of a photovoltaic ('PV') solar farm and associated infrastructure with a total capacity exceeding 50 megawatts ('MW'), in parts of west Oxfordshire, Cherwell and Vale of White Horse districts. The Project will export electricity for connection to the National Grid at Botley West.
- 1.1.3 The Project is classed as a 'nationally significant infrastructure project' ('NSIP') for the purposes of the PA 2008 and requires an application for a DCO. The application for development consent is being submitted to the planning inspectorate ('PINS'), with the decision on whether to grant a DCO to be made by the Secretary of State for Energy Security and Net Zero (the 'Secretary of State'), as required under the PA 2008.
- 1.1.4 The Project's solar arrays (comprising all the mounting structures, frames and foundations) will be connected by underground electrical cables within each section of the Site, and via underground electric cables to the substation at the grid connection point. The interconnecting cable route will largely follow the public highway, but some parts will cross land controlled by the Applicant.
- 1.1.5 The Project will also include associated development to support the solar PV arrays. The associated development element of the Project includes but is not limited to a new National Grid substation; the development of on-site substations; cabling between the different areas of solar PV arrays; temporary construction and decommissioning compounds; areas of landscaping and biodiversity enhancement; access provisions and areas for sensitive archaeological site protection and management.
- 1.1.6 The consent being sought is a temporary one. It is anticipated that the Project will be constructed, operated and decommissioned within 42 years. At the end of this period all above ground infrastructure (excluding the National Grid substation) and equipment will be removed, along with the cables beneath the main solar array areas, with the land reverting back to its previous agricultural use.
- 1.1.7 Cables located beneath the public highway or cables laid using horizontal directional drilling (HDD) are not, however, proposed to be removed following the decommissioning of the Project.
- 1.1.8 A full description of the Project is included in **Chapter 6: Project Description** of the Environmental Statement **[EN010147/APP/6.3]**. An overview of the Project and its environmental impacts is provided in the **Non-Technical Summary** of the Environmental Statement **[EN010147/APP/6.2]**.

- 1.1.9 The DCO, if made, would be known as the Botley West Solar Farm Order 202[\*]. A draft of the DCO has been submitted with the Application [EN010147/APP/3.1] (the “Order”).
- 1.1.10 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the “APFP Regulations”). It should be read in conjunction with the suite of documents accompanying the Application, in particular the Order, the Environmental Statement [EN010147/APP/6.1 to 6.5], the Works Plans [EN010147/APP/2.3], Land Plans [EN010147/APP/2.4], ~~Crown Land Plans [EN010147/APP/2.5]~~, Book of Reference [EN010147/APP/4.3], Statement of Reasons [EN010147/APP/4.1], Consultation Report [EN010147/APP/5.1] and the Planning Supporting Statement [EN010147/APP/7.1].

## 1.2 SolarFive Ltd

- 1.2.1 The Applicant and the proposed undertaker in the draft Order is SolarFive Ltd, an electricity generation licence holder under the Electricity Act 1989 and a company registered in England and Wales (company no. 12602740 and whose registered office is at 16 Great Queen Street, Covent Garden, London, United Kingdom, WC2B 5AH). SolarFive Ltd is the ‘special purpose vehicle’ (‘SPV’) for the Project and currently has a grid connection offer date with National Grid Electricity Transmission of October 2027.
- 1.2.2 SolarFive Ltd is jointly owned by the two founders of PVDP, a Berlin-based developer of solar farms. PVDP has been successfully developing solar assets in Europe and Japan for the last 18 years, with 1.0GW built to date. Further information on the Applicant’s corporate structure is in the Funding Statement [EN010147/APP/4.2].
- 1.2.3 PVDP acts on behalf of SolarFive Ltd and, in liaison with its legal and technical consultant team, has helped to prepare and submit the DCO application, including the Environmental Statement.

## 1.3 The Site

- 1.3.1 The Project will be located in the county of Oxfordshire, across an area of approximately 1,418ha. The Project location extends from an area of land in the north, situated between the A4260 and the Dorn River Valley near Tackley and Wootton (the ‘Northern Site’), through a central section, situated broadly between Bladon and Cassington (the ‘Central Site’), and connecting to a section further south near to Farmoor Reservoir and north of Cumnor (the ‘Southern Site’), where the Project will connect to the National Grid transmission network. The name ‘Botley West’ is derived from the location of the grid connection point.
- 1.3.2 The Project lies within the administrative areas of Oxfordshire County Council, West Oxfordshire District Council, Cherwell District Council and Vale of White Horse District Council. The majority of the Project lies within West Oxfordshire and overlaps with some of the Oxford Green Belt.

- 1.3.3 The Project is formed of three areas of solar installation (the Northern Site, the Central Site and the Southern Site) with interconnecting cables, which together would generate renewable power through photovoltaic panels. The Project aims to deliver approximately 840MWe of power to the National Electricity Transmission System ('NETS'), which would provide secure and clean energy of an equivalent level to meet the needs of approximately 330,000 homes.
- 1.3.4 The interconnecting cables being proposed are approximately 24.6km in length. Approximately 14.6km is located on farmland borders; 7.5km is located in public highway; and approximately 2.5km within trenchless crossings, such as those located under rivers, the railway line, main highway corridors, or under hedgerow and tree belt features.
- 1.3.5 The Project will connect to the National Grid, via a new National Grid 400kV substation, to be located close to the existing National Grid 400kV power line, which runs between Cowley, in Oxford, westwards to Walham in Gloucestershire. Discussions have been ongoing with NGET regarding the location and design for their substation based on their own assessment and evaluation work. Whilst, at the time of writing this Explanatory Memorandum, a final decision has yet to be taken by NGET, it is likely that the NGET substation will be located in one of two possible locations;
- (a) On land within the Order Limits, at the Southern Site, at the western most extremity, south of the Farmoor Reservoir; or
  - (b) On land near and to the West of the Applicant's Southern Site, south of the Farmoor Reservoir.
- 1.3.6 The area to be set aside for the NGET substation amounts to between 2.3ha to 3.8 ha. Within that area it is assumed that the substation itself will occupy a footprint of approximately 87m by 30m, with a likely maximum height of 12m, excluding connecting tower structures.
- 1.3.7 The Order limits is the area within which the Project may be carried out. The Order limits are shown on the Works Plans [EN010147/APP/2.3] and Land Plans [EN010147/APP/2.4].
- 1.3.8 The powers in the Order enabling the acquisition of land, new rights over land and the imposition of restrictions over land, relate to the Order land only which is within the Order limits. The Order land is shown on the Land Plans [EN010147/APP/2.4] ~~and Crown Land Plans [EN010147/APP/2.5].~~
- 1.3.9 Information about the Order limits, including about the current land use and any environmental constraints, is provided in greater detail in **Chapter 2: Existing Baseline** of the Environmental Statement [EN010147/APP/6.3].

## 1.4 The Proposed Project

- 1.4.1 A detailed description of the Project can be found in **Chapter 6: Project Description** of the Environmental Statement [EN010147/APP/6.3]. It comprises a generating station of more than 50MW, being the NSIP pursuant to the PA 2008 and is described in Work No. 1 in Schedule 1 to the Order. The Project also includes associated development (which comprises Work Nos. 2

to 9 in Schedule 1 to the Order) and further ancillary or related development as set out at sub-paragraphs (a) to (l) at the end of Schedule 1 to the Order.

- 1.4.2 All elements of the NSIP are described in the sub-paragraphs below, along with relevant definitions contained in Schedule 1 to the Order, and the associated development is described in paragraph 1.4.6 onwards.
- 1.4.3 **Work No. 1** – provides for solar panels and power converter stations to enable a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts. This description of Work No. 1 refers to a gross electrical output capacity of over 50MW. This is consistent with sections 14 and 15 of the PA 2008 which stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.
- 1.4.4 The description of the NSIP at Work No. 1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes reference to the means by which the parameters of the Project will be constrained and it is on this basis that the Environmental Impact Assessment has been undertaken, as set out in **Chapter 6: Project Description** of the Environmental Statement [EN010147/APP/6.3] and explained further in relation to the ‘consent envelope’. There is no reason to limit the electrical output capacity of the Project provided those parameters of the consent envelope are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the DCO.
- 1.4.5 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Project within the assessed parameters but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources, which is explained further in the Planning Supporting Statement [EN010147/APP/7.1]. The approach taken has precedent in all of the other made solar DCOs including the **Cleve Hill Solar Park Order 2020**, the **Little Crow Solar Park Order 2022**, the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 1.4.6 The associated development for the purposes of section 115 of the PA 2008 comprises Work Nos. 2 to 9 of the Project as provided for in Schedule 1 of the Order. This comprises the following elements:
- **Work No. 2** – provides for the development of a New National Grid Substation (as defined in the Order), including: electrical equipment (including power transformers, gantries, switchgear, reactive compensation equipment, electrical protection equipment devices (disconnectors, circuit breakers), harmonic filters, cables and back-up generators), control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings.

- **Work No. 3** – provides for the development of onsite substations and associated works, including Works 3A for the main substation and Works 3B for the six secondary substations; hardstanding, internal access road and parking areas; and on-site attenuation to collect and treat surface water before discharge.
- **Work No. 4** – provides for works in connection with high voltage electrical cabling, access and construction compounds for the electrical cables including:
  - (i) works to lay up to and including 275kV electrical cables connecting Work No. 3B to Work No. 3A;
  - (ii) works to lay up to and including 400kV electrical cables connecting Work No. 3A to Work No. 2;
  - (iii) grid connection infrastructure, including works to lay up to and including 400kV electrical cables, to connect Work No. 2 to the National Grid network.

Work No. 4 also provides for other related works such as the laying down of internal access tracks, ramps, means of access, footways, roads; joint bays, link boxes, cable ducts, cable protection, joint protection, manholes; marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; fencing, gates, boundary treatment and other means of enclosure; tunnelling, boring and drilling works for trenchless crossings and open trench crossings; as well as temporary construction and decommissioning laydown areas.

- **Work No. 5** – provides for sensitive archaeological site protection and management including habitat creation and management (including hedgerow removal and planting); works to upgrade existing footpaths or creation of new permissive paths, and fencing gates boundary treatment as well as other means of enclosure.
- **Work No. 6** – provides for works related to electrical cabling including (but not limited to) electrical cables connecting Works No. 1 and 3b to one another, connecting solar panels to one another, connecting the substations to one another, connecting the solar stations and on-site substations, including tunnelling, boring and drilling works for trenchless crossings and open trench crossings; site establishments and preparation works including site clearance, earthworks, and excavations; alteration of the position of services and utilities; and works for the protection of buildings and land. It also includes other works associated with the construction, maintenance, operation or decommissioning of the Project.
- **Work No. 7** – relates to the temporary construction and decommissioning compounds comprising areas of hardstanding; compacted ground or track matting; parking areas; site and welfare offices, canteens and workshops; security infrastructure, including cameras, perimeter fencing and lighting; areas to store materials, equipment, waste skips and spoil; site drainage and waste

management infrastructure (including sewerage); and electricity, water, waste water and telecommunications connections.

- **Work No. 8** – provides for works related to areas of landscape management and protection including measures to enhance the existing woodland and hedgerows; landscape and biodiversity mitigation and enhancement measures; community growing areas; habitat creation and management including earthworks and landscaping; construction of drainage infrastructure and means of access; laying down of internal access tracks, means of access and crossing of watercourses; and fencing gates boundary treatment and other means of enclosure.
- **Work No. 9** – relates to works to facilitate access to Work Nos. 1 to 8 including creation of accesses from the public highway; creation of visibility splays; works to improve and widen accesses across bridges; laying down of internal access tracks, means of access and crossing of watercourses; works to alter the layout of any street or highway; works to widen and surface the public highway and private means of access; and making and maintaining passing places.

#### 1.4.7 New National Grid Substation (Work No. 2)

- (a) As set out above, Work No. 2 in Schedule 1 of the Order facilitates the delivery of a 'New National Grid Substation' (as defined in Schedule 1 of the Order). The works included in this definition have been agreed to by National Grid to ensure that the scope of the works powers sought under the Order are sufficient to enable the new substation to be delivered pursuant to the Order.
- (b) Article 34(2) (consent to transfer the benefit of the Order) confirms that the benefit of Work No. 2 is for the undertaker (i.e. the Applicant) and National Grid, to ensure that the works for the New National Grid Substation may be carried out by either the Applicant or National Grid. This Article 34(2) also ensures that the cable works required to connect the main Project substation into the New National Grid Substation (Work No. 4(a)(ii)); and then to connect the New National Grid Substation to the national Grid network (Work No.4(a)(iii)), are also able to be delivered by the Applicant or National Grid.
- (c) The terms of a bilateral connection agreement dated 20 September 2021 provide that the Project would connect to the National Transmission System, via a new 400kV substation operated by National Grid. This new substation is proposed to be located close to the existing National Grid 400kV overhead line, which runs between Cowley in Oxford and Walham in Gloucestershire.
- (d) National Grid has carried out a site search and selection process for the new substation. That has identified two feasible locations: one on land under the control of the Applicant; and the other on land to the west of that in third party ownership, which National Grid is seeking to acquire. Those negotiations have not yet concluded.

- (e) Assuming National Grid can acquire the land, it will obtain the necessary consents for the new substation. However, the acquisition of the land and subsequent consent process are likely to take several months to conclude. Furthermore, whilst there are no obvious impediments to these processes, there is no guarantee that the land will be acquired, and the necessary consents obtained, within a reasonable timeframe.
- (f) The Applicant's application for the Botley West Solar Farm DCO therefore includes all the necessary powers for National Grid, or the Applicant, to deliver the new substation on the land under the Applicant's control. The Applicant may take this approach because the new substation is capable of being "associated development" under the PA 2008 (see 2.1 below).
- (g) If National Grid is unable to secure the interests and consents required in relation to its alternative site, the New National Grid Substation can be delivered through the powers in the DCO and on the land secured by the Applicant. Sheet 13a of the Works Plans [EN010147/APP/2.3] illustrates the scenario whereby the New National Grid Substation is delivered using the powers of the Order. Alternatively, if National Grid can secure the interests and consents required, the new substation would be built on the alternative site, and the land reserved for the New National Grid Substation in the Order would be used for the installation of additional solar array. Sheet 13b of the Works Plans [EN010147/APP/2.3] illustrates the scenario whereby the new substation will be delivered on National Grid's land and therefore the Applicant could utilise the area for additional solar array Work No. 1. Plot 13-04 on the Land Plans [EN010147/APP/2.4] identifies the area of land that will be used for either the New National Grid Substation or additional solar array.
- (h) This approach of securing development consent for alternative components of a solar project, on the same parcel(s) of land, has precedent in the **Cleve Hill Solar Park Order 2020**.
- (i) The Applicant's environmental impact assessment has considered both uses of the land reserved in the Order for the New National Grid Substation, and the cumulative impacts of solar development on that land and the development of the new substation on the alternative site identified by NGET.
- (j) This parallel consenting strategy for the new substation reduces potential impediments to the Project, whilst ensuring the environmental impacts are properly assessed, and the timely submission of consent applications.

1.4.8 The authorised development also includes further ancillary or related development within the Order limits, including:

- a. works for the provision of fencing and security measures such as CCTV, columns, lighting, communication boxes, lightning protection masts and weather stations;

- b. laying down of internal access tracks, ramps and span bridges, means of access, non-motorised links, footpaths and footways, laying and surfacing of permissive paths;
- c. laying down of temporary footpath diversions, permissive paths and construction of drainage infrastructure, signage and information boards;
- d. bunds, embankments, trenching and swales;
- e. landscaping and other works to mitigate any adverse effects of construction, maintenance or operation of the authorised development;
- f. electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- g. works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- h. surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- i. earthworks, site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- j. works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- k. tunnelling, boring and drilling works; and
- l. working sites in connection with the construction and decommissioning of the authorised development and its restoration,

and further ancillary or related development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Project but only within the Order limits and insofar as these works or operations are unlikely to give rise to any materially new or materially different Environmental effects from those assessed in the Environmental Statement [EN010147/APP/6.1 to 6.5].

- 1.4.9 This approach has been utilised in preference to more restrictive drafting, such as a requirement that ancillary works must be within the scope of work assessed by the environmental statement, in recognition of the recent Guidance on the Pre-application Stage for NSIPs (issued in April 2024 by the Ministry for Housing, Communities and Local Government). The Guidance notes the tendency for environmental statements to become excessively detailed and take an overly cautious approach that is ultimately inaccessible, cumbersome and counterproductive. The wording proposed in the Order therefore strikes an appropriate balance between the EIA regime and the Guidance, by retaining necessary flexibility for the detailed design of the authorised development, whilst ensuring that any ancillary development must remain within the *Rochdale Envelope* that has been assessed in the environmental statement.

## 1.5 Parameters of the Order and “Consent Envelope”

- 1.5.1 The detailed design of the Project must be in accordance with the Outline Layout and Design Principles [EN010147/APP/7.7], as secured in Requirement 5 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Project, such that new technology or different layouts can be used within that envelope, while ensuring that the potential impacts of the development will always comply with the Environmental Statement [EN010147/APP/6.1 to 6.5]. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in PINS' Advice Note 9: Rochdale Envelope (July 2018).
- 1.5.2 In addition to the Outline Layout and Design Principles [EN010147/APP/7.7] other DCO requirements, certified documents and plans will operate to control and manage the detailed design of the Project, as well as its construction, operation and maintenance and decommissioning. The way in which those mechanisms work together as an envelope within which the authorised development is to be undertaken, is explained in more detail below.
- 1.5.3 Article 3 (Development consent etc. granted by this Order) grants development consent for the Project. This consent is subject to two key controls:
- (a) The Project is described in Schedule 1 of the Order, where it is referred to as the "authorised development". The authorised development is granted consent pursuant to Article 3(1) which provides that consent for the Project is only given subject to compliance with the requirements, set out in Schedule 2 to the Order.
  - (b) In Schedule 1 the Project (i.e. the authorised development) is divided into a series of component parts, referred to as "numbered works". Article 3(2) requires that the numbered works authorised by the Order are situated within the corresponding numbered area shown on the Works Plans [EN010147/APP/2.3].
- 1.5.4 The design of the Project is also controlled via Requirement 5 (detailed design approval) of Schedule 2 of the Order which requires approval of details of the Project's design and requires that the details submitted accord with the Outline Layout and Design Principles [EN010147/APP/7.7]. The Outline Layout and Design Principles [EN010147/APP/7.7] set out the basis on which the assessment set out in the Environmental Statement [EN010147/APP/6.1 to 6.5] has been undertaken and secures the key design mitigation measures referenced in the Environmental Statement [EN010147/APP/6.1 to 6.5]. The Outline Layout and Design Principles [EN010147/APP/7.7] captures the important parameters that are necessary to ensure that the Project is constructed and operated in such a way that the impacts and effects would not exceed the scenario assessed in the Environmental Statement [EN010147/APP/6.1 to 6.5].
- 1.5.5 In addition to the Outline Layout and Design Principles [EN010147/APP/7.7], other DCO Requirements, certified documents and plans will operate to control and manage the detailed design of the Project, as well as its

construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as a consent envelope within which the Project is to be undertaken, is explained in more detail below.

- 1.5.6 In addition to these commitments and parameters, the design of the Project is also controlled by:
- a. approval and implementation of the Landscape and Ecology Management Plan (Requirement 6);
  - b. approval of a Biodiversity Net Gain Plan (Requirement 7);
  - c. approval and implementation of fencing and other means of enclosure (Requirement 8);
  - d. approval and implementation of any surface water drainage works and (if any) foul water drainage system (Requirement 9);
  - e. approval and implementation of the Written Scheme of Investigation (Requirement 10);
  - f. approval and implementation of a Code of Construction Practice (Requirement 11);
  - g. approval and implementation of the Operational Management Plan (Requirement 12);
  - h. approval and implementation of a Skills, Supply Chain and Employment Plan (Requirement 13); and
  - i. the protective provisions (Schedule 15).
- 1.5.7 Where the Outline Layout and Design Principles **[EN010147/APP/7.7]** do not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the environmental impact assessment and having regard to the other controls in place via the measures listed above.
- 1.5.8 The construction phase of the Project is required to be constructed within the areas on the Works Plans **[EN010147/APP/2.3]** and is also controlled by:
- a. the implementation of a community liaison group (Requirement 4);
  - b. approval and implementation of fencing and other means of enclosure (Requirement 8);
  - c. approval and implementation of any surface water drainage works and (if any) foul water drainage system (Requirement 9);
  - d. approval and implementation of the Written Scheme of Investigation (Requirement 10);
  - e. approval and implementation of a Code of Construction Practice (Requirement 11) which in turn secures further management plans including a Construction Traffic Management Plan, Public Rights of Way Management Plan, Site Resources and Waste Management Plan, Soil Management Plan; and Dust Management Plan;
  - f. approval and implementation of a Skills, Supply Chain and Employment Plan (Requirement 13);
  - g. the protective provisions (Schedule 15 of the Order); and

- h. street works pursuant to relevant powers in Part 3 of the Order and the accompanying Streets, Access and Rights of Way Plans [EN010149/APP/2.2].
- 1.5.9 The ongoing operation and maintenance of the Project is controlled by:
  - a. approval and implementation of the Landscape and Ecology Management Plan (Requirement 6);
  - b. approval and implementation of fencing and other means of enclosure (Requirement 8);
  - c. approval and implementation of any surface water drainage works and (if any) foul water drainage system (Requirement 9);
  - d. approval and implementation of the Operational Management Plan (Requirement 12);
  - e. approval and implementation of a Skills, Supply Chain and Employment Plan (Requirement 13);
  - f. the protective provisions (Schedule 15 of the Order);
  - g. the Works Plans [EN010149/APP/2.3]; and
  - h. the Streets, Access and Rights of Way Plans [EN010149/APP/2.2].
- 1.5.10 The decommissioning and restoration of the Project is controlled by the approval and implementation of a Decommissioning Plan (Requirement 14).
- 1.5.11 The Application seeks flexibility to undertake the Project within the above envelope, in particular within the maximum areas and parameters secured via the Works Plans [EN010147/APP/2.3] and Outline Layout and Design Principles [EN010147/APP/7.7]. As set out in **Chapter 4: Approach to Environmental Assessment** of the Environmental Statement [EN010147/APP/6.3] and the individual technical chapters, the environmental impact assessment has assessed the upper extent of the areas and sizes allowed by the Works Plans [EN010147/APP/2.3] and Outline Layout and Design Principles [EN010147/APP/7.7]. As a result, the Environmental Statement [EN010147/APP/6.1 to 6.5] has assessed a worst case and has considered and confirmed that any Project built within the maximum areas and parameters would have effects no worse than those assessed.
- 1.5.12 Any illustrative development layouts have been submitted to provide illustrative examples of the different design layouts that have been considered for the Project that could be built out within the "consent envelope" (the design aspect of which is controlled primarily through the Works Plans [EN010147/APP/2.3] and Outline Layout and Design Principles [EN010147/APP/7.7]). These are provided for illustration only within the Environmental Statement figures Volume 2.1a, 2.1b, 2.2a, 2.2b, 2.2c, 2.2d and 2.3 of the Environmental Statement [EN010142/APP/6.4] and are not sought to be secured.

## 1.6 The Purpose And Structure Of This Document

- 1.6.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum

also explains why each article of, and Schedule to, the Order is required for the Project.

- 1.6.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "model provisions"). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions and provides precedents from other made DCO Orders where available.
- 1.6.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Project. This reflects the integrated consenting objective of the PA 2008 regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the PA 2008, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152 so far as these are relevant to the Project. All powers provided for within the Order come within the scope of section 120 of, and Schedule 5 to, the PA 2008.
- 1.6.4 The provisions contained in the Order are briefly described below and then considered in more detail in the following sections:
- a. **Part 1 (Preliminary)** – Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of the defined terms used in the Order;
  - b. **Part 2 (Principal Powers)** – Articles 3 to 7 provide development consent for the Project, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to the disapplication and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
  - c. **Part 3 (Streets)** – Articles 8 to 16 provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to temporarily close and permit vehicular use on streets and public rights of way; to permanently close rights of way; use private roads; provide access to street works; to enter into agreements with street authorities; and provisions relating to traffic regulations;
  - d. **Part 4 (Supplemental Powers)** – Articles 17 and 18 set out two supplemental powers relating to the discharge of water and the authority to survey and investigate land;
  - e. **Part 5 (Powers of Acquisition)** – Articles 19 to 33 provide for the undertaker to be able to compulsorily acquire the Order land and rights over and within it, and to be able to temporarily possess parts of the Order land for the construction or maintenance of the Project. Article 20 sets out a time limit for the exercise of the compulsory acquisition powers, Article 21 incorporates the mineral code and Article 23 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 29

and 30 provide for the temporary use of land for constructing and maintaining the Project. Article 32 provides for powers in relation to the land and apparatus of statutory undertakers in closed streets;

- f. **Part 6 (Miscellaneous and General)** – Articles 34 to 47 include various general provisions in relation to the Order:
- i. **Article 34** sets out who has the benefit of the powers contained in the Order and **Article 35** sets out how those powers can be transferred.
  - ii. **Articles 36 and 37** provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order land will be "operational land";
  - iii. **Articles 38 and 39** provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Project and in relation to trees subject to tree preservation orders; and
  - iv. **Articles 40 to 47** include provisions relating to the certification of plans and documents relevant to the Order; no double recovery, arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 15); service of notices under the Order; procedure in relation to approvals required under the Order; and guarantees in respect of the payment of compensation; ~~and Crown rights~~.

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

- a. **Schedule 1** – the description of the Project;
- b. **Schedule 2** – the requirements that apply to the Project (i.e. the controls that apply to the Order, similar to planning conditions). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order;
- c. **Schedule 3** – a list of the local legislation relating to drainage, infrastructure, land, planning, railways, river navigation, fisheries and water that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order;
- d. **Schedules 4 to 8** – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary traffic regulation measures during construction of the authorised development;
- e. **Schedule 9** – details of land in which only new rights may be acquired;
- f. **Schedule 10** – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- g. **Schedule 11** – details of land over which temporary possession may be taken;
- h. **Schedule 12** – details of hedgerows to be removed;

- i. **Schedule 13** – the documents and plans to be certified by the Secretary of State;
- j. **Schedule 14** – arbitration rules that apply to most arbitrations in connection with the Order;
- k. **Schedule 15** – provisions for the protection of statutory undertakers and their apparatus; and
- l. **Schedule 16** – procedure for the discharge of requirements.

## 2. Purpose Of The Order

### 2.1 The Project

- 2.1.1 The Project involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the PA 2008. The Applicant requires development consent under the PA 2008 in order to construct, maintain, operate and decommission the Project. Under section 37 of the PA 2008, development consent may only be granted by a DCO, following an application to the Secretary of State.
- 2.1.2 The Applicant is therefore making an application to the Secretary of State for a development consent order for the Project. In the Order, the Project is referred to as the "authorised development". The Order refers to the person authorised to exercise the powers in the Order as the "undertaker" and defines the undertaker as SolarFive Ltd.
- 2.1.3 The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the Order.
- 2.1.4 Section 115(1) of the PA 2008 provides that development consent may be granted for associated development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the authorised development are either the NSIP or are associated development, in order to include them in the Order.
- 2.1.5 The solar photovoltaic generating station within Work No. 1 in Schedule 1 to the Order constitutes "development for which development consent is required", and as such is the NSIP.
- 2.1.6 The Order also includes the proposed development of associated development out to allow for the importation and exportation of energy to the National Grid, included at Work Nos. 2 to 9 of Schedule 1 of the Order, including a new National Grid substation.
- 2.1.7 The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") – it is clear that all of these works come within the Guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the PA 2008.

2.1.8 The approach taken by the Applicant between those parts of the authorised development which form the NSIP and those parts that form associated development follows the approach taken by other DCOs to date, including the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Cottam Solar Project Order 2024**.

2.1.9 In particular, Work Nos. 2 to 9 are:

- a. all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- b. all subordinate to the NSIP – none of them are an aim in themselves (paragraph 5(ii));
- c. not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (paragraph 5(iii));
- d. all proportionate to the nature and scale of the NSIP (paragraph 5(iv));
- e. all of a nature which is typically brought forward alongside a solar generating station (paragraph 6); and
- f. all listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention:
  - i. in Annex A, “Connections to national, regional or local networks”, including electricity networks and in Annex B, “substations”, “jointing pits”, “control buildings” and “underground lines” would include the electrical compounds and grid connection works (Work Nos. 2, 3, 4 and 6);
  - ii. in Annex A, “monitoring apparatus” (Work No. 6);
  - iii. in Annex A, “Formation of new or improved vehicular or pedestrian access, whether temporary or permanent”; highway improvements, “Alteration or construction of roads, footpaths”, “Parking spaces for workers” and “lay down areas” (Work Nos. 4 to 5, 6 and 9);
  - iv. in Annex A, hard and soft landscaping would include landscaping and other works to mitigate adverse impacts (Work Nos. 5, 6 and 8); and
  - v. in Annex A, “Security measures” and “Working sites, site offices and laydown areas” (Work Nos. 4, 6 and 7).

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

## 2.2 Compulsory Acquisition

2.2.1 In addition to providing for the construction, maintenance, operation and decommissioning of the Project, the Order will, in accordance with section 122, section 120(3) and Schedule 5 of the PA 2008, authorise the acquisition

of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.

2.2.2 The Book of Reference [EN010147/APP/4.3] sets out a description of, and interests included in, the Order land, split by "plots", and these are shown on the Land Plans [EN010147/APP/2.4] ~~and Crown Land Plans [EN010147/APP/2.5]~~. The Book of Reference [EN010147/APP/4.3] is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests, and the identification of those interests is explained in both the Book of Reference [EN010147/APP/4.3] and the Consultation Report [EN010147/APP/5.1]). The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired as well as for the temporary possession of land. The Order and the Book of Reference [EN010147/APP/4.3] should be read together with the Land Plans [EN010147/APP/2.4] ~~and Crown Land Plans [EN010147/APP/2.5]~~ and the Statement of Reasons [EN010147/APP/4.1]), which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

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

## 2.3 Statutory Undertaker's Land and Apparatus

2.3.1 The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order land are identified in the Book of Reference [EN010147/APP/4.3].

2.3.2 Section 127(2) of the PA 2008 states that a DCO may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:

- a. the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- b. the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.

2.3.3 Section 127(5) of the PA 2008 states that a DCO may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land to the extent that:

- a. the land can be purchased without serious detriment to the carrying on of the undertaking; or
- b. any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

2.3.4 Section 138 of the PA 2008 states that a DCO may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.

- 2.3.5 The Order includes protective provisions in respect of statutory undertakers (see Article 43 and Schedule 15). The Applicant is currently seeking to agree the form of protective provisions with the affected undertakers. Further details as to how the tests under sections 127 and 138 of the PA 2008 have been satisfied are set out in the Statement of Reasons [EN010147/APP/4.1].

### 3. Provisions of the Order

- 3.1.1 The Order consists of 47 operative provisions, each referred to as articles and 16 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below. Equally, the Project is referred to as the "authorised development" in the Order and so for ease this document refers to the "authorised development" when explaining the provisions of the Order.
- 3.1.2 The proposed works in Schedules 4 to 7 are listed in chronological order. There are some works that were previously considered (e.g. ASP-12 to ASP-16 in Part 1 of Schedule 5) but are no longer required following design refinement. The Schedule(s) note where such works are 'not required', to indicate that they are not inadvertently omitted.

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

- 3.2.1 Articles 1 (Citation and commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.
- 3.2.2 Article 2 (Interpretation) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:
- a. definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 13 to the Order;
  - b. the definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electrical cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Longfield Solar Farm Order 2023**, the **Mallard**

**Pass Solar Farm Order 2024, the Gate Burton Energy Park Order 2024 and the Cottam Solar Project Order 2024;**

- c. the definition of "authorised development" means the authorised development described in Schedule 1 to the Order which is development within the meaning of section 32 of the PA 2008. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of associated development is described in detail in Schedule 1, as it is considered that this drafting is more accurate. This definition has precedent in the **Longfield Solar Farm Order 2023, the Mallard Pass Solar Farm Order 2024 and the Gate Burton Energy Park Order 2024;**
- d. the definition of "commence" is defined to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain enabling phase works and preparatory works prior to the submission of relevant details for approval under all of the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as "permitted preliminary works", there may be a requirement to submit details to the relevant planning authority. Where this is the case, the requirement expressly prevents the "permitted preliminary works" from being carried out until those details have been approved. For example, for the purpose of Requirement 6 (Landscape and Ecology Management Plan), "commence" includes part (h) (site clearance (including vegetation removal, demolition of existing buildings and structures)) and (i) (advanced planting to allow for an early establishment of protective screening) of the permitted preliminary works. This definition has precedent in the **Longfield Solar Farm Order 2023, the Mallard Pass Solar Farm Order 2024 and the Gate Burton Energy Park Order 2024.**

~~The Applicant has built on existing precedent such that sub-paragraph (c) facilitates "works in relation to construction compounds and accesses to construction compounds (including above and below ground site preparation for temporary facilities for the use of contractors)". This is to ensure that such works may be carried out as an early phase of works prior to the discharge of all requirements, which is necessary for the proposed construction timetable of the Project. However, in recognition of the fact that this is broader than the precedented position and appreciating that the outline Code of Construction Practice [EN010147/APP/7.6.1] includes controls that are applicable to the construction and access works required for the construction compounds, the Applicant has defined Requirement 11 (Code of Construction Practice) such that 'commence' includes sub-paragraph (c) of the permitted preliminary works;~~

- e. a definition of "maintain" has been added to make clear what activities are authorised under Article 5 during the operation of the authorised development to the extent that these do not give rise to any materially new

or materially different environmental effects than those identified in the Environmental Statement [EN010147/APP/6.1 to 6.5] for the operation of the authorised development. The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards, controls and advances in technology. The approach taken has precedent in the **Mallard Pass Solar Farm Order 2024**, and similar drafting also appears in the **Longfield Solar Farm Order 2023**;

- f. for the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
- vi. **Maintenance and inspection:** Throughout the life of the Project there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to plant failures. It is anticipated that staff will attend when required for maintenance and cleaning activities;
  - vii. **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;
  - viii. **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;
  - ix. **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed;
  - x. **Reconstruct:** If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;
  - xi. **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part;

The Outline Operational Management Plan [EN010147/APP/7.6.2] sets out the intentions for the Project, which will be finalised as part of the detailed Operational Management Plan to be approved pursuant to Requirement 12 of the draft Order [EN010147/APP/3.1].

- g. the definition of "Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by the authorised development shown pink or blue on the Land Plans [EN010147/APP/2.4]

~~and Crown Land Plans [EN010147/APP/2.5]~~ which is within the limits of land to be acquired or used and described in the Book of Reference [EN010147/APP/4.3]. This land is coloured pink (land to be permanently acquired) or blue (land in which the undertaker can create and acquire new rights). In addition, the Land Plans [EN010147/APP/2.4] show land within the Order limits, but outside of the Order land, in relation to which rights of temporary possession only can be exercised by the undertaker are included in the Order (that land is coloured green);

- h. the definition of "Order limits" means the limits shown on the Land Plans [EN010147/APP/2.4] and the Works Plans [EN010147/APP/2.3] within which the authorised development may be carried out and land acquired or used. This includes the land over which the rights of temporary possession only can be exercised by the undertaker (as shown in green on the Land Plans [EN010147/APP/2.4]);
  - i. the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing a network or service to members of the public and, insofar as they may have assets or apparatus within the Order limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is precedent for this approach, for instance the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**;
  - j. the definition of "street works" has been amended to refer to the works listed in the street works Article (Article 8(1)) so as to ensure consistency between the powers in the Article and the definition itself; and
  - k. the "undertaker" is defined as SolarFive Ltd, who has the benefit of the provisions of the Order, subject to the provisions of Article 34. Under Article 34(2), the benefit of Work No. 2, 4(a)(ii) and 4(a)(iii) applies to both SolarFive Ltd as well as National Grid.
- 3.2.3 Paragraph (2) of Article 2 has been included to reflect that "rights over land" include references to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts and incidents, including restrictive covenants. Paragraph (2) also makes it clear that references to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another.
- 3.2.4 Paragraph (3) of Article 2 has been added to make it clear that references to the purposes of the authorised development includes construction, maintenance, operation, use and decommissioning of the authorised development. This has been inserted to assist with making the Order clearer. In the operational provisions in the Order there is now only references to the 'purposes of the authorised development' rather than having to repeat construct, maintain, operate, use and decommission. The approach taken has precedent in the **Mallard Pass Solar Farm Order 2024**.
- 3.2.5 Paragraphs (4) to (8) of Article 2 have been added to provide clarity (respectively) that all distances, directions, capacities and lengths are

approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans **[EN010147/APP/2.3]**; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; and that all areas described in the Book of Reference **[EN010147/APP/4.3]** are approximate. The approach taken has precedent in the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 3.2.6 Paragraph (9) of Article 2 confirms that references within the Order **[EN010147/APP/3.1]** to materially new or materially different environmental effects (in the context of the authorised development or part of it not being authorised if it would result in such effects), are not intended to apply where the effects are different to those assessed in the Environmental Statement **[EN010147/APP/6.1 to 6.5]** by virtue of being an adverse effect that has been reduced or avoided, or a positive effect that has increased in significance. Without this clarification, the "materially new or materially different" provisions could have the inadvertent consequence of not encouraging a reduction in adverse effects or an increased benefit from a positive effect at detailed design.
- 3.2.7 Article 3 (Development consent etc. granted by this Order) grants development consent for the authorised development. This article is adapted from the model provisions. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The content of the works contained within each work number is described in greater detail above.
- 3.2.8 Paragraph (2) of Article 3 requires that the works authorised by the Order are situated in the areas shown on the Works Plans **[EN010147/APP/2.3]**. This is to provide certainty as to what has been consented by the Order, in respect of which areas of land.
- 3.2.9 The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development within the set limits.
- 3.2.10 The use of parameters is appropriate in the current Order as they serve to precisely define the authorised development by reference to the Works Plans **[EN010147/APP/2.3]**, while preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement **[EN010147/APP/6.1 to 6.5]** accompanying the application for development consent has assessed the authorised development within the full envelope provided by the use of parameters, and so development within this envelope will not create effects that exceed the

worst-case scenario assessed in the Environmental Statement [EN010147/APP/6.1 to 6.5]. Further detail in this respect is provided above.

- 3.2.11 Article 4 (Operation of a generating station) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the PA 2008. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station and has precedent in all six of the made solar development consent orders to date.
- 3.2.12 Article 5 (Power to maintain the authorised development) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement [EN010147/APP/6.1 to 6.5] has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement [EN010147/APP/6.1 to 6.5].
- 3.2.13 Article 6 (Disapplication and modification of statutory provisions) disapplies a number of statutory provisions. Section 120 of the PA 2008 makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the PA 2008's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Longfield Solar Farm Order 2023**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.2.14 Article 6 provides for the disapplication of the following specified provisions:
- section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority or relevant internal drainage board;
  - section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
  - the provisions of any byelaws by drainage undertakers made under section 66 of the Land Drainage Act 1991;
  - the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;

- e. regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, only insofar as a flood risk activity permit(s). This enables the Applicant to carry out a flood risk activity without the need for an environmental permit;
- f. the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- g. the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 29 and 30 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being articles 29 and 30. This approach has precedent and has been accepted by the Secretary of State; see for example the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

3.2.15 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, the Water Resources Act 1991, and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 15 to the Order) and the Environment Agency (Part 7 of Schedule 15 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 Project.

3.2.16 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's approach to obtaining the other consents required for the Project is set out in greater detail in the Consents and Licenses Required Under Other Legislation [EN010147/APP/5.3].

3.2.17 Article 6(2) also applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Paragraph (2) of Article 6 extends the exception to any trees felled as a result of the authorised development.

- 3.2.18 The Hedgerow provisions at Article 6(3) are considered necessary to ensure legislative clarity that removal of any hedgerow to which the Hedgerow Regulations 1997 relates is permitted for the carrying out of any development or the exercise of any functions which have been authorised by the Order [EN010147/APP/3.1]. This has precedent in other development consent orders including the **Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024**. The hedgerow provisions at Article 6(4) are also considered necessary to give legislative clarity that there is no conflict between the exercise of any functions which have been authorised by the Order [EN010147/APP/3.1] and Regulation 5 of the Management of Hedgerows (England) Regulations 2024 which sets out general maintenance requirements for important hedgerows.
- 3.2.19 In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3, which relates to matters including drainage, infrastructure, land, planning, railways, river navigation, fisheries and water within, and in the vicinity of, the Order limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the Order, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6 disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are inconsistent with how the powers in the Order can be exercised.
- 3.2.20 Article 6(4) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy. It has precedence in the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.2.21 Article 7 (Defence to proceedings in respect of statutory nuisance) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 7 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Project and for this reason it is necessary to include the article in the Order. Article 7 is preceded in all made solar DCOs, including the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Sunnica Energy Farm Order 2024**.

### 3.3 Part 3 (Streets)

- 3.3.1 Article 8 (Street works) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because

implementation of the authorised development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been amended to refer to electrical cables as well as apparatus and extended in paragraph (1)(e) to provide for works which may be required to any culvert under a street. This has precedent in the **Longfield Solar Farm Order 2023**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 3.3.2 Article 9 (Power to alter layout, etc., of streets) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 then sets out the alterations to streets (split into two parts showing permanent and temporary works respectively). This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street) require the consent of the street authority before they can be exercised. Article 9 has precedent and appears in the **Drax Power (Generating Stations) Order 2019**, the **Great Yarmouth Third River Crossing Development Consent Order 2020**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**. However, paragraph 9(2)(c) has been added to make it clear that the undertaker may alter, remove, replace and relocate any street furniture required. This is necessary to enable the conveyance of abnormal indivisible loads to the Order limits and follows the approach in the **Drax Power (Generating Stations) Order 2019**, the **Great Yarmouth Third River Crossing Development Consent Order 2020**, and the **Longfield Solar Farm Order 2023**.
- 3.3.3 Article 10 (Construction and maintenance of altered streets) provides that the permanent alterations to the streets listed in Part 1 of Schedule 5 must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the highway authority (paragraph (1)). Temporary alterations are set out in Part 2 of Schedule 5 and they must be completed to the reasonable satisfaction of the street authority, and they must be maintained at the undertaker's expense for the duration that the temporary alterations are used by the undertaker (paragraph (2)). The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 3.3.4 Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the

street was not dangerous to traffic. Paragraph (6) provides that with the exception of paragraph (1) of this Article, the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out. This Article (and the incorporation of the defences in particular) has precedence in the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024** and is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013**, Article 11 in the **Drax Power (Generating Stations) Order 2019** and Article 10 in the **Sunnica Energy Farm Order 2024**.

- 3.3.5 Article 11 (Temporary closure of public rights of way) provides for the temporary prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of any street or public rights of way for the purposes of constructing or maintaining the authorised development. It is required because, in particular, the undertaker will need to temporarily divert certain public rights of way in order to construct the authorised development as provided for in the Outline Public Rights of Way Management Plan [EN010142/APP/7.6.1] (and secured by Requirement 11, as an appendix to the Outline Code of Construction Practice). Schedule 6 is comprised of six parts (streets to be temporarily closed; public rights of way to be temporarily closed and diverted; public rights of way to be permanently closed and diverted (see paragraph 3.3.9 below); temporary use of motor vehicles on public rights of way; permanent use of motor vehicles on public rights of way; and temporary management of public rights of way).
- 3.3.6 The authorisation under Article 11 of the use of motor vehicles over public rights of way where there is no public right to use motor vehicles is necessary to enable the undertaker to access parts of the authorised development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific streets and public rights of way that are set out in Schedule 6 to the Order and as shown on the Streets, Access, and Rights of Way Plans [EN010147/APP/2.2] and Outline Public Rights of Way Management Plan [EN010147/APP/7.6.1] (and secured by Requirement 11, as an appendix to the Outline Code of Construction Practice). Article 11 mirrors Article 11 of the model provisions in providing that where the street or public right of way is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other streets or public rights of way not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 15 (see below) deals with traffic regulation more widely.
- 3.3.7 Article 11(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of a street or public rights of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any street or public right of way as a temporary working site (which is not in the model provision). This wording has precedent in the

**Sunnica Energy Farm Order 2024, the Mallard Pass Solar Farm Order 2024 and the Gate Burton Energy Park Order 2024.** Similar wording to this Article has also been used in other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, Article 12 of the **Meaford Gas Fired Generating Station Order 2016** and Article 13 of the **Riverside Energy Park Order 2020**.

- 3.3.8 Article 11(7) enables the permanent stopping up, prohibition of the use, restriction of use, alteration or diversion, of any public rights of way added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after 1 November 2024. This is to ensure that the delivery of the Project is not impeded by any new public rights of way being designated after the submission of the application. The power is appropriately limited because it only applies to public rights of way that are within the Order limits and to new public rights of way that were not recognised in the definitive map and statement throughout the pre-application process. The wording aligns with made DCO precedent. For example, Article 11(7) of the **Gate Burton Energy Park Order 2024** and it is also used to protect against the risk of new Tree Preservation Orders in **The A47/A11 Thickthorn Junction Development Consent Order 2022** (Art.39), **The A47 Wansford to Sutton Development Consent Order 2023** (Art.40), **The A428 Black Cat to Caxton Gibbet Development Consent Order 2022** (Art.43) and **The Norfolk Vanguard Offshore Wind Farm Order 2022** (Art.36).
- 3.3.9 Article 12 (Permanent closure of public rights of way) allows the undertaker to permanently close and divert the public rights of way specified in Part 6 of Schedule 6 (i.e. the legal public right of way to be stopped up / extinguished). Article 12(2) provides that this closure cannot occur unless a substitute public right of way has been completed to the reasonable satisfaction of the street authority, or a temporary alternative route is first provided and maintained until the permanent substitute public right of way is provided, again to the reasonable satisfaction of the street authority. This wording is updated from the model provisions, with similar wording employed on several made Orders in respect of public right of way closures, including **The Drax Power (Generating Stations) Order 2019**, the **A66 Northern Trans-Pennine Development Consent Order 2024**, and the **Sizewell C (Nuclear Generating Station) Order 2022**.
- 3.3.10 Paragraphs (4) and (5) make provision that would require the undertaker, following the opening for public use of new or altered public rights of way to notify the surveying authority of that public right of way as permanently diverted, together with a statement of modifications to the definitive map. This notification is deemed to be a legal event order modifying the definitive map accordingly. The purpose of this provision is to facilitate the prompt updating of the definitive map by avoiding imposing a requirement on the surveying authorities to make legal event orders to modify the definitive map as a consequence of the Project. This approach reflects the position where local highway authorities making Highways Act 1980 orders may combine those with a legal event order under the Wildlife and Countryside Act 1981 (see the Public Rights of Way (Combined Orders) (England) Regulations 2008). These paragraphs have precedent in several made DCOs, including most highway orders (see for a recent example, the **A66 Northern Trans-Pennine**

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- 3.3.11 Article 13 (Use of private roads) authorises the temporary passage by the undertaker, in common with other permitted users, over private roads within the Order limits by persons or vehicles for the purposes of, or in connection with, the construction, operation or maintenance of the authorised development. The article creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner. This article is necessary because the undertaker will need to use private roads inside the Order limits.
- 3.3.12 There is precedent for Article 13 in the most recent made solar DCO, the **Cottam Solar Project Order 2024**.
- 3.3.13 Paragraph (2) provides that the undertaker will compensate any person who has suffered loss or damage as a result of the exercise of this power. Paragraph (3) clarifies that any dispute as to a person's entitlement to compensation, or as to the amount of compensation, is to be determined under Part 1 of the Land Compensation Act 1961.
- 3.3.14 Article 14 (Access to works) is a model provision that has been minorly amended to provide for permanent and temporary means of access to works and is justified on the basis that it has the effect of permitting a less draconian power, by allowing land to be temporarily used, rather than permanently used for access. The article gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 7 to the Order. This article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development (in the locations specified in Schedule 7). The article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority, in consultation with the highway authority. In addition, the Article also requires the undertaker to restore any access that has been temporarily created under the Order to the reasonable satisfaction of the street authority.
- 3.3.15 Article 15 (Agreements with street authorities) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets; closure, prohibition, restriction, alteration or diversion of any street; works authorised under Articles 8 (street works) and 10 (construction and maintenance of altered streets) of the Order; and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development. This provision has precedent in the **Riverside Energy Park Order 2020**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024** and is required so that the undertaker may enter into agreements with the relevant street authorities.

3.3.16 Article 16(1) (Traffic regulation measures) provides the undertaker with powers to temporarily impose new speed limits and temporarily suspend existing weight limit restrictions. Schedule 8 identifies the relevant roads and specifies the extents of the roads that will be subject to these temporary traffic regulation measures. These specific measures are required to safely regulate traffic during the construction of the Project and are shown on the Traffic Regulation Measures Plans [EN010147/APP/2.11]. Article 16(1)(c) also provides the undertaker with the powers to temporarily place traffic signs and signals in the extents of the road over which temporary provision has been made under paragraph (1) or under paragraph (2). Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures for the purposes of the Project. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Project. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. Any provision made by the undertaker under Article 16(1) or Article 16(2) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the Road Traffic Regulation Act 1984 and is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the authorised development for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the PA 2008. For example, similar provisions are contained within the **Great Yarmouth Third River Crossing Development Consent Order 2020**, the **Mallard Pass Solar Farm Order 2024**, the **Sunnica Energy Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

## 3.4 Part 4 (Supplemental Powers)

3.4.1 Article 17 (Discharge of water) is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to a drainage authority, these provisions are disapplied as sufficiently detailed provision will be made by the relevant protective provisions (see Part 3 of Schedule 15 (protective provisions)). These amendments align with the drafting of the equivalent article in the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 3.4.2 Article 18 (Authority to survey and investigate the land) is a model provision that enables the undertaker to enter onto any land within the Order limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 3.4.3 The model provision has been modified so that no trial holes are to be made:
- a. in land located within the highway boundary without the consent of the highway authority; or
  - b. in a private street without the consent of the street authority.
- 3.4.4 The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development and has precedent in the **Sunnica Energy Farm Order 2024**, the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

## 3.5 Part 5 (Powers of Acquisition)

- 3.5.1 Article 19 (Compulsory acquisition of land) is a model provision that provides for the compulsory acquisition and use of such land as is required for the authorised development, or to facilitate, or is incidental to, the authorised development. The Article is necessary to secure the delivery of the authorised development as set out in more detail in the Statement of Reasons **[EN010147/APP/4.1]** accompanying the application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 23 (Private rights). Similarly, Article 22 (Compulsory acquisition of rights) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the authorised development. This approach has precedent in the **Riverside Energy Park Order 2020**, the **Lake Lothing (Lowestoft) Third Crossing Order 2020**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.5.2 Article 19(2) makes clear that the powers in this Article are subject to the powers and restrictions in Article 20 (Time limit for exercise of authority to acquire land compulsorily), Article 22 (Compulsory acquisition of rights), Article 25 (Acquisition of subsoil or airspace only) and, Article 29 (Temporary use of land for constructing the authorised development) ~~and Article 47 (Crown rights)~~, to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.

- 3.5.3 Article 20 (Time limit for exercise of authority to acquire land compulsorily) imposes a time limit for the exercise of compulsory acquisition powers of five years, confirming this to be the 'applicable period' for the purposes of the 1965 and 1981 Acts (as amended by the Levelling Up and Regeneration Act 2023). These Acts both provide for the time limit for the exercise of compulsory purchase powers to be extended in the event of an application to the Court challenging the making of an Order granting compulsory acquisition. Paragraph (3) expands the scope of this time limit to cover the power to take temporary possession of land to construct the authorised development. The time limit is extended in the event of a challenge to the making of the DCO, aligning the powers of temporary possession and compulsory acquisition, mirroring the drafting in the 1965 and 1981 Acts. This means that, in the event of any delay to the Project being constructed due to legal challenge, the undertaker retains the full intended ability to use temporary possession powers where the acquisition of rights or land is not required over that land or the whole of that land.
- 3.5.4 Article 21 (Compulsory acquisition of land – incorporation of the mineral code) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order limits.
- 3.5.5 Article 22 (Compulsory acquisition of rights) enables the undertaker to acquire rights or impose restrictive covenants over the Order land as may be required for any purpose for which the land may be acquired under Article 19 (Compulsory acquisition of land). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 29 (temporary use of land for constructing the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 11 to the Order (i.e. land of which temporary possession may be taken).
- 3.5.6 The Article provides that, in respect of the Order land set out in Schedule 9 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct and maintain the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order land set out in Schedule 9 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 3.5.7 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenants for the purpose of diverting, replacing or protecting the apparatus of a statutory

undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.

- 3.5.8 This Article originates from Article 19 of the model provisions, which grants broad powers of acquisition which are then subject to subsequent articles to limit that broad power. It is standard and well preceded drafting including in the **Cleve Hill Solar Park Order 2020**, the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.5.9 Article 23 (Private rights) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 19 (Compulsory acquisition of land) (Article 23(1)); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 22 (Compulsory acquisition of rights) (Article 23(2)); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order (Article 23(3)). This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.
- 3.5.10 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the PA 2008 rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.
- 3.5.11 Article 24 (Application of the 1981 Act) applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Applicant the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 and aligns with the wording in the draft **North Falls Offshore Wind Farm Order 2024**].
- 3.5.12 Article 25 (Acquisition of subsoil or airspace only) is a model provision that permits the undertaker to acquire only the subsoil of land or airspace above land which is to be compulsorily acquired (either pursuant to Article 19 or Article 22), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible the extent of interests to be acquired, thereby reducing the impact on landowners.
- 3.5.13 Article 26 (Power to override easements and other rights) provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any

easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in Article 19 of the **Immingham Open Cycle Gas Turbine Order 2020** and the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 3.5.14 Article 27 (Modification of Part 1 of the Compulsory Purchase Act 1965) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the PA 2008. This provision reflects changes introduced by the Housing and Planning Act 2016 and by the Levelling Up and Regeneration Act 2023. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order. These modifications have broad precedent in the **Hornsea Three Offshore Wind Farm Order 2020**, the **Hornsea Four Offshore Wind Farm Order 2023**, the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**, and the **Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024**.
- 3.5.15 Article 28 (Rights under or over streets) is a model provision which has been included in the majority of made DCOs to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.
- 3.5.16 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.
- 3.5.17 Article 29 (Temporary use of land for constructing the authorised development) allows the land specified in Schedule 11 (Land of which temporary possession may be taken) to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the authorised development for which temporary possession of the land was taken. The Article also requires the undertaker to give 14 days' notice before taking possession, and to restore the land following the temporary works.
- 3.5.18 Wording has been added to paragraph (1)(a)(ii) in order to allow Article 29 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively

(after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.

- 3.5.19 The wording at paragraph (2) provides that, amongst other things, the temporary possession powers in Article 29 do not allow the undertaker to take temporary possession of a garden belonging to a house. However, this Article 29(2) has been amended to provide that this restriction does not apply in respect of Plot 6-23, because at least part of that plot is understood to include part of a garden of Burleigh Lodge. As a result, the temporary possession powers under Article 29 are required to be available for the undertaker to use over Plot 6-23, as the plot forms part of the Cable Corridor, and the Applicant may need to take temporary possession of this plot ahead of acquiring permanent rights over the plot (including access rights and cable rights, as set out in Schedule 9 of the DCO) in order to deliver the Cable Corridor to connect the Project to the National Grid substation. This is also shown on Sheet 6 of the Land Plans [EN010147/APP/2.4]. The need and justification for temporary possession powers over Plot 6-23 is that the temporary possession powers will allow the Applicant to enter on to the land for a particular purpose (for example, site investigation works to identify the minimum land required for the final cable placement) in advance of any vesting of the relevant rights. This will enable the Applicant to only compulsorily acquire the minimum amount of rights required over Plot 6-23 to construct, operate and maintain the Project, which may avoid the need to acquire any permanent rights over the garden.
- 3.5.20 Wording has also been added to paragraphs (4) and (5) to take into account that the undertaker may, pursuant to Article 29(1)(a)(ii), temporarily use land that it may compulsorily acquire. This is also subject to a one-year limit beginning with the date of final commissioning of the authorised development.
- 3.5.21 Paragraph (10) makes clear that the undertaker cannot compulsorily acquire, nor permanently acquire rights or impose restrictive covenants over, the land specified in Article 29(1)(a)(i) (which is land of which temporary possession only is required).
- 3.5.22 Wording has been included at paragraph (11) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 9 (land in which only new rights etc. may be acquired), and nor are the powers under Article 25 (Acquisition of subsoil or airspace only) or Article 28 (Rights under or over streets) precluded. Save for the amendments referred to at paragraph 3.5.19, this Article has precedent in the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.5.23 Article 30 (Temporary use of land for maintaining the authorised development) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring not less than 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.

- 3.5.24 The maintenance period has been adapted from the model provision through paragraph (11) to apply to the period of 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 solar generating stations, such as the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**. However, in order to be able to carry out the landscaping and ecological commitments set out in the landscape and ecology management plan, the maintenance period has been extended to the period in the landscape and ecology management plan approved pursuant to Requirement 6. A similar provision was included in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 3.5.25 Article 31 (Statutory undertakers) provides for the acquisition of land or rights or the imposition of restrictive covenants over land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 43 below) included at Schedule 15 of the Order. Further details on statutory undertakers' land and apparatus are included in the Statement of Reasons **[EN010147/APP/4.1]**. This power is required over the whole of the Order land and the wording has been used in other made Orders including the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 3.5.26 Article 32 (Apparatus and rights of statutory undertakers in closed streets) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are closed by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 15. This approach has precedent in Article 30 of the **Longfield Solar Farm Order 2023**, Article 29 of the **Sunnica Energy Farm Order 2024**, Article 32 of the **Mallard Pass Solar Farm Order 2024** and Article 30 of the **Gate Burton Energy Park Order 2024**.
- 3.5.27 Article 33 (Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under Article 31 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

## 3.6 Part 6 (Miscellaneous and General)

- 3.6.1 Article 34 (Benefit of the Order) overrides section 156(1) of the PA 2008 (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the Project and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be 'open'

as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the **Drax Power (Generating Stations) Order 2019** and the **Cleve Hill Solar Park Order 2020**.

- 3.6.2 Article 34(2)(c) also provides that for Work No. 2 (works for the new National Grid substation), Work No. 4(a)(ii) (cabling works to connect the main substation to the new National Grid substation) and Work No. 4 (a)(iii) (grid connection infrastructure works to connect the new National Grid substation to the National Grid network), the benefit of the Order is for the undertaker and National Grid. This is because it may be that National Grid is best placed to carry out all or part of such works. This approach has precedent in Article 32 of the **Longfield Solar Farm Order 2023**, Article 34 of the **Mallard Pass Solar Farm Order 2024** and Article 32 of the **Gate Burton Energy Park Order 2024**.
- 3.6.3 Article 35 (Consent to transfer the benefit of the Order) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- a. the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
  - b. 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.
- 3.6.4 Article 35(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 3.6.5 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. Article 35(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 35(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017** and similar provisions can be found in the **Cottam Solar Project Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Mallard Pass Solar Farm Order 2024**.
- 3.6.6 Article 35(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- a. the transferred benefit will include any rights that are conferred and any obligations that are imposed;
  - b. the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker; and

- c. the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 3.6.7 This approach also has precedent in the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 3.6.8 Article 36 (Application of landlord and tenant law) is a model provision included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the Project.
- 3.6.9 Article 37 (Operational land for purposes of the 1990 Act) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.
- 3.6.10 Article 38 (Felling or lopping of trees and removal of hedgerows) is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the purposes of the authorised development; constituting a danger for persons using the authorised development or obstructing or interfering with the passage of construction vehicles. Schedule 12 lists the hedgerows which are to be removed which are shown on the Hedgerow Removal Plans [EN010147/APP/2.10].
- 3.6.11 Article 38(6) provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited.
- 3.6.12 Article 38 does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order ("TPO"). Article 39 (Trees subject to tree preservation orders) provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. This is important where there are any known TPOs but also to apply in the event a tree becomes subject to a TPO

after the date of the Order. The Article is a model provision included in numerous made DCOs save that it applies generally to any tree subject to a TPO made before and after the date of the Order coming into effect and either within or overhanging the Order limits. This approach has precedent in the **Cleve Hill Solar Park Order 2020**, the **Sunnica Energy Farm Order 2024**, and the **Gate Burton Energy Park Order 2024**.

- 3.6.13 Article 40 (Certification of plans and documents, etc.) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the Book of Reference **[EN010147/APP/4.3]**, plans and Environmental Statement **[EN010147/APP/6.1 to 6.5]**) to the Secretary of State so that they can be certified as being true copies. The Article refers to Schedule 13, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 13 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.
- 3.6.14 Article 41 (No double recovery) is not a model provision and is based on article 44 of the model clauses for railway contained in schedule 1 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders. It provides that compensation is not payable both under the 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.
- 3.6.15 Article 42 (Arbitration) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 14 (Arbitration rules), has precedent in the **Cleve Hill Solar Park Order 2020** the **Sunnica Energy Farm Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park 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.
- 3.6.16 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 or agreed in writing between the undertaker and the party in question.
- 3.6.17 The Article applies Schedule 14 to the Order, which sets out further detail of the arbitration process. The detail of Schedule 14 is set out below.
- 3.6.18 In addition, Article 42(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 3.6.19 Article 43 (Protective Provisions) provides for Schedule 15, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail below. This is a model provision.
- 3.6.20 Article 44 (Service of notices) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is

necessary because the service of notice provisions under sections 229 and 230 of the PA 2008 only apply to notices served under the PA 2008 itself and do not apply to notices served under the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006, and numerous made DCOs.

- 3.6.21 Article 45 (Procedure in relation to certain approvals etc.) provides procedures in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within eight weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article.
- 3.6.22 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 16 (Procedure for discharge of requirements) (see below).
- 3.6.23 This Article has precedent in the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**. The wording is considered appropriate and justified in order to ensure that the authorised development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.
- 3.6.24 Article 46 (Guarantees in respect of payment of compensation) restricts the undertaker from exercising the powers conferred under Articles 19, 22, 23, 28, 29, 30 and 31 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Sunnica Energy Farm Order 2024**.
- ~~3.6.25 Article 47 (Crown rights) prevents the undertaker from acquiring any Crown land (as defined in the PA 2008), or from otherwise interfering with such land, without the written consent of the relevant Crown authority. The Crown's consent may be given unconditionally or subject to terms and conditions.~~
- ~~3.6.26 The proposed Order land includes parcels of land which constitute Crown land. This Article has been included to ensure that any acquisition of other land holdings, creation or extinguishment of rights cannot create any interference with the rights of the Crown and has precedent in several made~~

~~DCOs, for example Article 45 of the Gate Burton Energy Park Order 2024 and Article 44 of the Sunnica Energy Farm Order 2024.~~

## 4. Schedules

### 4.1 Schedule 1 (Authorised Development)

- 4.1.1 This Schedule describes the authorised development in detail and is split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.
- 4.1.2 The works set out in Schedule 1 to the Order are explained in detail above.
- 4.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement **[EN010147/APP/6.1 to 6.5]**. This is achieved through the following mechanisms in the Order:
- a. Article 3 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the Works Plans **[EN010147/APP/2.3]** – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the Environmental Statement **[EN010147/APP/6.1 to 6.5]**;
  - b. Schedule 1 provides that development which does not form part of a specific Work Number can only be brought forward if it does not lead to materially new or materially different effects from those assessed in the Environmental Statement **[EN010147/APP/6.1 to 6.5]**;
  - c. In terms of the detailed design, Requirement 5 of Schedule 2 (see below) prevents the undertaker from commencing the authorised development until it has obtained the approval of the relevant planning authorities (or authority, as applicable) to the layout, scale, ground levels, external appearance, hard surfacing materials, access, refuse or other storage units, signs and lighting; and
  - d. Requirement 5(2) requires that the details submitted must accord with the Outline Layout and Design Principles **[EN010147/APP/7.7]**. The Outline Layout and Design Principles is a certified document pursuant to Article 40 (certification of plans and documents) and Schedule 13 (documents and plans to be certified). The Outline Layout and Design Principles **[EN010147/APP/7.7]** contains the maximum and where applicable minimum parameters for the authorised development and these are the same as those used for the assessment of effects in the Environmental Statement **[EN010147/APP/6.1 to 6.5]**. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the Environmental

Statement, recognising that the final massings may differ from (but will never be larger than) these maxima.

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

## 4.2 Schedule 2 (Requirements)

- 4.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the relevant planning authority or other relevant statutory consultee.
- 4.2.2 The requirements closely relate to the mitigation set out in the Environmental Mitigation Schedule and Commitments Register [**EN010147/APP/5.4**] and a number of them specifically refer to the outline strategies or plans relied upon in the Environmental Statement [**EN010147/APP/6.1 to 6.5**], in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 4.2.3 Many of the requirements require submission of details for approval by the relevant planning authority (or relevant planning authorities where applicable). In some instances, the relevant planning authority is under a duty to consult with a third party or parties in relation to the document submitted to them. This is a departure from the model provisions. Where consultation is required under the Order it is, in each case, the relevant planning authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the relevant planning authority to consult a third party, that third party has been named within the relevant requirement.
- 4.2.4 In the undertaker's opinion the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement [**EN010147/APP/6.1 to 6.5**]; enforceable and precise in their language; and reasonable in all other respects.
- 4.2.5 In all cases where a Project or strategy or plan is to be submitted for approval, the undertaker must implement the approved Project or strategy or plan as approved and maintain the plan through the operation of the relevant part of the authorised development. This wording to ensure ongoing maintenance has been incorporated from the made **Gate Burton Energy Park Order 2024** and **Cottam Solar Project Order 2024**. This is subject to requirement 3, as explained below.
- 4.2.6 Where relevant and appropriate, certain requirements can be discharged in part, which is facilitated by the wording restricting "part" of the authorised

development from proceeding until the relevant details have been submitted and approved in respect of that part. The “parts” are not pre-defined and this approach is designed to ensure necessary flexibility for different aspects of the authorised development to proceed as and when appropriate in the overall development schedule following detailed design. The approach and drafting is preceded in recently-made DCOs such as the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.

- 4.2.7 **Requirement 1** – Interpretation: This provides a definition in relation to “relevant planning authorities” which means Oxfordshire County Council, West Oxfordshire District Council, Cherwell District Council and Vale of White Horse District Council, as applicable.
- 4.2.8 **Requirement 2** – Commencement of the authorised development: This requirement provides that the authorised development must not begin later than 5 years from the date of the Order coming into force.
- 4.2.9 **Requirement 3** – Approved details and amendments to them: This requirement provides that the undertaker may submit any amendments to any Approved Document to the relevant planning authority for approval. The planning authority may approve the amendments proposed if it is satisfied that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.
- 4.2.10 **Requirement 4** – Community liaison group: This requirement provides that the undertaker must establish a community liaison group prior to commencement of the authorised development, in order to facilitate liaison between representatives of people living in the vicinity of the Order limits, and other relevant organisations in relation to the construction of the authorised development.
- 4.2.11 **Requirement 5** – Detailed design approval: This requirement stipulates the details that must be submitted to and approved by the relevant planning authority before the authorised development may commence. The details submitted must be in accordance with the Outline Layout and Design Principles [EN010147/APP/7.7]. The authorised development must be carried out in accordance with the approved details.
- 4.2.12 **Requirement 6** – Landscape and ecology management plan: The requirement stipulates that the authorised development must not commence (and “commence” will include site clearance and advanced planting) until a written landscape and ecology management plan (which is substantially in accordance with the outline landscape and ecology management plan [EN010147/APP/7.6.3]) has been submitted to and approved by the relevant planning authority. The landscape and ecology management plan must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates.
- 4.2.13 **Requirement 7** – Biodiversity net gain: This requirement stipulates that no part of the authorised development may commence until a biodiversity net gain plan (which is substantially in accordance with the outline landscape and ecology management plan [EN010147/APP/7.6.3]) has been submitted to and

approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body. It is considered appropriate to require consultation with the relevant statutory nature conservation body to ensure that it has the opportunity pre-commencement to comment on the biodiversity net gain plan before it is approved by the relevant authority. The biodiversity net gain plan must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- 4.2.14 **Requirement 8** – Fencing and other means of enclosure: The undertaker is required to submit details of and obtain the written approval from the relevant planning authorities for any proposed permanent and temporary fences, walls or other means of enclosure, for each part prior to commencement (including all permitted preliminary works) of the part in question. In respect of any permanent fences, walls or other means of enclosure, the written details must be substantially in accordance with the Outline Layout and Design Principles [EN010147/APP/7.7]. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.
- 4.2.15 **Requirement 9** – Surface and foul water drainage: This requirement provides that the authorised development may not commence until written details of the surface water drainage works and foul water drainage system (if any) for that part have been submitted to and approved by the local lead flood authority and the relevant planning authority (or relevant planning authorities, as applicable), in consultation with Thames Water Utilities Limited or its successor in function as the relevant water undertaker. The surface water drainage works and foul water drainage system (if any) must be substantially in accordance with the conceptual drainage strategy and the design and operation of any part of the authorised development must be carried out and maintained in accordance with the Project approved for that part.
- 4.2.16 **Requirement 10** – Archaeology: This requirement stipulates that no part of the authorised development may commence (and “commence” will include intrusive archaeological surveys) until an archaeological written scheme of investigation (which is substantially in accordance with the outline archaeological written scheme of investigation at Appendix 7.7 of the Environmental Statement [EN010147/APP/6.4]) has been submitted to and approved by the relevant planning authority. The archaeological written scheme of investigation must be implemented as approved.
- 4.2.17 **Requirement 11** – Code of Construction Practice: Under this requirement, the authorised development must not commence ~~(and “commence” will include works in relation to construction compounds and accesses to construction compounds)~~ until a code of construction practice (which is substantially in accordance with the code of construction practice [EN010147/APP/7.6.1]) has been submitted to and approved by the relevant planning authority (or authorities, as applicable), such approval to be in consultation with the planning waste authority and the relevant highway authority. The code of construction practice must include the following plans: construction travel management plan; public rights of way management plan; soil management plan; site resources and waste management plan; and dust management plan.

The construction works of any part of the authorised development must be carried out in accordance with the approved code of construction practice.

- 4.2.18 **Requirement 12** – Operational management plan: This requirement provides that prior to the date of final commissioning for the authorised development an operational management plan (which is substantially in accordance with the outline operational management plan [EN010147/APP/7.6.2]) must be submitted to and approved by the relevant planning authority (or authorities, as applicable), such approval to be in consultation with the planning waste authority and the relevant highway authority. The operation of the authorised development must be carried out and maintained in accordance with the approved operational management plan.
- 4.2.19 **Requirement 13** – Skills, supply chain and employment: this requirement stipulates that no part of the authorised development may commence until a skills, supply chain and employment plan (substantially in accordance with the framework skills, supply chain and employment plan at Appendix 15.2 of the Environmental Statement [EN010147/APP/6.4]) has been submitted to and approved by the relevant planning authority (or authorities, as applicable). The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities. The skills, supply chain and employment plan must be implemented as approved.
- 4.2.20 **Requirement 14** – Decommissioning and restoration: Decommissioning must commence no later than 37.5 years following the date of final commissioning of the authorised development. No later than eight weeks prior to the intended date of decommissioning the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan for that part which substantially accords with the Outline Decommissioning Plan [EN010147/APP/7.6.4]. No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted in relation to such works. The plan submitted must be implemented as approved. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.
- 4.2.21 In accordance with PINS' Advice Note 15: Drafting Development Consent Orders (July 2018), the Applicant's view is that it is necessary for named consultees of each specific requirement (where applicable) to be listed under Schedule 2 (Requirements). As the consultee bodies are specific to each requirement, it is necessary to identify any applicable consultee bodies in the requirements themselves so that it is clear which consultee is required in respect of which requirement, and to maintain a clear distinction between the specific obligations under each requirement in Schedule 2, and the general procedure for discharging those requirements under Schedule 16. Further, Article 3 is the operative provision which gives the Applicant development consent, subject to the requirements in Schedule 2. Therefore, it is necessary to include the consultees in Schedule 2 to make it precise and enforceable as to which bodies must be consulted in relation to which requirements, as a condition for the development consent. This approach is well precedented in

each of the made solar DCOs (namely, the **Cleve Hill Solar Park Order 2020**, the **Little Crow Solar Park Order 2022**, the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Sunnica Energy Farm Order 2024**), where the procedure(s) for the discharge of requirements all cross refer to the requirements themselves, which then include the appropriate consultee bodies specific to that requirement.

### **4.3 Schedule 3 (Legislation to be disapplied)**

- 4.3.1 This Schedule lists out the legislation that the Order disapplies that relates to drainage, infrastructure, land, planning, railways, river navigation, fisheries and water 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.

### **4.4 Schedule 4 (Streets subject to street works)**

- 4.4.1 This Schedule sets out the streets that are to be subject to street works by reference to the Streets, Access, and Rights of Way Plans [EN010147/APP/2.2]. The Schedule relates to Article 8 (Street works).

### **4.5 Schedule 5 (Alteration of streets)**

- 4.5.1 This Schedule sets out the streets that are to be permanently altered (Part 1) and temporarily altered (Part 2) by reference to the Streets, Access, and Rights of Way Plans [EN010147/APP/2.2]. This Schedule relates to Articles 9 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).

### **4.6 Schedule 6 (Streets and public rights of way)**

- 4.6.1 This Schedule sets out the locations of the streets to be temporarily closed (Part 1), the public rights of way to be temporarily closed and diverted (Part 2), the public rights of way over which the undertaker seeks authorisation to use motor vehicles temporarily (Part 3), the public rights of way over which the undertaker seeks authorisation to use motor vehicles permanently (Part 4), the public rights of way to be managed temporarily (Part 5), and the public rights of way to be permanently closed and diverted (Part 6). It references the Streets, Access, and Rights of Way Plans [EN010147/APP/2.2]. This Schedule relates to Article 11 (Temporary closure of public rights of way) and Article 12 (Permanent closure of public rights of way).

### **4.7 Schedule 7 (Access to works)**

- 4.7.1 This Schedule sets out the permanent means of accesses to works (Part 1) and temporary means of accesses to works (Part 2) to the authorised development. It references the Streets, Access, and Rights of Way Plans [EN010147/APP/2.2]. The Schedule relates to Article 13 (Access to works).

## **4.8 Schedule 8 (Traffic regulation measures)**

- 4.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 16 and contains details of the nature of the measures for each affected street.
- 4.8.2 Schedule 8 is comprised of two parts setting out the traffic regulation measures in relation to temporary speed limits (Part 1) and temporary suspension of weight restrictions (Part 2).

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

- 4.9.1 This Schedule sets out in a table the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of the table correlate with the relevant plot numbers shaded blue on the Land Plans [EN010147/APP/2.4] and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 22 (Compulsory acquisition of rights).

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

- 4.10.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 and the Land Compensation Act 1961. It is commonly included in made DCOs, including the **Cleve Hill Solar Park Order 2020**, the **A303 (Amesbury to Berwick Down) Development Consent Order 2020**. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016, which aligns with the approach in the **Mallard Pass Solar Farm Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Sunnica Energy Farm Order 2024**. The Schedule relates to Article 22 (Compulsory acquisition of rights).

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

- 4.11.1 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 29 (Temporary use of land for constructing the authorised development). This land is shown green on the Land Plans [EN010147/APP/2.4] ~~and Crown Land Plans [EN010147/APP/2.5]~~, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans [EN010147/APP/2.3].

## **4.12 Schedule 12 (Hedgerows to be removed)**

4.12.1 This Schedule lists the hedgerows which are to be removed. Column 2 describes the relevant hedgerow with reference to the hedgerow removal plans [EN010147/APP/2.10] and the maximum amount of removal which is anticipated. The hedgerow removal plans [EN010147/APP/2.10] do not show the precise location of the hedgerow removal and this will be confirmed once detailed design has been undertaken through the landscape and ecology management plan [EN010147/APP/7.6.3] secured by requirement 6 in Schedule 2. Column 3 contains a brief description of the purpose for the removal, whilst Column 4 identifies if the hedgerows are classified as important under the Hedgerows Regulations 1997. This Schedule relates to Article 38 (Felling or lopping of trees and removal of hedgerows).

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

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

## **4.14 Schedule 14 (Arbitration rules)**

4.14.1 This Schedule relates to Article 42 (Arbitration). In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.

4.14.2 Schedule 14 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

4.14.3 Paragraph 2 deals with the appointment of the arbitrator. The parties must agree and nominate a single arbitrator and notify the arbitrator of their appointment within 14 days of the receipt of the notice of arbitration. If the nominated arbitrator refuses the appointment, the parties must agree and nominate an alternative arbitrator within 14 days of the receipt of the notice of the nominated arbitrator's refusal. If the parties do not agree and nominate a single arbitrator within the time periods set out, the Secretary of State will, on application by either party after giving written notice to the other party, appoint a single arbitrator.

4.14.4 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;
  - d. If there is to be a hearing, the Schedule sets out the time periods for such hearing; and
  - e. Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, parties may provide final submissions.
- 4.14.5 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.
- 4.14.6 The Schedule includes other provisions with respect to arbitration such as arbitrator's powers, costs and confidentiality.

## **4.15 Schedule 15 (Protective Provisions)**

- 4.15.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 43 (Protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2, and drainage authorities at Part 3).
- 4.15.2 In addition, each of Parts 4 to 7 contain provisions for the benefit of a particular body and these remaining Parts are at varying stages of negotiation with the relevant parties. The versions of the protective provisions contained within Parts 4 to 7 of the Order represent the latest point that negotiations have reached with each party, and therefore are not yet agreed and are subject to change. In addition, there may be a need for additional parts of this Schedule 15 in the event that any other parties request bespoke protective provisions and the undertaker is willing to negotiate them. Bespoke protective provisions are currently included in Schedule 15 for the protection of:
- a. Part 4 – Railway Interests (following discussions with Network Rail);
  - b. Part 5 – Thames Water Utilities Limited;
  - c. Part 6 – Southern Gas Networks Plc as Gas Undertaker; and
  - d. Part 7 – the Environment Agency.
- 4.15.3 The protective provisions in Part 1 – for the protection of electricity, gas, water and sewerage undertakers, have been amended slightly to include other mains, pipelines or cables not ordinarily falling within the definition of "apparatus" and the owner of such mains, pipelines and cables as a "utility undertaker". This is to capture and protect a water supply to tenants that is privately provided within the Order limits.

## 4.16 Schedule 16 (Procedure for discharge of requirements)

4.16.1 This Schedule provides a bespoke procedure for dealing with an application made to the relevant planning authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant planning authority requires further information to be provided in relation to that application. Schedules similar to Schedule 16 have been used in various orders and can be seen in a similar form in Schedule 16 of the **Mallard Pass Solar Farm Order 2024**, Schedule 15 of the **Gate Burton Energy Park Order 2024** and Schedule 13 of the **Sunnica Energy Farm Order 2024**. The bespoke process is required in order to ensure that applications under Requirements are dealt with efficiently so that the authorised development is not held up. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be held up by the discharge of requirements. This schedule has been shared with the relevant planning authorities. The Schedule relates to Article 45 (Procedure in relation to certain approvals etc.).

4.16.14.16.2 Paragraph 6 of Schedule 16 has been added to provide that any anticipatory steps which the Applicant takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps. This wording has precedent in various made DCOs including the **A47 Blofield to North Burlingham Development Consent Order 2022**, the **A428 Black Cat to Caxton Gibbet Development Consent Order 2022**, the **M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022** and the **A47 Wansford to Sutton Development Consent Order 2023**.