



# BEACON FEN

## ENERGY PARK

Planning Inspectorate Reference: EN010151

Explanatory Memorandum (Tracked)  
Document Reference: 3.2  
Change Request – December 2025



Quality information

| Prepared by | Checked by | Verified by | Approved by |
|-------------|------------|-------------|-------------|
| HSF         |            |             |             |
|             |            |             |             |

Revision History

| Revision          | Revision date                 | Details                                         | Authorised                 | Name | Position |
|-------------------|-------------------------------|-------------------------------------------------|----------------------------|------|----------|
| 1                 | April 2025                    | Submission version                              | HSF                        |      |          |
| 2                 | July 2025                     | Updates in response to s51 advice on acceptance | HSF Kramer                 |      |          |
| 3                 | October 2025                  | Updates submitted at Deadline 2                 | HSF Kramer                 |      |          |
| 4                 | November 2025                 | Updates submitted at Deadline 4                 | HSF Kramer                 |      |          |
| <a href="#">5</a> | <a href="#">December 2025</a> | <a href="#">Change Request version</a>          | <a href="#">HSF Kramer</a> |      |          |

## Table of Contents

|     |                                                             |    |
|-----|-------------------------------------------------------------|----|
| 1.  | Introduction .....                                          | 4  |
| 2.  | The Purpose of the Order .....                              | 5  |
| 3.  | Part 1 – Preliminary .....                                  | 14 |
| 4.  | Part 2 – Principal Powers .....                             | 17 |
| 5.  | Part 3 – Streets .....                                      | 24 |
| 6.  | Part 4 – Supplemental Powers .....                          | 28 |
| 7.  | Part 5 – Powers of acquisition and possession of land ..... | 30 |
| 8.  | Part 6 - Miscellaneous and General .....                    | 38 |
| 9.  | Schedules .....                                             | 43 |
| 10. | Glossary .....                                              | 53 |

# 1. Introduction

## 1.1 Overview

- 1.1.1 Beacon Fen Energy Park Ltd (the 'Applicant') has made an application (the 'Application') for a development consent order ('DCO') from the Secretary of State for Energy Security and Net Zero to authorise the Beacon Fen Solar Project (the 'Proposed Development') which is described at Schedule 1 (authorised development) to the **Draft DCO (Document Ref: 3.1)** which accompanies the Application and is entitled the Beacon Fen Energy Park Order 202[ ] (the 'Order').
- 1.1.2 The site of the Proposed Development is located east of Sleaford in Lincolnshire. The site is entirely within the administrative boundaries of North Kesteven District Council, Boston Borough Council and Lincolnshire County Council.
- 1.1.3 This memorandum explains the purpose and effect of each Article of, and the Schedules to, the Order, as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('APFP Regulations'). In particular, it sets out (where relevant):
- the source of the provision (whether it is bespoke or based on a made DCO); and
  - the reasons why the Article is relevant to the project and considered important/essential to the delivery of the Proposed Development.
- 1.1.4 This memorandum should be read alongside the **Draft DCO (Document Ref: 3.1)** and the various documents submitted in respect of the Application.
- 1.1.5 The **Draft DCO (Document Ref: 3.1)** and this memorandum have both been prepared in accordance with:
- The Planning Inspectorate's Nationally Significant Infrastructure Projects: Advice on the Preparation and Submission of Application Documents (published 8 August 2024, updated 10 October 2024)<sup>1</sup>;
  - The Planning Inspectorate's Advice Note Fifteen: drafting Development Consent Orders (Version 2, July 2018, updated 24 March 2025)<sup>2</sup>; and
  - The Department of Levelling Up, Housing and Communities guidance note: Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (published 30 April 2024).<sup>3</sup>

<sup>1</sup> Available online at Nationally Significant Infrastructure Projects: Advice on the Preparation and Submission of Application Documents - GOV.UK and last accessed by the Applicant on 3 April 2025.

<sup>2</sup> Available online at Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders - GOV.UK and last accessed by the Applicant on 3 April 2025.

<sup>3</sup> Available online at Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects - GOV.UK and last accessed by the Applicant on 3 April 2025.



## 2. The Purpose of the Order

### 2.1 Overview

- 2.1.1 Section 15 of the Planning Act 2008 ('2008 Act') provides that a DCO is required to the extent that a development is, or forms part of, a nationally significant infrastructure project ('NSIP').
- 2.1.2 The Proposed Development is an NSIP under sections 14(1)(a) and 15 of the 2008 Act because it comprises a generating station with a gross electrical output of over 50 megawatts ('MW') and is located in England.
- 2.1.3 Accordingly, the Applicant has made the Application in order to secure development consent for the Proposed Development. The **Draft DCO (Document Ref: 3.1)** is part of the Application.

### 2.2 Development authorised by the Order

- 2.2.1 A detailed description of the Proposed Development can be found in **Chapter 2: Proposed Development (Document Ref: 6.2 ES Vol. 1, 6.2.2)** of the **Environmental Statement (Document Ref: 6.1-6.4)**. It comprises a generating station of more than 50 MW, being the NSIP, and is described in Work No. 1 in Schedule 1 to the Order. The Proposed Development also includes associated development, which comprises Work Nos 2-10 in Schedule 1 to the Order.
- 2.2.2 The NSIP is as follows:

**Work No. 1 – a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—**

  - (a) *solar panels fitted to mounting structures; and*
  - (b) *balance of solar system (BoSS) plant.*
- 2.2.3 The description of Work No. 1 refers to a gross electrical output of over 50 MW. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that a generating station which exceeds an electrical capacity of 50 MW will be a NSIP and therefore development consent will be required.
- 2.2.4 Work No. 1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Proposed Development will be constrained and it is on this basis which the **Environmental Statement (Document Ref: 6.1-6.4)** has been prepared.
- 2.2.5 There is no reason to limit the electrical output capacity of the Proposed Development provided those parameters are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.
- 2.2.6 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to

still construct the Proposed Development within the assessed parameters, but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources. The approach taken is well preceded in solar DCOs – please see the **Little Crow Solar Park Order 2022**, the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.

- 2.2.7 The associated development for the purposes of section 115 of the 2008 Act comprises Work Nos 2 to 10 of the Proposed Development as provided for in Schedule 1 to the Order. This comprises the following elements:

**Work No. 2** — *a battery energy storage system compound and associated works including—*

- a) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles;*
- b) transformers and associated bunding;*
- c) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;*
- d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;*
- e) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(a) or (d) or located separately in its own container or enclosure;*
- f) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(a), (d) and (e), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;*
- g) electrical cables including electrical cables connecting to Work No. 3;*
- h) fire safety infrastructure including water storage tanks, lagoons and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles;*
- i) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility; and*
- j) office, warehouse and plant storage building comprising—*
  - i. offices and welfare facilities;*
  - ii. storage facilities;*
  - iii. waste storage within a fenced compound;*
  - iv. parking areas; and*

- v. *a warehouse building for the storage of spare parts, operational plant and vehicles.*

**Work No. 3** — *development of an onsite substation and associated works including—*

- a) *substation, switch room buildings and ancillary equipment including reactive power units;*
- b) *monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms;*
- c) *water storage tanks; and*
- d) *400 kilovolt harmonic filter compound.*
- e) *office, warehouse and plant storage building comprising—*
  - i. *offices and welfare facilities;*
  - ii. *storage facilities;*
  - iii. *waste storage within a fenced compound;*
  - iv. *parking areas; and*
  - v. *a warehouse building for the storage of spare parts, operational plant and vehicles.*

**Work No. 4** — *works in connection with electrical cabling including—*

- a) *Work No. 4A— works to lay high voltage electrical cables including—*
  - i. *works to lay electrical cables connecting Work No. 3 to Work No. 5 including open cut trenching, tunnelling, boring and drilling works for trenchless crossings;*
  - ii. *works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;*
  - iii. *works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;*
  - iv. *works to divert and underground existing electrical overhead lines and other services;*
  - v. *laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage and information boards; and*
  - vi. *construction laydown areas, including site and welfare offices and areas to store materials and equipment.*
- b) *Work No. 4B— construction compounds in connection with Work No.4A including—*
  - i. *areas of hardstanding;*

- ii. car parking;*
- iii. site and welfare offices, canteens and workshops;*
- iv. area to store materials and equipment;*
- v. storage and waste skips;*
- vi. areas for offloading and turning;*
- vii. security infrastructure, including cameras, perimeter fencing and lighting;*
- viii. site drainage and waste management infrastructure (including sewerage); and*
- ix. electricity, water, waste water and telecommunications connections.*

**Work No. 5** — *works to the existing Bicker Fen National Grid substation including—*

- a) Work No. 5A— creation of a new generation bay and associated works at the existing substation including—*
  - i. an electrical bay to connect into the existing network at Work No. 5B, including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;*
  - ii. substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers;*
  - iii. control building; and*
  - iv. underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into Work No. 5B, including associated outdoor AIS or indoor GIS and electrical apparatus.*
- b) Work No. 5B— an extension to the existing substation including—*
  - i. outdoor AIS or indoor GIS, including circuit breakers, disconnectors and earth switches;*
  - ii. substation electrical apparatus, including bus-bars, bus-section and a bus-coupler, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers; and*
  - iii. underground and above ground electrical cables and electrical conductors, including cables for power, control and communication with electrical bays and to connect into Work No. 5A and the existing network within the existing substation, including associated outdoor AIS or indoor GIS and electrical apparatus.*



- c) Work No. 5C— cabling works and overhead line works in connection with the extension to the existing substation including—
- i. a cable sealing end compound and construction of a new circuit bay connecting into the existing substation; ~~and~~
  - ii. installation of a new 400 kV transmission tower to be located between an existing tower which will link into the new electrical bay in comprising part of Work 5B; and
  - iii. ~~ii.~~—underground and above ground electrical cables and electrical conductors, connecting ~~the~~ to an existing 400kV transmission tower, the new 400kV transmission tower and the new ~~feeder~~ electrical bay.
- d) Work No. 5D— temporary laydown area including—
- i. areas of hardstanding, compacted ground or tracking matting;
  - ii. car parking and access;
  - iii. area to store materials and equipment, including electrical cables;
  - iv. site and welfare offices and cabins;
  - v. security infrastructure, including cameras, perimeter fencing and lighting;
  - vi. site drainage and waste management infrastructure (including sewerage); and
  - vii. electricity, water, waste water and telecommunications connections.
- e) Work No. 5E— further works in connection with the extension to the existing substation including—
- i. landscaping and biodiversity mitigation and enhancement measures including planting; and
  - ii. the laying and construction of drainage infrastructure.

**Work No. 6 — works including—**

- a) electrical cables, including but not limited to electrical cables connecting Work Nos. 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS;
- b) fencing, gates, boundary treatment and other means of enclosure;
- c) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- d) landscaping and biodiversity mitigation and enhancement measures including planting;
- e) improvement, maintenance and use of existing private tracks;
- f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, including via footbridges, and

*roads, including the laying and construction of drainage infrastructure,  
signage and information boards;*

- g) laying down of temporary footpath diversions, permissive paths, signage and information boards;*
- h) earthworks;*
- i) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;*
- j) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;*
- k) works to divert and underground existing electrical overhead lines and other services; and*
- l) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.*

**Work No. 7** — *construction and decommissioning compounds in connection with Work Nos. 1, 2 and 3 including—*

- a) areas of hardstanding;*
- b) car parking;*
- c) site and welfare offices, canteens and workshops;*
- d) area to store materials and equipment;*
- e) storage and waste skips;*
- f) areas for offloading and turning;*
- g) security infrastructure, including cameras, perimeter fencing and lighting;*
- h) site drainage and waste management infrastructure (including sewerage); and*
- i) electricity, water, waste water and telecommunications connections.*

**Work No. 8** — *works to create the bespoke access road including—*

- a) creation of accesses from the public highway;*
- b) works to divert and underground existing electrical overhead lines and other services;*
- c) creation of visibility splays;*
- d) works to widen and surface the public highway and private means of access;*
- e) creation of public right of way crossings;*
- f) works to create associated drainage infrastructure, including works to existing drainage infrastructure;*
- g) creation of temporary construction compounds;*

- h) erection of temporary fencing and hording and permanent access gates; and*
- i) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.*

**Work No. 9 — areas of habitat management including—**

- a) landscape and biodiversity enhancement measures;*
- b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and*
- c) fencing, gates, boundary treatment and other means of enclosure.*

**Work No. 10 — works to facilitate access to Work Nos. 1 to 9 including—**

- a) creation of accesses from the public highway;*
- b) creation of visibility splays; and*
- c) works to widen and surface the public highway and private means of access.*

2.2.8 Section 115(1) of the 2008 Act provides that development consent may be granted for ‘(a) development for which development consent is required, or (b) associated development.’.

2.2.9 Guidance on associated development has been issued by the Government.<sup>4</sup> In this guidance, associated development is described as being ‘typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project’ and which ‘requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts’ (paragraph 5).

2.2.10 Consent is also sought for ‘further associated development’ as set out below Work No. 10 of Schedule 1 to the Order as may be necessary or expedient for the purposes of or in connection with the authorised development which is within the Order Limits and falls within the scope of works assessed by the **Environmental Statement (Document Ref: 6.1-6.4)** including:

- a) works for the provision of fencing and security measures such as CCTV and lighting;*
- b) laying down of internal access tracks;*
- c) ramps, means of access, non-motorised links, footpaths, footways;*
- d) boundary treatments, including means of enclosure;*
- e) bunds, embankments, trenching and swales;*

---

<sup>4</sup> Guidance on associated development applications for major infrastructure projects (Department for Communities and Local Government, April 2013). Available online at Planning Act 2008: Guidance on associated development applications for major infrastructure projects and last accessed by the Applicant on 3 April 2025.

- f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;*
- g) works to existing irrigation systems and works to alter the position and extent of such irrigation systems;*
- h) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;*
- i) 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;*
- j) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;*
- k) 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;*
- l) works required for the strengthening, improvement, maintenance, or reconstruction of any street;*
- m) tunnelling, boring and drilling works;*
- n) works for the benefit of protection of land affected by the authorised development;*
- o) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and*
- p) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development.*

2.2.11 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

2.2.12 Section 120(3) of the 2008 Act provides that an order can make a provision '*relating to, or to matters ancillary to, the development*' and makes it clear (section 120(4)) that such matters 'include', in particular, provision for or relating to any of the matters listed in Part 1 of Schedule 5 of the 2008 Act. Section 120(5) also allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO, include any provision that appears necessary or expedient to giving full effect to any other provision in the DCO, and include any incidental, consequential or transitional provisions or savings.

2.2.13 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(3) of the 2008 Act, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the 2008 Act.



justification for these powers is set out in the **Statement of Reasons (Document Ref: 4.1)** that accompanies the Application.

- 2.2.14 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the 2008 Act, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.
- 2.2.15 Other ancillary matters include the temporary closure of lengths of existing highways and public rights of way ('PRoW') and traffic regulation measures.

## 3. Part 1 – Preliminary

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

### Article 1 (Citation and commencement)

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

### Article 2 (Interpretation)

- 3.1.3 The purpose of Article 2(1) is to define various terms used in the Order. Definitions to note include:

- The definition of 'apparatus' has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition is clearly established in precedent, for example in the **Longfield Solar Farm Order 2023** (Article 2(1)) and the **Gate Burton Energy Park Order 2024** (Article 2(1));
- A definition of "commence" has been included within the Order, which excludes the pre-commencement activity of 'permitted preliminary works'. The effect of the definition is that the site enabling works can be carried out prior to the requirements contained in Schedule 2 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The Applicant notes the definition of 'commence' was deleted by the Secretary of State when the **A160/A180 (Port of Immingham Improvement) Development Consent Order 2015** was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had 'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the Proposed Development and that this was a correctable error for the purposes of Schedule 4 to the 2008 Act';
- "date of final commissioning" is defined as means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing. This date is used as the trigger point for commencement of the decommissioning of the Proposed Development, which must commence no later than 40 years following the date of final commissioning, as secured in Requirement 19 in Schedule 2 to the Order

(see paragraph 9.1.27 below). Use of this definition and mechanism for time limiting the operational lifetime of the authorised development has precedent in the **Gate Burton Energy Park Order 2024** (Article 2(1) and Requirement 19) and so is considered appropriate for this Order;

- A definition of "maintain" is included to clarify what is authorised under Article 5 (see paragraph 4.1.6 below) so as to provide the Applicant with certainty. In particular it does not permit the Applicant to carry out any maintenance operations which would cause materially new or materially different environmental effects to those identified in the **Environmental Statement (Document Ref: 6.1-6.4)**. The approach taken is clearly established in precedent, including in the **Little Crow Solar Park Order 2022** (Article 2(1)) and the **Cleve Hill Solar Park Order 2020** (Article 2(1)). In response to comments made by Lincolnshire County Council, the Applicant has considered the most up to date precedent in recently made solar DCOs (the latest being the **Tillbridge Solar Order 2025**), and has updated the drafting of the definition of "maintain" in the Draft DCO as follows to make the limitations of the definition clear:

*"“maintain” includes inspect, upkeep, repair, refurbish, adjust, alter, remove, reconstruct and replace in relation to the authorised development, **but not remove, reconstruct or replace the whole of, the authorised development**, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” must be construed accordingly;”*

- "permitted preliminary works", which comprises the specific list of activities and works that can be carried out prior to development being considered to have "commenced" as previously defined. Use of this definition is well precedented, please see the **Heckington Fen Solar Park Order 2025** (Article 2(1)) and the **West Burton Solar Project Order 2025** (Article 2(1)) as examples; and
- "undertaker" is defined as Beacon Fen Energy Park Ltd or any person who has the benefit of the Order in accordance with Articles 6 (benefit of the Order) and 7 (consent to transfer benefit of the Order) (see paragraphs 4.1.7 to 4.1.16 below).

3.1.4 Article 2(2) provides that a broad definition of "rights over land" applies to the Order.

3.1.5 Paragraphs (3) to (7) and (9) 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 Plan (Document Ref: 2.4)**; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; that all areas described in the **Book of Reference (Document Ref: 4.3)** are approximate; and that references to other legislation in the Order should be construed as including amendments to such legislation. It is commonplace to include such provision in a DCO (see, for example, Articles 2(3) to (8) of the **Gate Burton Energy Park Order 2024**).

3.1.6 Article 2(8) is an interpretive provision applying to all references in the Order to "materially new or materially different" environmental effects. There are provisions in the **Draft DCO (Document Ref: 3.1)** where activities are

constrained to those which do not give rise to materially new or materially different environmental effects or where variations are permissible provided they do not give rise to such effects (e.g. the definition of maintenance described above and requirement 3 in Schedule 2 to the **Draft DCO (Document Ref: 3.1)**). The interpretive provision confirms that references to materially new or materially different environmental effects in comparison with those reported in the **Environmental Statement (Document Ref: 6.1-6.4)** shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the Environmental Statement as a result of the authorised development.

- 3.1.7 Article 2(8) reflects the recently established precedent in Article 2(10) of the **A122 (Lower Thames Crossing) Development Consent Order 2025**. The Applicant does not consider that the interpretive provision changes the meaning of “materially new or materially different”; instead, it seeks to confirm the position that references to “materially new or materially different” are not intended to prevent variations within the terms of the Order being progressed where they would entail an environmental betterment.

## 4. Part 2 – Principal Powers

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

- 4.1.1 This Article grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development into different works enables the Order to refer to different parts of the authorised development by citing the relevant work number for that area.
- 4.1.2 Article 3(2) requires that the works authorised by the Order are situated in the areas shown on the **Works Plan (Document Ref: 2.4)**. The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development within the set limits.
- 4.1.3 Flexibility is appropriate in the current Order as it serves to precisely define the authorised development by reference Schedule 1, while preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology to the extent shown on the **Works Plan (Document Ref: 2.4)**. The **Environmental Statement (Document Ref: 6.1- 6.4)** accompanying the Application has assessed the authorised development within the full envelope provided by the **Works Plan (Document Ref: 2.4)**, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the **Environmental Statement (Document Ref: 6.1-6.4)**.
- 4.1.4 Article 3(3) stipulates that any enactment applying to land within or immediately adjacent to the Order Limits has effect subject to the provisions of this Order. This provision has been included and is necessary in order to ensure that there are no acts of a local or other nature that would hinder the construction and operation of the authorised development. It ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. As a result, the construction and operation of the authorised development are not jeopardised by any incompatible statutory provisions which may exist. This provision must capture enactments applying to land adjacent to the Order Limits as such enactments could otherwise potentially hinder the construction or operation of the authorised development – e.g. by restricting access to the site. The provision is well precedented (including in Article 4(2) of the **A66 Northern Trans-Pennine Development Consent Order 2024**, Article 3(2) of the **M42 Junction 6 Development Consent Order 2020** and in Article 3(2) of the **Manston Airport Development Consent Order 2022**).

## Article 4 – Authorisation of use

- 4.1.5 Article 4 provides that, once constructed, the undertaker has the authority to operate and use the authorised development. However, this power does not relieve the undertaker of its obligation to obtain other operational consents that may be needed in addition to the Order as expressly stated in Article 4(2). This Article has been inserted for the avoidance of doubt and in accordance with section 120(3) of the 2008 Act. It is also preceded in recently made solar DCOs (albeit it is named "Operation of a generating station" – see, for example, Article 4 of the **Heckington Fen Solar Park Order 2025**).

## Article 5 – Maintenance of authorised development

- 4.1.6 This Article is necessary to ensure that any required maintenance activities can be carried out. Article 5 reflects the terms of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the 'model provisions'). "Maintain" is defined in Article 2(1), with its scope and purpose described in paragraph 3.1.3. This provision is preceded in recently made solar DCOs. See, for example, Article 5 of the **West Burton Solar Project Order 2025**.

## Article 6 – Benefit of the Order

- 4.1.7 Article 6 provides that Beacon Fen Energy Park Ltd has the sole benefit of the powers and rights under the Order, except in respect of Work No. 5 (works to the existing Bicker Fen National Grid substation), for which the benefit of the Order is granted to both Beacon Fen Energy Park Ltd and National Grid Electricity Transmission plc ('National Grid'). These works constitute in each case infrastructure which, while necessary to facilitate the development of the Proposed Development, is likely to be carried out and owned by National Grid. For further information relating to the role of National Grid in delivering Work No.5, as well as the relationship between the Proposed Development and the Heckington Fen Solar Park Order 2025, please refer to section 2.13 of **Chapter 2: Proposed Development (Document Ref: 6.2 ES Vol. 1, 6.2.2)** and the **Grid Connection Statement (Document Ref: 7.1)**.
- 4.1.8 Paragraph (2) further provides that nothing in paragraph (1) should be read as meaning that other parties expressly stated to benefit from the Order should be excluded from such benefits.
- 4.1.9 This Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the specified parties and not any other person with an interest in the Order Land (unless provided under Article 7).
- 4.1.10 Precedent for the use of similar provisions can be found in a number of DCOs which include works to a substation to facilitate the connection of a generating station to the national grid. For example, please see Article 34 of the **West Burton Solar Project Order 2025**, where powers to carry out particular works were given to National Grid, and Article 8 of the **Riverside Energy Park Order 2020** where London Power Networks was granted the power to carry out certain works. Paragraph (2) has multiple precedents, including Article 7(2) of the **Great Yarmouth Third River Crossing Development Consent Order 2020**.



## Article 7 – Consent to transfer benefit of the Order

- 4.1.11 This is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- the transferee or lessee is National Grid;
  - the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
  - the compensation provisions for the acquisition of land or effects on land have elapsed.
- 4.1.12 Article 7(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 4.1.13 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.
- 4.1.14 Article 7(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 7(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017** which has been used in numerous more recent DCOs since then.
- 4.1.15 Article 7(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- the transferred benefit will include any rights that are conferred and any obligations that are imposed;
  - the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
  - the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 4.1.16 As noted above, Article 7 is preceded in numerous made DCOs, including the **Little Crow Solar Park Order 2022** (Article 5), the **Longfield Solar Farm Order 2023** (Article 33) and the **West Burton Solar Project Order 2025** (Article 35).

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

- 4.1.17 Article 8 disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought under this Article for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020** (Article 3), the **Longfield Solar Farm Order 2023** (Article 6) and the **Gate Burton Energy Park Order 2024** (Article 6).
- 4.1.18 Article 8(1) provides for the disapplication of the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 32 and 34 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 32 and 34. This approach has precedent and has been accepted by the Secretary of State; see for example the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023** and the **Mallard Pass Solar Farm Order 2024**.
- 4.1.19 Section 150 of the 2008 Act only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's approach to obtaining the other consents required for the Proposed Development is set out in greater detail in the **Other Consents and Licences Statement (Document Ref: 5.4)**.
- 4.1.20 Article 8 also applies section 9 of the Forestry Act 1967 to any felling required as a result of the authorised development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disapplies the requirement from felling required to implement development authorised by a planning permission, but not to development authorised by a DCO. Paragraph (3) of Article 8 therefore extends the exception to the context of the DCO and any trees felled as a result of the authorised development. This approach has precedent in the **Great Yarmouth Third River Crossing Development Order 2020** (Article 54) and has been followed in numerous made DCOs since then (see, for example, Article 6(2) of the **West Burton Solar Project Order 2025**).

- 4.1.21 Similar amendments are made in Article 8(2) to the Hedgerows Regulations 1997. These amendments bring the position for DCO development in line with the position under other planning permissions or deemed permissions (such as under the Transport and Works Act 1992). This is considered appropriate for a DCO project of national importance and is preceded in Article 6 of the **Little Crow Solar Park Order 2022**.
- 4.1.22 Article 8(4) disapplies section 141 of the Highways Act 1980. This section places restrictions on planting in or near carriageways. It has been disapplied to the extent that any tree or shrub planted has been planted with the agreement of the highway authority. This provision is preceded in paragraph 2 of Schedule 25 to the **Sizewell C (Nuclear Generating Station) Order 2022**.
- 4.1.23 Article 8(5) clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any buildings within the authorised development fall within the exemption under regulation 6 and will not be considered as "development" for the purposes of levying the community infrastructure levy. The rationale for this disapplication is that the authorised development is in its own right a piece of nationally significant infrastructure, and the undertaker will be obliged to provide all of the mitigatory infrastructure to mitigate its effects. Therefore, it would not be justifiable for the levy to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts. This provision is preceded in Article 6(3) the **Longfield Solar Order 2023**, Article 6(3) of the **Cottam Solar Project Order 2024** and Article 6(5) of the **Mallard Pass Solar Farm Order 2024**.
- 4.1.24 Article 8(6) confirms that Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 has been disapplied to avoid any future planning enactments undermining the powers and rights provided to the undertaker under the Order. This provision is included in paragraph 4 of Schedule 14 to the **Northampton Gateway Rail Freight Interchange Order 2019**.

#### Article 9 – Planning Permission

- 4.1.25 Article 9(1) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the authorised development.
- 4.1.26 The next provisions of the Article clarify the relationship between the application of planning permissions granted under the Town and Country Planning Act 1990 ('1990 Act') (or permitted development rights deemed to be granted under it) and the development powers granted by the Order. It addresses any potential uncertainty that may result from the Supreme Court's decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30. Article 56 of the **A122 (Lower Thames Crossing) Development Consent Order 2025** contains similar drafting to address this uncertainty. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented (or continue to be implemented) depends upon whether it remains physically possible to carry out the development authorised

by the second permission in light of what has already been done under the first permission.

- 4.1.27 Article 9(2) provides that the works authorised by the DCO (authorised development) may be carried out or may continue to be carried out notwithstanding the initiation of any development pursuant to a planning permission granted or deemed to be granted pursuant to the 1990 Act which may be physically incompatible with the authorised development.
- 4.1.28 Article 9(3) provides that any conditions of any planning permission granted prior to the date of the Order that are incompatible with the requirements of the Order or the authorised development shall cease to have effect from the date the authorised development is commenced. This provision also includes use of any permitted development rights (as is specified in Article 9(5)(b)).
- 4.1.29 Article 9(4) makes clear that nothing in the Order restricts the future grant of planning permissions under the 1990 Act for works within the Order Limits, or exercise of permitted development rights. This provision is included for the avoidance of doubt to make clear that the local planning authority is not prevented, following the grant of the DCO, from granting planning permission for development on land within the Order Limits that would not conflict with the DCO. This provision is necessary to ensure that minor works can be separately consented without needing to rely on an amendment to the Order which would be disproportionate and impractical in the circumstances.
- 4.1.30 Article 9(5) contains definitions relevant to the interpretation of the Article.

#### **Article 10 – Defence to proceedings in respect of statutory nuisance**

- 4.1.31 Article 10 provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise if the noise is created in the course of constructing, operating, maintaining or decommissioning the authorised development and for which notice has been given under Section 60 or consent obtained under Section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 10 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Proposed Development and for this reason it is necessary to include the Article in the Order. This provision appears in numerous made DCOs, including all made solar DCOs. Please see, for example, the **Mallard Pass Solar Farm Order 2024** (Article 7) and **Gate Burton Energy Park Order 2024** (Article 7). The rationale is that if works are authorised under the Order, they are subject to appropriate levels of controls and should be permitted to proceed to construction and operation (and eventually decommissioning).
- 4.1.32 As stated at paragraph 9.1.22 below, Requirement 14 of the Order provides that, prior to the commencing construction of Work Nos. 1, 2 and 3, an operational noise assessment must be submitted to and approved by the local planning authority. The operational noise assessment must include details of how the design of each numbered work has incorporated mitigation to ensure the operational noise rating levels as set out in the **Environmental Statement (Document Ref: 6.1-6.4)** are to be complied with, such that the authorised development is not likely to result in any materially new or materially different

noise effects from those assessed in **Chapter 10: Noise and Vibration (Document Ref: 6.2 ES Vol. 1, 6.2.10)**. Noise is further controlled via the mitigation secured in the **Outline Construction Environmental Management Plan (Document Ref: 6.3, ES Vol.2, 6.3.7)** and the **Outline Decommissioning Environmental Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.8)**. In addition, a **Statutory Nuisance Statement (Document Ref: 5.3)** has been prepared and submitted as part of the Application.

## 5. Part 3 – Streets

### Article 11 – Street works

- 5.1.1 Article 11 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 3 (streets subject to street works) sets out the streets that are subject to street works thereby clarifying the extent of the powers. Article 11 is a model provision; however, it has been modified to bring in sections 54 to 106 of the 1991 Act to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been extended in paragraph (1)(e) to provide for works which may be required to any culvert under a street. This Article is based on Article 9 of the **Immingham Open Cycle Gas Turbine Order 2020** and is preceded in numerous made solar DCOs (for example, see Article 8 of the **West Burton Solar Project Order 2025**).

### Article 12 – Application of the permit scheme

- 5.1.2 Article 12 (Application of the permit scheme) was added at Deadline 2 to clarify the interaction between the street works articles of the Order and the application of the relevant permitting schemes of the local highways authority (LCC). The Article clarifies that the permit scheme continues to apply, but cannot be refused or granted subject to conditions which would effect refusal, and that conditions for a permit must be consistent with the Order and its powers. These clarifications ensure certainty that the street works for the authorised development can proceed in accordance with the made Order. The Article also ensures that an appeal process remains open to the undertaker to any decisions under permitting scheme, in order to enable the undertaker to appropriately align any conditions for the schemes with the requirements of the made Order. This Article is preceded in, for example, Article 9 of the **Tillbridge Solar Order 2025**.

### Article 13 – Power to alter layout, etc., of streets

- 5.1.3 This Article allows the undertaker to alter the layout of or carry out any works in a street. Schedule 4 (alteration of streets) 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 13 has precedent in numerous made DCOs and appears in the **Drax Power (Generating Stations) Order 2019**, the **Gate Burton Energy Park Order 2024** (Article 9) and the **Heckington Fen Solar Park Order 2025** (Article 9).

### Article 14 – Construction and maintenance of altered streets

- 5.1.4 Article 14 provides that the permanent alterations to the streets listed in Part 1 of Schedule 4 (alterations of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed, be



maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the street authority.

- 5.1.5 Paragraph (2) provides that the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker. Paragraph (3) provides that restoration works carried out pursuant to Article 13(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.
- 5.1.6 Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (6) provides that with the exception of paragraph (1) of this Article, the provisions of this Article do not apply where the undertaker is the street authority for a street in which the works are being carried out. This Article (and the incorporation of the defences in particular) is preceded in numerous made DCOs, including Article 10 of the **West Burton Solar Project Order 2025** and Article 10 of the **Cottam Solar Project Order 2024**.

#### Article 15 – Use of private roads

- 5.1.7 This Article authorises the temporary passage by the undertaker, in common with other permitted users, over private roads within the Order Limits by persons or vehicles for the purposes of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development. The Article creates a power to 'use' a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner, and so is considered to be a "lesser", and therefore more proportionate, power compared to taking temporary possession of a private road or 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 to carry out the Proposed Development.
- 5.1.8 Article 15(2) provides that the undertaker will compensate any person who has suffered loss or damage as a result of the exercise of this power, thereby protecting any interference with any private right which gives rise to the need for compensation.
- 5.1.9 Article 15(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.
- 5.1.10 In addition, any exercise of this power will be subject to the controls which are outlined in the **Outline Construction Traffic Management Plan ((Document Ref: 6.3 ES Vol.2, 6.3.78))**, and so this power should be considered in conjunction with the controls and mitigations set out in that document.
- 5.1.11 Precedent for this Article is in Article 13 of the **Silvertown Tunnel Order**

**2018**, Article 20 of the **Sizewell C (Nuclear Generating Station) Order 2022** and, in respect of solar DCOs specifically, Article 12 of the **Cottam Solar Project Order 2024** and Article 14 of the **Tillbridge Solar Order 2025**.

### **Article 16 - Temporary prohibition or restriction of use of streets and public rights of way**

- 5.1.12 Article 16 provides for the temporary stopping up, prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of streets and public rights of way for the purposes of the authorised development. It is required because, in particular, the undertaker will need to temporarily close certain public rights of way in order to construct the authorised development. No permanent stopping up or diversion of streets or public rights of way is required. Schedule 5 (streets and public rights of way) is comprised of four parts (public rights of way to be temporarily closed; permanent use of motor vehicles on public rights of way; temporary use of motor vehicles on public rights of way; and temporary management of public rights of way).
- 5.1.13 The authorisation under Article 16 of the use of motor vehicles over public rights of way where there is no public right to use motor vehicles is necessary to enable the undertaker to access parts of the authorised development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 5 (streets and public rights of way) to the Order and as shown on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**. Article 15 mirrors Article 11 of the model provisions in providing that where the public right of way is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other public rights of way not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 19 (see paragraphs 5.1.18 to 5.1.20 below) deals with traffic regulation more widely.
- 5.1.14 Article 16(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any public right of way temporarily stopped up as a temporary working site (which is not in the model provision). Similar wording to this Article has been used in numerous other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, Article 13 of the **Riverside Energy Park Order 2020** and Article 11 of the **Gate Burton Energy Park Order 2024**.

### **Article 17 – Access to works**

- 5.1.15 Article 17 is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the authorised development, as set out in Schedule 6 (access to works) to the Order. This Article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 6 (access to works) is split into Part 1 (permanent means of access to works) and Part 2 (temporary means of access to works). The

Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the local planning authority, in consultation with the highway authority. Similar provisions to this Article are contained in Article 21 of the **Sizewell C (Nuclear Generating Station) Order 2022** and Article 12 of the **Gate Burton Energy Park Order 2024**.

### Article 18 - Agreements with street authorities

- 5.1.16 Article 18 is a model provision which authorises a street authority and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any street, stopping up, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 11 (street works), 13 (power to alter layout, etc., of streets) and 14 (construction and maintenance of altered streets) of the Order, the adoption of works and any other such works as the parties may agree. This provision has precedent in numerous made DCOs including the **Longfield Solar Farm Order 2023** (Article 13) and the **West Burton Solar Project Order 2025** (Article 14) and is required so that the undertaker may enter into agreements with the relevant street authorities.

### Article 19 – Traffic regulation measures

- 5.1.17 Article 19 provides the undertaker with powers to place temporarily traffic signs and signals in the extents of the roads specified in Schedule 7 (traffic regulation measures). This Schedule identifies the relevant roads and specifies the extents of the roads that will be subject to temporary traffic signal and banksman control areas. These specific measures are required to safely regulate traffic during the construction or decommissioning of the Proposed Development.
- 5.1.18 Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Proposed Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in DCOs granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of or decommissioning of the authorised development for the undertaker to put in place some temporary restrictions on road usage.
- 5.1.19 The powers under this Article are provided for in section 120(5)(a) of the 2008 Act and are preceded in numerous made DCOs. For example, similar provision is contained within the **Longfield Solar Farm Order 2023** (Article 14) and the **West Burton Solar Project Order 2025** (Article 15).

## 6. Part 4 – Supplemental Powers

### Article 20 – Discharge of water

- 6.1.1 Article 20 is a modified model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, operation, maintenance or decommissioning of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions.
- 6.1.2 The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 inserted instead. The Article has also been updated to reflect the current approach to the drafting of statutory instruments and so that if the undertaker makes an application for consent under the provisions of the Article but the relevant party does not provide notification of its decision within 28 days of the undertaker's application then consent will have been deemed to have been given. Its inclusion is permitted by section 120(3) as well as section 120(4) and specifically paragraph 26 of Part 1 of Schedule 5 to the 2008 Act.
- 6.1.3 There is precedent for this article in the majority of made Orders to date. Recently, it has been included in Article 9 of the **Little Crow Solar Park Order 2022**, Article 25 of the **Sizewell C (Nuclear Generating Station) Order 2022** and Article 16 of the **Mallard Pass Solar Farm Order 2024**.

### Article 21 – Protective works to buildings

- 6.1.4 Article 21 is a model provision which is included in most made DCOs to date (for a recent example, please see Article 17 of the **West Burton Solar Project Order 2025**). Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Land, subject to a number of conditions including the service of 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 6.1.5 The broad power in the model provision is necessary to ensure that the Applicant is also able to carry out protective works to any building which may be erected between now and the construction of the Proposed Development, to avoid the risk that any new buildings impede delivery of the project.
- 6.1.6 Protective works can also be undertaken after the carrying out of the works forming part of the authorised development for a period of 5 years from the date of completion of the part of the authorised development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. This Article is required because there are buildings within, and in close proximity to, the Order Land that might

feasibly require surveys and protective works as a result of the authorised development.

- 6.1.7 The Article includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).

#### **Article 22 – Authority to survey and investigate the land**

- 6.1.8 Article 22 is a modified model provision which allows the undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.
- 6.1.9 The model provision has been modified so that no trial holes are to be made: (a) in land located within the highway boundary without the consent of the highway authority; or (b) in a private street without the consent of the street authority.
- 6.1.10 If a highway authority or street authority after having received an application to make trial holes within a highway fails to notify the undertaker within 28 days of having received the application it will have been deemed to have provided consent. The Article also 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 **Sizewell C (Nuclear Generating Station) Order 2022** (Article 27), the **Longfield Solar Farm Order 2023** (Article 17) and the **Gate Burton Energy Park Order 2024** (Article 17).



## 7. Part 5 – Powers of acquisition and possession of land

### Article 23 – Compulsory acquisition of land

- 7.1.1 This Article provides the undertaker with the powers to compulsorily acquire any land within the Order Land where that land is either required for construction, operation, maintenance and decommissioning of the authorised development, or is required to facilitate or is incidental to those activities. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development.
- 7.1.2 This Article is subject to Article 26 (time limit for exercise of authority to acquire land compulsorily), Article 27 (compulsory acquisition of rights and imposition of restrictive covenants), Article 30 (acquisition of subsoil and airspace only), Article 32 (temporary use of land for carrying out authorised development), Article 41 (crown rights) and Schedule 11 (protective provisions). These Articles all impose restrictions on the exercise of powers under Article 23.
- 7.1.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the 2008 Act, together with Paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in numerous made DCOs, for example, the **Sizewell C (Nuclear Generating Station) Order 2022** (Article 28). Similar provisions are also included in the **Longfield Solar Farm Order 2023** (Article 18) and **West Burton Solar Project Order 2025** (Article 19).

### Article 24 – Compulsory acquisition of land – incorporation of the mineral code

- 7.1.4 Article 24 is a model provision which incorporates Parts 2 and 3 of Schedule 2 (Minerals) of the Acquisition of Land Act 1981. By incorporating both parts of Schedule 2, this Article prohibits the undertaker from also acquiring rights to any mines underneath the acquired land (unless they are expressly purchased), and provides mine owners with the ability to work the mines and extract minerals, subject to certain restrictions.
- 7.1.5 Part 3 of the Acquisition of Land Act 1981 sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, Article 24 provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.
- 7.1.6 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground stability) as well as the undertaker's ability to carry out authorised development pursuant to Article 3 (development consent etc. granted by the Order).
- 7.1.7 This restriction is provided for under sections 120(3) and (4) together with paragraph 4 of Schedule 5 of the 2008 Act, which relate to the carrying out



specified mining operations within a specified area. Precedent for this approach is found in numerous other made DCOs, such as the **Silvertown Tunnel Order 2018** (Article 20) and the **Longfield Solar Farm Order 2023** (Article 22). More recently, it has been included in the **Tillbridge Solar Order 2025** (Article 48) and the **Stonestreet Green Solar Order 2025** (Article 22).

- 7.1.8 During Issue Specific Hearing 3, the Examining Authority queried the inclusion of this article within the Draft DCO. The Applicant considers that this is an entirely appropriate and well precedented article. Whilst the Proposed Development is not in the vicinity of any existing or proposed extraction areas, an area in the north east of the Site is within a Mineral Safeguarding Area, and it is not possible to rule out the presence of minerals across the rest of the Site, so it is reasonable and prudent to conclude that the provisions of the mineral code may be relevant. Incorporating the mineral code into the Order means that the undertaker is placed on the same "footing" when exercising compulsory acquisition powers under the Order as an acquiring authority exercising powers pursuant to a compulsory purchase Order, and so is consistent with other articles which incorporate relevant parts of compulsory acquisition legislation into the Order.

#### **Article 25 – Statutory authority to override easements and other rights**

- 7.1.9 This Article provides that the undertaker may interfere with rights or breach restrictive covenants in the course of carrying out or using the authorised development (Article 25(1)), rather than automatically cleansing the title to land required for the authorised development of all third party rights. The recourse of an affected landowner in such circumstances is specified by Article 24(4) and 24(5) of the Order to be section 10 of the Compulsory Purchase Act 1965 ('1965 Act').
- 7.1.10 The Applicant considers that this power (in essence the protection for the undertaker of statutory authority in carrying out or using the authorised development) is sufficient and less draconian than provisions in a number of DCOs which expunge all rights from title, regardless of whether interference or breach of covenant is necessary to execute the Proposed Development.
- 7.1.11 The powers under this Article are provided for under sections 120(3) and (4) and section 122, together with paragraph 1 of Schedule 5 of the 2008 Act, as they relate to the compulsory acquisition of land. This Article replicates Article 25 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 30 of the **Sizewell C (Nuclear Generating Station) Order 2022**. A similar provision is also included as Article 27 in the **Tillbridge Solar Order 2025**.

#### **Article 26 – Time limit for exercise of authority to acquire land compulsorily**

- 7.1.12 This Article provides that the undertaker must exercise its power to acquire land or interests within five years of the Order being made. This ensures that landowners within the Order Land have certainty as to whether or not their land is to be acquired, or rights over their land acquired, within a set period of time.
- 7.1.13 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the 2008 Act, together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land. The undertaker considers that 5 years is an appropriate time limit as it is consistent

with the time limit for commencing the authorised development set out in Requirement 2 of Schedule 2 to the Order and has precedent in the majority of made DCOs to date. Precedent for this Article can be found in numerous made DCOs, for example, see Article 19 of the **Gate Burton Energy Park Order 2024**, Article 18 of the **Heckington Fen Solar Park Order 2025** and Article 22 of the **Tillbridge Solar Order 2025**.

### Article 27 – Compulsory acquisition of rights and imposition of restrictive covenants

- 7.1.14 Article 27 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 23 (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 32 (temporary use of land for carrying out the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 10 to the Order (i.e. land over which only temporary possession may be taken).
- 7.1.15 The Article provides that, in respect of the Order Land set out in Schedule 8 (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 8 (land in which only new rights etc. may be acquired) 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.
- 7.1.16 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. Paragraph (7) provides that the article is subject to Article 41 (Crown rights).
- 7.1.17 This Article is a departure from the model provisions, but it has precedent in many DCOs including the **Cottam Solar Project Order 2024** (Article 22), the **West Burton Solar Project Order 2025** (Article 22) and the **Tillbridge Solar Order 2025** (Article 23).

### Article 28 – Private rights

- 7.1.18 This Article is a modified model provision included in numerous made DCOs (see, for example, Article 23 of the **Cottam Solar Project Order 2024** and Article 24 of the **Tillbridge Solar Order 2025**). It provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the Order. In so far as the Applicant acquires land or creates new rights over land under the Order, where the continuance of private rights over that land would be inconsistent with the exercise of the

right being acquired or created then the private rights in question will be extinguished.

7.1.19 Paragraph (3) provides that all private rights over land which the undertaker takes temporary possession of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

7.1.20 Paragraphs (4) to (7) make provision for compensation and for circumstances where rights are preserved.

7.1.21 Paragraph (8) sets out a list of matters deemed to be private rights.

7.1.22 Article 28 differs from the model provisions in the following key respects:

- It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order Land.
- Paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.
- Paragraph (3) is included to clarify the position where the Applicant takes temporary possession of land.
- Sub-paragraph (6)(a)(i) is amended to also refer to the acquisition of rights or imposition of restrictive covenants.
- Paragraph (8) sets out what are considered to be 'private rights over land'. This is necessary to clarify the nature of the private rights to which this article applies.

### **Article 29 – Application of the 1981 Act**

7.1.23 Article 29 provides for the application of the Compulsory Purchase (Vesting Declarations) Act 1981 ('the 1981 Act'), containing the vesting procedures for land subject to compulsory purchase. It allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act. Vesting declarations allow title in land concerned to pass to the acquirer more quickly than using the notice to treat procedure. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure. This Article also clarifies that the undertaker will be a body or person authorised to acquire land for the purposes of the vesting declaration procedure.

7.1.24 In particular, the Article modifies specific provisions of the Acquisition of Land Act 1981 so that it is consistent with the five-year timeframe under Article 26 of the Order for the exercise of compulsory acquisition powers in relation to the Order land (compared to the usual timeframe of three years for vesting declarations to be executed).

7.1.25 The modification to the Acquisition of Land Act 1981 under Article 28 is provided for under section 120(5)(a) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order). Article 29 of the Order follows the approach in numerous made DCOs, for example, Article 26 of the

**Silvertown Tunnel Order 2018**, Article 22 of the **Longfield Solar Farm Order 2023**, Article 21 of the **Heckington Fen Solar Park Order 2025** and Article 25 of the **Tillbridge Solar Order 2025**.

### **Article 30 – Acquisition of subsoil and airspace only**

- 7.1.26 Article 30 authorises the undertaker to acquire the subsoil (as defined in Article 2(1)) and airspace, or rights in it, of any land acquired under Article 23 (compulsory acquisition of land) instead of acquiring the whole of the land.
- 7.1.27 Under certain circumstances it may be necessary for the undertaker to only acquire a stratum of land below the surface (for example for the construction of underground services) and therefore Article 30 confirms that where any subsoil is required, the undertaker is not required to acquire any greater interest in any other part of the land (i.e. the sub-surface). The purpose of Article 30 is to minimise so far as is possible the extent of interests the undertaker needs to acquire, resulting in less impact on landowners and lower compensation payments.
- 7.1.28 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the 2008 Act, together with paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in other made DCOs, such as Article 26 of the **Port of Tilbury (Extension) Order 2019**, Article 22 of the **Wrexham Gas Fired Generating Station Order 2017** and Article 30 of the **Hinkley Point C (Nuclear Generating Station) Order 2013**.

### **Article 31 – Modification of the 1965 Act**

- 7.1.29 Articles 31(1) to (4) amend the provisions of the 1965 Act so they are consistent with the terms and timeframes under the Order and the 2008 Act. Article 31(4) makes it clear that the counter-notice process under Part 2 of Schedule 2A of the 1965 Act, introduced by the Housing and Planning Act 2016, does not apply to the temporary possession or use of land under Articles 22, 32, 34 or 37 of this Order. This is because Schedule 2A has two processes for the serving and determination of counter-notices depending on whether or not the acquiring authority is in possession of the land. This interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under Articles 22, 32, 34 or 37.
- 7.1.30 Article 30 modifies the provisions of Part 1 of the 1965 Act as applied to the Order by section 125 of the 2008 Act. The powers under this Article are provided for under section 120(5)(a) of the 2008 Act which allows a DCO to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the DCO (in this case, the compulsory acquisition powers under the Order). Similar provisions can be found in numerous made DCOs, for example, see Article 25 of the **Longfield Solar Farm Order 2023**, Article 27 of the **Cottam Solar Project Order 2024** and Article 28 of the **Tillbridge Solar Order 2025**.

### **Article 32 – Temporary use of land for carrying out the authorised development**

- 7.1.31 The purpose of this Article is to allow the temporary possession of any Order Land in connection with the construction of the authorised development in respect of which no notice to treat has been served or vesting declaration made.

- 7.1.32 The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus Article 23 with Article 32 makes it possible for the undertaker to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the Proposed Development as constructed. This article relates to Schedule 10 (land of which temporary possession may be taken) which sets out the plots over which temporary possession rights only may be taken. The benefits of this are reduced impacts on landowners and lower costs to the undertaker, which is in the public interest. In line with this, paragraph (1)(e) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.
- 7.1.33 Paragraph (2) requires the undertaker to give at least 14 days' notice prior to entering on and taking temporary possession of land under paragraph (1).
- 7.1.34 Paragraph (3) provides that the undertaker may not (without the agreement of the owner of the land) remain in possession under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry or vesting declaration in relation to that land.
- 7.1.35 Paragraph (4) provides that, subject to certain exceptions, the undertaker will be required to remove works from land subject to temporary possession and restore that land to the reasonable satisfaction of the owner of the land before giving up possession of the land.
- 7.1.36 Paragraph (5) provides that the undertaker must pay compensation to the owners and occupiers of land of which temporary possession has been taken for any loss or damages arising from the temporary possession. Paragraph (6) provides that disputes in relation to compensation are to be determined under Part 1 of the Land Compensation Act 1961.
- 7.1.37 Paragraph (7) provides that any dispute about removal of works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land. Paragraph (8) provides that this Article does not affect liability to pay compensation under section 152 of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- 7.1.38 Paragraph (9) clarifies that the undertaker is not required to acquire any land, or interest in land, that it takes temporary possession of. Paragraph (10) provides that the provisions of the 1965 Act will apply to the refusal by the owner of the land to give possession of the land to the undertaker under Article 31. Lastly, paragraph (11) clarifies that the power to take temporary possession of land under paragraph (1) may be exercised more than once in relation to the same parcel of land.
- 7.1.39 Similar temporary possession provisions have been included in numerous made DCOs, including the **Sizewell C (Nuclear Generating Station) Order 2022** (Article 39), the **Cottam Solar Project Order 2024** (Article 29), the **Heckington Fen Solar Park Order 2025** (Article 26) and the **Tillbridge Solar Order 2025** (Article 30).



### Article 33 – Time limit for exercise of authority to temporarily use land for construction of authorised development

- 7.1.40 This Article provides that the undertaker may not enter land pursuant to the power of temporary possession in Article 32 at any time after five years from the day on which the Order is made. However, where temporary possession is taken during this period, the undertaker may retain possession after the expiry of this period.
- 7.1.41 This Article is similar in effect to a number of granted DCOs and has precedent in Article 20 of the **Sizewell C (Nuclear Generating Station) Order 2022** (as with that DCO, this time limit is provided as a standalone Article, separate from the Article relating to the time limits for exercising powers of compulsory acquisition).

### Article 34 – Temporary use of land for maintaining or decommissioning the authorised development

- 7.1.42 This Article provides the undertaker with the power to enter onto, and temporarily occupy, any Order Land for the purposes of maintaining or decommissioning the authorised development, without having to acquire a permanent interest in the land.
- 7.1.43 Before the undertaker can occupy the land, it must provide the landowner and any occupier with not less than 28 days' notice. 28 days' notice is not required if there is a potential safety risk, in which scenario the undertaker may service such notice as reasonably practicable. The undertaker is only permitted to remain in possession of the land for as long as reasonably necessary to carry out the relevant maintenance. Before it gives up its occupation of the land, the undertaker must reinstate the land to the satisfaction of the landowner.
- 7.1.44 Paragraph (7) provides for the undertaker to pay compensation to the owners and occupiers of land of which temporary possession is taken under this Article for any loss or damage arising from possession
- 7.1.45 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the Proposed Development is opened for use as this is more appropriate for this type of development. However, in order to be able to carry out the landscaping commitments set out in the **Outline Landscape and Ecological Management Plan (Document Ref: 6.3, ES Vol.2, Appendix 6.7, 6.3.19)**, the maintenance period has been extended to the period in the plan approved pursuant to Requirement 7 (see paragraph 9.1.15 below). Similar provisions are included in the **West Burton Solar Project Order 2025** (Article 30) and the **Mallard Pass Solar Farm Order 2024** (Article 30).

### Article 35 – Statutory undertakers

- 7.1.46 This Article allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or to interfere with their apparatus by removing or repositioning the apparatus within the Order land.
- 7.1.47 The general powers in this Article are subject to Schedule 11 (protective provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus.



- 7.1.48 The scope of the undertaker's powers under this Article include the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under Article 27.
- 7.1.49 Similar provision can be found in numerous other made DCOs including Article 42 of the **Sizewell C (Nuclear Generating Station) Order 2022** and Article 34 of the **Southampton to London Pipeline Development Consent Order 2020**.

#### Article 36 – Recovery of costs of new connections

- 7.1.50 Article 36 provides that any owner or occupier of properties that are affected by the removal of any apparatus under Article 35 (statutory undertakers) may recover the costs of any new connections from the undertaker.
- 7.1.51 Article 36(3) clarifies that this Article does not apply to apparatus to which Part 3 of the 1991 Act applies as separate compensation provisions are provided under those provisions.
- 7.1.52 This Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus. Precedent for this Article can be found in numerous other made DCOs, such as the **West Burton Solar Project Order 2025** (Article 33), the **Heckington Fen Solar Park Order 2025** (Article 30) and the **Tillbridge Solar order 2025** (Article 34).

#### Article 37 – Use of airspace within the Order land

- 7.1.53 Article 37 allows the undertaker to enter into and use as much of the airspace over any land within the Order land as is required for the construction, operation, maintenance and decommissioning of the authorised development or any other ancillary purpose. This right is necessary as landowners also own the airspace above their land and this right would avoid the need to obtain an airspace or over-sailing licence in the event that the undertaker occupies airspace above the Order Land that it does not own, or have an interest in (for instance where the arm of a crane or other machinery extends into the airspace of neighbouring land).
- 7.1.54 Article 37(2) clarifies that in exercising its rights under the Article, the undertaker will not be required to acquire a greater interest in the land. Under Article 37(3), compensation is payable to any persons affected by the undertaker exercising its powers under this Article.
- 7.1.55 Article 37 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 2 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of new rights over land. Article 36 follows Article 25 of the **North London Heat and Power Generating Station Order 2017** and Article 48 of the **Sizewell C (Nuclear Generating Station) Order 2022**.

## 8. Part 6 - Miscellaneous and General

### Article 38 – Removal of human remains

- 8.1.1 Article 38 disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. Article 38 is based upon Article 17 of the model provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development. This has been included as the undertaker has not been able to rule out the presence of human remains within the Order Limits.
- 8.1.2 This Article departs from the model provision in that paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in (for example) the **Crossrail Act 2008**, and the **Little Crow Solar Park Order 2022** (Article 12).
- 8.1.3 Paragraph (16) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950. The drafting in paragraphs (15) and (16) has precedent in the **Little Crow Solar Park Order 2022** (Article 12).
- 8.1.4 Overall, effect of Article 38 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single Article in the Order. It is required by the undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project. Precedent for the Article is provided by the **River Humber Gas Pipeline Replacement Order 2016** (Article 20) and the **Little Crow Solar Park Order 2022** (Article 12).

### Article 39 – No double recovery

- 8.1.5 This Article provides that compensation will not be paid under both the Order and other compensation regimes in respect of the same loss or damage. The principle of equivalence, namely that a claimant in a compulsory purchase matter will be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.
- 8.1.6 The ability to impose this restriction in a DCO is provided for under section 120(5)(a) of the 2008 Act. This Article is substantively similar to Article 41 in the **Cottam Solar Project Order 2024**, Article 39 of the **Gate Burton Energy Park Order 2025**, Article 41 of the **West Burton Solar Project Order 2025** and Article 42 of the **Tillbridge Solar Order 2025**.

### Article 40 – Protective provisions

- 8.1.7 Article 40 gives effect to the protective provisions in Schedule 11 (protective provisions), which protect the interests of third parties (such as gas, water and electricity undertakers) in the construction, operation and maintenance and decommissioning of the authorised development. Schedule 11 sets out the

procedures that will apply in respect of the removal or retention of apparatus within the Order limits as well as compensation provisions.

- 8.1.8 Article 40 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 10 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the protection of the property or interest of any person. The provisions included are substantially identical to protective provisions in numerous made DCOs, including Article 20 of the **Little Crow Solar Park Order 2022**, Article 43 of the **Cottam Solar Project Order 2024** and Article 44 of the **Tillbridge Solar Order 2025**.

#### Article 41 – Crown rights

- 8.1.9 Article 41 contains a saving for Crown rights. It protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that written consent from the Crown is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting the Order.
- 8.1.10 The 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. This Article does not prevent the acquisition of any interests in land which are held otherwise by or on behalf of the Crown.
- 8.1.11 The Article is standard across DCOs, including Article 48 of the **Cottam Solar Project Order 2024**, Article 45 of the **Gate Burton Energy Park Order 2024** and Article 49 of the **Tillbridge Solar Order 2025**.

#### Article 42 – Certification of plans, etc.

- 8.1.12 Article 42 requires the undertaker to submit copies of specific plans and documents to the Secretary of State to be certified as true copies following the making of the Order. The Article introduces Schedule 12 (documents and plans to be certified) which contains the list of documents and plans that are required to be certified by the Secretary of State under the Article. This Article provides that any plans and documents that are certified under this Article can be used as evidence in any proceedings. This Article also provides that, where a plan or document certified under the Article refers to a provision of the Order in draft form, and there is a discrepancy between that draft and the final form of the Order, the reference must be construed as per the Order as made.
- 8.1.13 The Article has precedent numerous made DCOs including Article 40 of the **Cottam Solar Project Order 2024**, Article 38 of the **Gate Burton Energy Park Order 2024** and Article 41 of the **Tillbridge Solar Order 2025**.

#### Article 43 – Service of notices

- 8.1.14 Article 43 sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This Article is necessary as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a DCO. Article 43 follows the approach taken in Article 44 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 81 of the **Sizewell C (Nuclear Generating**

**Station) Order 2022**, as well as a number of made solar DCOs (see Article 44 of the **Cottam Solar Project Order 2024**, for example).

#### Article 44 – Felling or lopping of trees or removal of hedgerows

- 8.1.15 Article 44 is based on a model provision and is included in numerous made DCOs, for example, Articles 35 and 36 of the **Sunnica Energy Farm Order 2024**. It provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or constituting a danger for persons using the authorised development. The Article also allows the undertaker to remove those hedgerows specified in Schedule 13 (hedgerows) along with the specific purpose of each removal.
- 8.1.16 Paragraphs (6) to (9) provide that the undertaker may fell or lop or cut back the roots of any tree which is subject to a Tree Preservation Order ('TPO') to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development. Compensation is provided for any loss or damage is caused. The effect of these paragraphs is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. This approach to TPOs has precedent in a number of solar DCOs, including the **Cleve Hill Solar Park Order 2020** (Article 33), the **Longfield Solar Farm Order 2023** (Article 37) and the **West Burton Solar Project Order 2025** (Article 39).
- 8.1.17 As noted in sections 2.1, 5.1 and 8.1 of the **Arboricultural Impact Assessment (Document Ref: 6.3 ES Vol. 2, 6.3.18)**, desk based surveys have indicated that (at the time the surveys were undertaken) there were no trees protected by a TPO located on or immediately adjacent to the Site. The provisions relating to TPO trees are therefore included in this Order on a precautionary basis, in the event that in the future any trees affected by the authorised development are afforded this status.
- 8.1.18 At Deadline 2, a new paragraph (11) was added to the Article to clarify the relationship between the powers in the Article and the relevant management plans. The exercise of the power in Article 44 can and must only be exercised in accordance with the requirements set out in Schedule 2 to the **Draft DCO (Document Ref: 3.1)**, specifically requirements 7, 8 and 12.

#### Article 45 – Arbitration

- 8.1.19 Article 45 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 **Longfield Solar Farm Order 2023** (Article 39), the **Gate Burton Energy Park Order 2024** (Article 40) and the **Tillbridge Solar Order 2025** (Article 43), among others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 8.1.20 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.

- 8.1.21 It applies Schedule 14 (arbitration rules) to the Order, which sets out further detail of the arbitration process. In addition, Article 45(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.

#### **Article 46 – Procedure in relation to certain approvals etc.**

- 8.1.22 Article 46 provides for 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 ten 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.
- 8.1.23 For any consent, agreement, or refusal pursuant to the requirements a detailed procedure is provided for in Part 2 of Schedule 2 (procedure for discharge of requirements) (see paragraph 9.1.29 below).
- 8.1.24 This article has precedent in numerous made DCOs, for example, Article 42 of the **Longfield Solar Farm Order 2023**, Article 43 of the **Mallard Pass Solar Farm Order 2024** and Article 46 of the **Tillbridge Solar Order 2025**. The ten week decision making time period is precededented in Article 45 of the **West Burton Solar Project Order 2025**.

#### **Article 47 – Guarantees in respect of payment of compensation**

- 8.1.25 Article 47 restricts the undertaker from exercising the powers conferred under articles 23, 27, 28, 30, 32, 34 and 35 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in numerous made DCOs, for example Article 44 of the **Mallard Pass Solar Farm Order 2024** and Article 47 of the **Tillbridge Solar Order 2025**.

#### **Article 48 – Application of landlord and tenant law**

- 8.1.26 Article 48 is a model provision which operates to override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole or any part of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, operation, maintenance or decommissioning of the authorised development. It has been included in numerous made DCOs to date (for example, see Article 34 of the **Gate Burton Energy Park Order 2024** and Article 37 of the **Tillbridge Solar Order 2025**).

#### **Article 49 – National Grid extension works**

- 8.1.27 Article 49 is specific to the NGET extension works to the existing Bicker Fen National Grid substation (Work No.5). The Article follows the drafting of Article 44 of the **Heckington Fen Solar Park Order 2025**.
- 8.1.28 Article 49(1) makes clear that if the undertaker or National Grid undertook



any elements of the extension works described in Work No.5 pursuant to a permission under the 1990 Act or by virtue of their statutory undertaker permitted development powers under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 then the requirements in Schedule 2 of the Order will not have effect in respect of those works. This is to allow for a scenario in which National Grid needed to extend the existing Bicker Fen National Grid substation in advance of the Applicant commencing its DCO.

- 8.1.29 Article 49(2) has the effect of disapplying the previous landscaping condition associated with planning permission (reference B/05/0046) granted by Boston Borough Council on 20 April 2005 which authorised the construction of the Bicker Fen substation (the "2005 Permission"). Documents (including the Approved Landscaping Plan) submitted pursuant to conditions of the 2005 Permission detailed that trees would be planted to the south of the existing substation. As explained within Section 2.13 of **Chapter 2: Proposed Development (Document Ref: 6.2 ES Vol.1, 6.2.2)** of the Environmental Statement, National Grid has requested optionality in terms of the design of the extension to Bicker Fen substation. At this stage, the two design options currently under consideration comprise Air Insulated Switchgear (AIS) and Gas Insulated Switchgear (GIS). Subject to National Grid's final design and reflective of the additional area assumed for the works necessary to deliver Heckington Fen's generation bay, the area of land required for the substation extension under the AIS system is approximately 18,022 m<sup>2</sup> and may necessitate these trees (or part thereof) to be removed in order to facilitate the Proposed Development. The extent of the two design options is illustrated in **Land take options at Bicker Fen substation (Document Ref: 2.26)** and the extent of the worst-case removal is illustrated on drawing **Plantation Removal at Bicker Fen 400kV Substation (Document Ref: 2.31)**. In terms of the plantation clearance, the worst case would require circa 0.71 ha (0.59 ha plantation woodland and 0.12ha rough grassland / scrub) to be removed. This paragraph is therefore necessary to ensure that enforcement action is not taken in respect of any inconsistencies between the Authorised Development and the 2005 Permission.
- 8.1.30 Article 49(2) is included in the Order pursuant to section 120 of the 2008 Act (What may be included in order granting development consent). The disapplication of conditions relating to the 2005 Permission would fall within section 120(3), on the basis that it is a matter ancillary to the main development, and section 120(5)(c), which enables the Secretary of State to include any provision that appears necessary or expedient for giving full effect to the Order.
- 8.1.31 The term "statutory provision" used in section 120(5) of the 2008 Act is defined in section 120(6) as meaning "a provision of an Act or of an instrument under an Act." Section 120(5) is therefore wide enough to exclude conditions attached to a planning permission granted under the 1990 Act, as is being sought here under Article 45(2) with disapplication of the 2005 Permission in so far as it is inconsistent with the Authorised Development. This approach has precedence most notably in Article 44(2) of the **Heckington Fen Solar Park Order 2025** and also in Article 6(4) of the **Longfield Solar Farm Order 2023**.

## 9. Schedules

- 9.1.1 Schedules 1 to 14 are summarised below.

### Schedule 1 – Authorised development

- 9.1.2 Schedule 1 specifies numbered works which comprise the authorised development and other associated development works. For a summary of these works, please see paragraph 2.2.7 of this memorandum.
- 9.1.3 The numbered works should be read alongside the **Works Plan (Document Ref: 2.4)**. All of the authorised development falls within the definition of a "generating station" for the purposes of sections 14 and 15 of the 2008 Act, or may be lawfully authorised as part of the DCO on the basis that it meets the definition of "associated development" under the 2008 Act and related guidance.
- 9.1.4 Schedule 1 also includes a catch-all provision which sets out a number of minor works that are common to a number of work packages, under the heading "further associated development" (see paragraph 2.2.10 above). These include works such as landscaping and drainage, earthworks and utilities installation.

### Schedule 2 – Requirements

- 9.1.5 Schedule 2 sets out the requirements which are proposed to control the construction, operation, maintenance and decommissioning of the authorised development. The requirements closely relate to the mitigation set out in the **Environmental Statement (Document Ref: 6.1-6.4)** and ensure that the mitigation relied upon for the conclusions of the Environmental Impact Assessment is secured. It is split into two parts – the first contains the requirements that apply to the authorised development, and the second sets out the procedure for discharge of the requirements.
- 9.1.6 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.
- 9.1.7 In the undertaker's opinion the requirements in Part 1 of Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the **Environmental Statement (Document Ref: 6.1-6.4)**; enforceable and precise in their language; and reasonable in all other respects.
- 9.1.8 In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan. This is subject to requirement 3, as explained below.

- 9.1.9 **Requirement 1 – Interpretation:** This includes a definition of “relevant planning authority” which provides a breakdown of the requirements to identify which planning authority is responsible for the discharge of each specific requirement. It also includes a definition of “relevant planning authorities” which incorporates each ‘relevant planning authority’. This definition is also applicable to the wider Order, as defined at Article 2.
- 9.1.10 **Requirement 2 – Commencement of the authorised development:** This requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- 9.1.11 **Requirement 3 – Approved details and amendments to them:** This requirement provides that where any documents have been certified under Article 42 and where any plans, details or schemes have been approved by the relevant planning authority (or authorities), the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the relevant planning authority (or authorities), those documents, plans, details or schemes are to be taken to include the amendments approved by the relevant planning authority (or authorities). Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different adverse environmental effects from those assessed in the **Environmental Statement (Document Ref: 6.1-6.4)**.
- 9.1.12 **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.
- 9.1.13 **Requirement 5 – Detailed design approval:** This requirement stipulates the details that must be submitted to and approved by the relevant planning authority (in consultation with Lincolnshire County Council, as highways authority, in respect of details relating to vehicular and pedestrian access, parking and circulation areas) before the authorised development may commence. The details submitted must accord with the **Works Plan (Document Ref: 2.4)** with the **Outline Design Principles** (see Appendix 1 of the **Design and Access Approach Document (Document Ref: 5.6)**) (or any variation of these as may be approved by the relevant planning authority under requirement 3). The authorised development must be carried out in accordance with the approved details.
- 9.1.14 **Requirement 6 – Battery safety management:** This requirement stipulates that Work No. 2 must not commence until a battery safety management plan has been approved by the relevant planning authority. The relevant planning authority must consult with North Kesteven District Council and Lincolnshire Fire and Rescue Service before approving the battery safety management plan. The battery safety management plan must be substantially in accordance with the **Outline Battery Safety Management Plan (Document Ref: 7.2)** and must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.
- 9.1.15 **Requirement 7 – Landscape and ecological management plan:** This requirement stipulates that no part of the authorised development may commence until a written landscape and ecological management plan

(substantially in accordance with the **Outline Landscape and Ecological Management Plan (Document Ref: 6.3, ES Vol.2, Appendix 6.7, 6.3.19)**) has been submitted to and approved by the relevant planning authority. The relevant planning authority must consult with Lincolnshire County Council before approving any landscape and ecological management plan. This requirement carves out site clearance works from the definition of permitted preliminary works, the effect being that such works will also require a landscape and ecological management plan to be approved before they can be carried out. The form of drafting has precedent in requirement 9 of the **Longfield Solar Farm Order 2023**, requirement 7 of the **Gate Burton Energy Park Order 2024** and requirement 7 of the **Tillbridge Solar Order 2025**. The landscape and ecological management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

- 9.1.16 **Requirement 8 – Biodiversity net gain:** This requirement stipulates that no part of the authorised development may commence until a biodiversity net gain strategy 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 strategy, before it is approved by the relevant planning authority (this being North Kesteven District Council and Boston Borough Council in this instance). The biodiversity net gain strategy must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates and must be substantially in accordance with the **Outline Landscape and Ecological Management Plan (Document Ref: 6.3, ES Vol.2, Appendix 6.7, 6.3.19)**. At Deadline 4, following comments from the host local authorities and the Examining Authority, the Applicant updated the drafting of the requirement to include the following additional sub-paragraph, so it is clear on the face of the Order the minimum biodiversity net gain percentages that the undertaker is committed to delivering: "*The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and 10% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' Statutory Metric (February 2024).*"
- 9.1.17 **Requirement 9 – Fencing and other means of enclosure:** This requirement stipulates that the undertaker is required to obtain written approval from the relevant planning authority for any proposed temporary or permanent fences, walls or other means of enclosure, for each part of the authorised development in question. The written details of permanent fencing must be substantially in accordance with the relevant **Outline Design Principles** (see Appendix 1 of the **Design and Access Approach Document (Document Ref: 5.6)**). Any approved permanent fencing must be completed before the date of final commissioning of that part of the authorised development. This form of drafting has precedent in requirement 9 of the **Gate Burton Energy Park Order 2024**.
- 9.1.18 **Requirement 10 – Surface and foul water drainage:** This requirement stipulates that no part of the authorised development may commence until the details of the surface water drainage and (if any) foul water drainage system (substantially in accordance with the **Outline Drainage Strategy** - see



Section 8 of **ES Appendix 11.1 Flood Risk Assessment (Document Ref: 6.3 ES Vol.2, 6.3.81)** have been submitted to and approved by the relevant planning authority, in consultation with Anglian Water Services Limited. This is appropriate to ensure that Anglian Water Services Limited has the opportunity pre-commencement to comment on the written details of the surface water drainage scheme and (if any) foul water drainage system, before being approved by Lincolnshire County Council (as the relevant planning authority in this instance). The approved scheme must be implemented and maintained throughout the construction and operation of the authorised development. This form of drafting is similar to requirement 10 of the **Gate Burton Energy Park Order 2024**.

- 9.1.19 **Requirement 11 – Archaeology:** This requirement stipulates that the authorised development must be implemented in accordance with the **Archaeological Mitigation Strategy (Document Ref: 6.3 ES Vol.2, 6.3.74)**. It also provides that no part of the authorised development (including permitted preliminary works) may commence until a written scheme of archaeological investigation (which must accord with the **Archaeological Mitigation Strategy (Document Ref: 6.3 ES Vol.2, 6.3.74)**) for that part has been submitted to and approved by the relevant planning authority (in this case, Lincolnshire County Council). Any archaeological works or watching brief must be carried out in accordance with the approved scheme. This form of drafting has precedent in requirement 11 of the **Gate Burton Energy Park Order 2024** and requirement 11 of the **Tillbridge Solar Order 2025**.
- 9.1.20 **Requirement 12 – Construction environmental management plan:** Under this requirement, no part of the authorised development may commence until a construction environmental management plan (CEMP) (which must substantially accord with the **Outline Construction Environmental Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.7)**) has been submitted to and approved by the relevant planning authority. The relevant planning authority must consult with Lincolnshire County Council before approving any construction environmental management plan. All construction works associated with the authorised development must be carried out in accordance with the approved CEMP. Similar requirements are included in numerous made DCOs; see, for example, requirement 12 of the **Tillbridge Solar Order 2025**.
- 9.1.21 **Requirement 13 – Construction traffic management plan:** This requirement provides that no part of the authorised development may commence until a construction traffic management plan (CTMP) (which must be substantially in accordance with the **Outline Construction Traffic Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.78)**) has been submitted to and approved by the relevant planning authority, in consultation with the relevant highway authority. It is appropriate to require consultation with the relevant highway authority to ensure that it has the appropriate opportunity pre-commencement to comment on the CTMP, before it is approved by Lincolnshire County Council (as the relevant planning authority in this instance). This is appropriate as the **Outline Construction Traffic Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.78)** includes provisions relevant to the statutory functions of the relevant highway. The CTMP must be implemented as approved. Similar requirements are included in numerous made DCOs; see, for example, requirement 15 of the **Tillbridge Solar Order 2025**.
- 9.1.22 **Requirement 14 – Operational noise:** This requirement stipulates that Work Nos. 1, 2 and 3 may not commence until an operational noise assessment



(containing details of how the design has incorporated mitigation set out in the **Environmental Statement (Document Ref: 6.1 – 6.4)** in respect of operational noise rating levels has been complied with) has been submitted to and approved by the relevant planning authority. The design in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates. This form of drafting has precedent in requirement 15 of the **Gate Burton Energy Park Order 2024** and requirement 18 of the **Tillbridge Solar Order 2025**.

- 9.1.23 **Requirement 15 – Permissive path:** This requirement provides that a permissive path (running between points PP 1/01 and PP 4/01 on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)** extending PRow Ewer/12/1 within the Solar Array Area) must be provided and open to the public one year following the date of final commissioning of Work No. 1. The permissive path must be maintained and access by the public permitted for 364 days a year except where closure is required for maintenance or in an emergency until the date of decommissioning. This requirement is bespoke to this Order, although a similar requirement is included in the **Tillbridge Solar Order 2025** (requirement 16).
- 9.1.24 **Requirement 16 – Soils management:** This requirement stipulates that no part of the authorised development may commence until a soil management plan (substantially in accordance with the **Outline Soil Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.95)**) for that part has been submitted to and approved by the relevant planning authority. All construction works must be carried out in accordance with the approved soil management plan and maintained throughout the operation of the relevant part of the authorised development to which the plan relates. The requirement also stipulates that detailed soil management plans must be submitted prior to the date of final commissioning (relating to the operational phase of the authorised development) and prior to the start of any decommissioning works for any part of the authorised development (relating to the decommissioning phase of the authorised development). These follow up plans must also be substantially in accordance with the **Outline Soil Management Plan (Document Ref: 6.3 ES Vol.2, 6.3.95)**. This form of drafting has precedent in requirement 17 of the **Gate Burton Energy Park Order 2024**.
- 9.1.25 **Requirement 17 – Skills, supply chain and employment:** This requirement provides that no part of the authorised development may commence until a skills, supply chain and employment plan (which must be substantially in accordance with the **Outline Skills, Supply Chain, Employment Plan (Document Ref: 6.3 ES Vol. 2, 6.3.98)**) in relation to that part has been submitted to and approved by the relevant planning authority, following consultation with Lincolnshire County Council. The skills and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities. The skills and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates. This form of drafting has precedent in requirement 18 of the **Gate Burton Energy Park Order 2024** and requirement 20 of the **Tillbridge Solar Order 2025**.
- 9.1.26 **Requirement 18 – Public rights of way:** This requirement was added into the **Draft DCO (Document Ref: 3.1)** at Deadline 2, following discussions relating to the management of PRow affected by the construction of the

Proposed Development during Issue Specific Hearing 1. This requirement provides that the authorised development may not commence until a public rights of way management plan ('PRoWMP') for any sections of public rights of way shown to be temporarily closed on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)** have been submitted to and approved by the relevant planning authority. The PRoWMP must be substantially in accordance with the **Outline Public Rights of Way Management Plan (Document Ref: 9.5)** and must be implemented as approved. Similar drafting to this requirement is included in numerous made DCOs; for example, see requirement 17 of the **Tillbridge Solar Order 2025**.

- 9.1.27 **Requirement 19 – Decommissioning and restoration:** This requirement provides that decommissioning of Work Nos. 1, 2 and 3 must commence no later than 40 years following the date of final commissioning of the authorised development. This requirement also provides that, unless otherwise agreed in writing with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning. Within 12 months of such notification, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan (which must include a decommissioning worker travel plan and site waste management plan) for that part which must be substantially in accordance with the **Outline Decommissioning Environmental Management Plan (Document Ref: 6.3 ES Vol. 2, 6.3.8)**. The relevant planning authority must consult with the Environment Agency and Lincolnshire County Council before approving any decommissioning environmental management plan. No decommissioning works may be carried out until the relevant planning authority has approved the plan submitted in relation to such works, and the plan must be implemented as approved. The drafting of this requirement follows the precedent of requirement 19 of the **Gate Burton Energy Park Order 2024**.
- 9.1.28 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 out as relevant in Part 1 of Schedule 2. 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 Part 1 of Schedule 2, and the general procedure for discharging those requirements set out in Part 2 of Schedule 2. Further, Article 3 is the operative provision which gives the Applicant development consent, subject to the requirements in Part 1 of Schedule 2. Therefore, it is necessary to include the consultees in Part 1 of Schedule 2 to make it clear which bodies must be consulted in relation to which requirements, as a condition for the development consent. This approach is well preceded in all of the made solar DCOs.
- 9.1.29 Part 2 of Schedule 2 (procedure for discharge of requirements) 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 Part 1 of Schedule 2 to the Order. It sets out time periods within which decisions must be made. 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. Similar provisions are contained in numerous made DCOs, with the form of these provisions being based on Schedule 16 to the **Mallard Pass Solar Farm Order 2024** (a precedent that has since been followed in a number of more recent solar DCOs; see, for example, Schedule 16 to the **Tillbridge Solar Order 2025**). The bespoke process is required in order to ensure that applications under requirements are dealt with efficiently so that the delivery of this development of "critical national priority" is not unduly delayed. Paragraph 24 sets out the fees that the undertaker must pay when making an application to the relevant planning authority for any consent, agreement or approval required by a requirement. The drafting of this paragraph was updated at Deadline 2 as a result of ongoing negotiations with Lincolnshire County Council and North Kesteven District Council. The fee structure and fee amounts now reflect the equivalent drafting in the latest version of the Springwell draft DCO.

- 9.1.30 At Deadline 4, a further update was made to paragraph 24(2)(a) to include requirement 8 (biodiversity net gain) and requirement 17 (skills, supply chain and employment) within the list of first applications for discharge that incur a fee of £2,578. This update was made following comments from **Boston Borough Council at Deadline 3 (REP3-011)**.

#### **Schedule 3 – Streets subject to street works**

- 9.1.31 This Schedule sets out the streets that are to be subject to street works and provides a description of those works, by reference to the information shown on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**. The Schedule relates to Article 11 (street works).

#### **Schedule 4 – Alteration of Streets**

- 9.1.32 This Schedule sets out the streets that are to be permanently and temporarily altered and maintained by the highway authority or street authority by reference to the information shown on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**. This Schedule relates to Article 132 (power to alter layout etc., of streets) and Article 14 (Construction and maintenance of altered streets).

#### **Schedule 5 – Streets and public rights of way**

- 9.1.33 This Schedule sets out the locations of the public rights of way to be temporarily closed (Part 1), the public rights of way over which the undertaker seeks authorisation to use motor vehicles permanently (Part 2) and temporarily (Part 3) and the public rights of way which the undertaker is seeking the power to manage temporarily (Part 4). It references the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**, which show the locations of all affected public rights of way. This Schedule relates to Article 16 (temporary prohibition or restriction of use of streets and public rights of way).

#### **Schedule 6 – Access to Works**

- 9.1.34 This Schedule sets out the permanent means of accesses to works (Part 1) and temporary means of accesses (Part 2) to the authorised development which the undertaker is seeking powers to firm and lay out. The Schedule relates to Article 17 (access to works) and references the information shown on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**.

#### **Schedule 7 – Traffic regulation measures**

- 9.1.35 This Schedule contains details of the streets that are to be subject to

temporary traffic regulation measures pursuant to Article 19 (traffic regulation measures). The Schedule references the information shown on the **Streets, Rights of Way and Access Plans (Document Ref: 2.5)**.

#### **Schedule 8 – Land in which only new rights etc. may be acquired**

- 9.1.36 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the **Land Plans (Document Ref: 2.2)** and column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

#### **Schedule 9 - Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants**

- 9.1.37 This Schedule sets out various amendments to legislation pertaining to compulsory purchase and compensation for the purposes of the Order. It relates to Article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

#### **Schedule 10 – Land of which temporary possession may be taken**

- 9.1.38 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 32 (Temporary use of land for carrying out the authorised development). This land is shown edged red and shaded green on the **Land Plans (Document Ref: 2.2)**, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding **Works Plan (Document Ref: 2.4)**.

#### **Schedule 11 – Protective Provisions**

- 9.1.39 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 40 (protective provisions) and contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2).
- 9.1.40 In addition, each of Parts 3 – 10 contain provisions for the benefit of a particular body. The relevant bodies are as follows:
- Anglian Water Services Limited (Part 3);
  - National Gas Transmission Plc (as gas undertaker) (Part 4);
  - National Grid Viking Link Limited (Part 5);
  - Lincolnshire Fire & Rescue Service (Part 6);
  - Ecotricity (Heck Fen Solar) Limited (Part 7);
  - Triton Knoll OFTO Limited (Part 8);
  - Bicker Fen Windfarm Limited (Part 9);
  - Railway Interests (being Network Rail Infrastructure Limited) (Part 10); and
  - Cadent Gas Limited (as gas undertaker) (Part 11).

9.1.41 As at Deadline 4, most of the bespoke protective provisions are still subject to negotiation between the Applicant and the relevant statutory undertakers. The statutory undertakers with land or apparatus within the Order Land are listed in Table 2 of the **Land and Rights Negotiations Tracker (Document Ref: 4.4)**. This table includes information relating to the status of negotiations on protective provisions, as at the time of submission of the Application. The **Land and Rights Negotiations Tracker (Document Ref: 4.4)** will be kept updated during the pre-Examination and Examination phases and submitted to the Examining Authority at regular intervals (and as requested). It is anticipated that the various Parts of Schedule 11 will also be updated as the Examination progresses. Save for the addition of Part 11, the protective provisions have not been updated in the Deadline 4 version of the **Draft DCO (Document Ref: 3.1)**, as the Applicant has chosen to wait until negotiations are further progressed/completed before updating the Order.

#### Schedule 12 – Documents and plans to be certified

9.1.42 This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 42 (certification of plans, etc.). The Schedule has been amended to include a Part 2, which lists substitute documents that have been submitted following acceptance of the Application. This has been updated to reflect amendments to and substitutions of certified documents made at Deadline 3 and Deadline 4.

#### Schedule 13 – Hedgerows

9.1.43 This Schedule sets out the hedgerows to be removed pursuant to Article 44 (felling or lopping of trees or removal of hedgerows), listing at Part 1 the important hedgerows to be removed (as defined by the Hedgerows Regulations 1997), and at Part 2 other hedgerows to be removed. The tables reference the **Vegetation Removal Plan (Document Ref: 6.4 ES Vol.3, 6.4.43)** which show the locations and extents of the hedgerows to which the Schedule applies. Column 3 in both tables explains the purpose for which the powers of removal are required.

#### Schedule 14 – Arbitration Rules

9.1.44 This Schedule relates to Article 45 (arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the urgent need for new electricity generating capacity, identified in the National Policy Statement for Renewable Energy Infrastructure ('NPS EN-3'), it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.

9.1.45 Schedule 14 refers to the person who commenced the arbitration as the "claimant" and the other party as the "respondent".

9.1.46 The timetable for the process is as follows:

- Within 14 days of the arbitrator being appointed the claimant shall serve on the respondent and the arbitrator a statement of claim and all supporting evidence to support the claim.
- Within 14 days of receipt of the claimant's statement of claim and supporting evidence the respondent will serve a statement of defence and all supporting evidence to support its defence, together with any



objections to the claimant's documentation.

- Within 7 days of receipt of the respondent's documentation the claimant may make a statement of reply.

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

## 10. Glossary

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

**Table 1: Glossary of terms**

| Term                            | Definition                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1965 Act                        | The Compulsory Purchase Act 1965.                                                                                                                                                                                                                                                                                                                                                                      |
| 1981 Act                        | The Compulsory Purchase (Vesting Declarations) Act 1981.                                                                                                                                                                                                                                                                                                                                               |
| 1990 Act                        | The Town and Country Planning Act 1990.                                                                                                                                                                                                                                                                                                                                                                |
| 1991 Act                        | The New Roads and Street Works Act 1991.                                                                                                                                                                                                                                                                                                                                                               |
| 2008 Act                        | The Planning Act 2008.                                                                                                                                                                                                                                                                                                                                                                                 |
| APFP Regulations                | The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.                                                                                                                                                                                                                                                                                                           |
| Applicant                       | Beacon Fen Energy Park Ltd.                                                                                                                                                                                                                                                                                                                                                                            |
| Application                     | The application for a DCO to be submitted pursuant to the 2008 Act by the Applicant for the Proposed Development.                                                                                                                                                                                                                                                                                      |
| associated development          | Defined in section 115(2) of the 2008 Act as development which is associated with the principal development (i.e. the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development. |
| Development Consent Order (DCO) | Development consent is required pursuant to the 2008 Act for NSIPs. A development consent order is the order which grants development consent.                                                                                                                                                                                                                                                         |
| EIA Regulations                 | The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.                                                                                                                                                                                                                                                                                                                        |
| Environmental Statement         | The <b>Environmental Statement (Document Ref: 6.1-6.4)</b> submitted as part of the Application, as required by the EIA Regulations.                                                                                                                                                                                                                                                                   |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Explanatory Memorandum  | This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks.                                                                                                                                                                                                                                                                                                                                                                                                             |
| Land Plans              | The <b>Land Plans (Document Ref: 2.2)</b> certified by the Secretary of State as the land plans for the purposes of article 41 of the Order.                                                                                                                                                                                                                                                                                                                                                                                       |
| MW                      | Megawatt, which is a measure of energy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| National Grid (or NGET) | National Grid Electricity Transmission plc (company number 2366977, whose registered office is at 1-3 Strand, London, WC2N 5EH) being a licence holder within the meaning of Part 1 of the 1989 Act and having the benefit of Work No. 5 of the Order.                                                                                                                                                                                                                                                                             |
| NSIP                    | Nationally Significant Infrastructure Project pursuant to the 2008 Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Order                   | The Beacon Fen Solar Order 202[ ], being the DCO that would be made by the Secretary of State authorising the Proposed Development, a draft of which has been submitted as part of the Application.                                                                                                                                                                                                                                                                                                                                |
| Order Land              | The land over which the Order would authorise compulsory acquisition and temporary possession, shown on the <b>Land Plans (Document Ref: 2.2)</b> .                                                                                                                                                                                                                                                                                                                                                                                |
| Order Limits            | The limits of the land to which the Application relates and shown on the <b>Works Plan (Document Ref: 2.4)</b> .                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Proposed Development    | Comprises the construction, operation (and maintenance), and decommissioning of a solar photovoltaic (PV) electricity generating facility and battery energy storage system (BESS), with associated export and connection infrastructure to, and above and below ground works at, the National Grid Bicker Fen Substation. A detailed description of the Proposed Development can be found in <b>Chapter 2: Proposed Development (Document Ref: 6.2 ES Vol. 1, 6.2.2) of the Environmental Statement (Document Ref: 6.1-6.4)</b> . |
| PV                      | Photovoltaic.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Secretary of State      | The Secretary of State for Energy Security and Net Zero who will determine the Application.                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Site                    | The Land east of Sleaford in Lincolnshire. The site is entirely within the administrative boundaries of North                                                                                                                                                                                                                                                                                                                                                                                                                      |

|                      |                                                                                                                                                                                                              |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | Kesteven District Council, Boston Borough Council and Lincolnshire County Council                                                                                                                            |
| Statement of Reasons | The <b>Statement of Reasons (Document Ref: 4.1)</b> which accompanies the Application and sets out the justification for the acquisition or interference with the Order Land.                                |
| Works Plan           | The <b>Works Plan (Document Ref: 2.4)</b> , which accompany the Application, showing the Order Limits and the numbered works that form the Proposed Development and as described in Schedule 1 to the Order. |