



Frodsham Solar Explanatory Memorandum

May 2025



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**Planning Act 2008; and Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations Regulation 5(2)(c)**

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P01	May 2025	Kiera Cox (Pinsent Masons)	Matthew Fox (Pinsent Masons)

Prepared For:
Frodsham Solar Ltd

Prepared By:



1. INTRODUCTION

1.1 Overview

- 1.1.1 This Explanatory Memorandum has been prepared on behalf of the Applicant and forms part of the Application for a Development Consent Order (DCO).
- 1.1.2 The Applicant is seeking development consent for the Proposed Development, which in summary comprises the construction, operation, maintenance and decommissioning of a ground-mounted solar energy generating station with a total capacity exceeding 50 megawatts and an associated on-site Battery Energy Storage System (BESS). The Proposed Development also includes the associated infrastructure for connection to the local electricity distribution network, as well as a private wire electricity connection that would provide the opportunity to supply renewable energy generated by the Proposed Development directly to nearby businesses.
- 1.1.3 The Proposed Development is situated on land at Frodsham Marsh within the administrative area of Cheshire West and Chester Council.
- 1.1.4 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act. This is because it consists of a generating station with an electrical output capacity exceeding 50MW, this being a ground mounted solar energy generating station.
- 1.1.5 The DCO, if made, would be known as the Frodsham Solar Farm Order 202[*]. A draft of the DCO has been submitted with the Application.
- 1.1.6 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. It should be read in conjunction with the suite of documents accompanying the Application, in particular the draft Order, the Environmental Statement [EN010153/DR/6.1], the Works Plans [EN010153/DR/2.3], Land and Crown Land Plans [EN010153/DR/2.2], Book of Reference [EN010153/DR/4.3], Statement of Reasons [EN010153/DR/4.1], and Consultation Report [EN010153/DR/5.1].

1.2 Frodsham Solar Limited

- 1.2.1 The Applicant is a limited company registered at Companies House under company number 14432433 and whose registered office is at 70 St Mary Axe, London, United Kingdom, EC3A 8BE. More information on the Applicant's ownership and corporate structure is set out in the Funding Statement [EN010153/DR/4.2].

1.3 The Site

- 1.3.1 The Site is located to the north of the centre of Frodsham Town Centre within the administrative areas of Cheshire West and Chester Council (CWaCC). The Site contains all of the principal elements of the Proposed Development which includes the:

- (a) Solar Array Development Area that would include solar photovoltaic (PV) modules and the support frames, internal access tracks, cabling, inverters, transformers, the solar array substation (known as the 'Frodsham Solar Substation) and the BESS;
 - (b) Main Site Access route;
 - (c) SPEN Grid Connection linking Frodsham Solar Substation to the SP Energy Networks (SPEN) Frodsham Substation;
 - (d) SPEN / National Grid Substation and access to the substation compound;
 - (e) Private Wire Connection to local businesses;
 - (f) Skylark Mitigation Area; and
 - (g) Non Breeding Bird Mitigation Area (NBBMA).
- 1.3.2 The Order limits is the area within which the Proposed Development may be carried out. The Order limits is shown on the Land and Crown Land Plans [EN010153/DR/2.2] and Works Plans [EN010153/DR/2.3]. The powers in the Order enabling the acquisition of land, new rights over land and the imposition of restrictions over land, relate to the Order Land only, which is all the land within the Order limits.
- 1.3.3 Information about the Order limits, including about the current land use and any environmental constraints, is provided in greater detail in Chapter 3 of the Environmental Statement [EN010153/DR/6.1].

1.4 The Proposed Development

- 1.4.1 A detailed description of the Proposed Development can be found in Chapter 5 of the Environmental Statement [EN010153/DR/6.1]. It comprises a generating station of more than 50MW, 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 Numbers 2-8 in Schedule 1 to the Order.
- 1.4.2 All elements of the NSIP are described in the sub-paragraphs below and the Associated Development is described in paragraph 1.4.7:
- (a) **Work No. 1** - the ground mounted solar PV generating station with a gross electrical output capacity of over 50 MW including:-
 - (i) Solar PV modules fitted to mounting structures and associated foundations;
 - (ii) Inverters;
 - (iii) Transformers;
 - (iv) Switchgear; and
 - (v) Electrical and communication cables.

- 1.4.3 The description of Work No.1 refers to an electrical output capacity of over 50MW. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.
- 1.4.4 The description of the NSIP at Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The Order includes reference to the means by which the parameters of the Proposed Development will be constrained and it is on this basis that the EIA has been undertaken, as is set out in the Environmental Statement [EN010153/DR/6.1] and explained further below in relation to the "consent envelope". There is no reason to limit the electrical output capacity of the Proposed Development provided those parameters of the consent envelope are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the Order.
- 1.4.5 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the 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, which is explained further in the Planning Statement [EN010127/APP/5.6]. The approach taken has precedent in the **Mallard Pass Solar Farm Order 2024**, the **Little Crow Solar Park Order 2022**, and the **Cleve Hill Solar Park Order 2020**.
- 1.4.6 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 8 of the Proposed Development as provided for in Schedule 1 to the Order. This comprises the following elements:
- (a) **Work No. 2** – works in connection with a battery energy storage system compound comprising –
 - (i) **Work No.2A** – BESS A: This comprises battery storage units (BSU); transformer / power conversion system (PCS) units and ancillary equipment; a switchgear and control room; reinforced concrete foundation slab; concrete piling; carparking and access roads; works for the provision of security and monitoring measures; drainage infrastructure; and firewater storage and suppression systems.
 - (ii) **Work No.2B** – BESS B: This comprises battery storage units (BSU); transformer / power conversion system (PCS) units and ancillary equipment; a switchgear and control room; reinforced concrete foundation slab; concrete piling; carparking and access roads; works for the provision of security and monitoring measures; drainage infrastructure; and firewater storage and suppression systems.

These two sites are options – only one of the BESS compounds will be constructed with the site not used for BESS proposed to be able to be used for additional solar array. This is also the case for the substations set out below.
 - (b) **Work No.3** - works in connection with an onsite substation and associated works, including –

- (i) **Work No.3A** – Substation A: This includes a substation; switch room buildings; electrical control equipment; control building; storage areas; welfare facilities; offices; workshop; stores; car parking and access roads; works for the provision of security and monitoring measures; and drainage infrastructure.
 - (ii) **Work No.3B** – Substation B: This includes a substation; switch room buildings; electrical control equipment; control building; storage areas; welfare facilities; offices; workshop; stores; car parking and access roads; works for the provision of security and monitoring measures; and drainage infrastructure.
- (c) **Work No. 4** – connection works from Work No. 3 comprising –
 - (i) **Work No. 4A** – works to create an electrical connection from Frodsham Solar substation (Work No. 3) to Frodsham SPEN substation including above ground and below ground 132kV electrical cables and communication cables; pylons; and works to the SPEN substation to facilitate connection of the authorised development to the SPEN Frodsham Substation.
 - (ii) **Work No.4B** – works to lay underground 132kV electrical cables and communication cables from Frodsham Solar Substation (Work No. 3) to nearby businesses.
- (d) **Work No. 5** – works to lay electrical cables and communication cables including connecting:
 - (i) Work No.1 to Work No. 3
 - (ii) Work No. 2 to Work No. 3
 - (iii) Work No. 1 to Work No. 2
- (e) **Work No. 6** - works to create, enhance and maintain green infrastructure including
 - (i) **Work No.6A** – green infrastructure works including planting hedgerows, trees and grassland; creation of open water habitats; improvements to existing public rights of way, existing streets and private tracks; laying down of internal access tracks and permissive paths; car park; signage and information boards; bird hides and screens; and benches.
 - (ii) **Work No.6B** – works to create skylark habitat.
 - (iii) **Work No. 6C** – works to create a Non-Breeding Bird Mitigation Area including: earthworks; creation of scrapes and waterbodies; water level management systems; use of geotextiles or clay liners; and installation of predator control fencing.

- (f) **Work No. 7** – construction, maintenance and decommissioning compounds including areas of hardstanding; car park; site and welfare offices, canteens and workshops; area to store materials and equipment; storage and waste skips; area for download and turning; security infrastructure, including camera, perimeter fencing and lighting; site drainage and waste management infrastructure (including sewerage); and electricity, water, waste water and telecommunications connections.
- (g) **Work No. 8** – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points.

1.4.7 Schedule 1 also provides for the authorisation of ancillary or related development, which includes such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Proposed Development but only within the Order limits and insofar as these works or operations are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement [EN010153/DR/6.1], to take place within the Order limits (and so not constrained by specific limits of deviation), including:-

- (a) laying down of internal access tracks;
- (b) temporary footpath diversions;
- (c) ramps, means of access, car parks;
- (d) crossings of watercourses and roads;
- (e) improvement, maintenance, repair and use of existing streets, private tracks, public rights of way and access roads;
- (f) sustainable drainage systems including runoff outfalls, attenuation areas, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;
- (g) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing;
- (h) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;
- (i) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, communications chambers, fibre optic cables and other works associated with cable laying;
- (j) foundations for structures, buildings, plant and machinery;
- (k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

- (l) 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; and
- (m) earthworks, site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations;

1.5 Parameters of the Order and the "consent envelope"

- 1.5.1 The detailed design of the Proposed Development must be in accordance with the Design Principles (Appendix 1 to the Design Approach Document [EN010153/DR/5.8] and the Design Parameters Statement [EN010153/DR/7.1]), as secured in Requirement 6 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Proposed Development, such that new technology or different layouts can be used within that envelope, while ensuring that the development will not fall outside of the scope of the Environmental Statement [EN010153/DR/6.1]. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in PINS' Advice Note 9: Rochdale Envelope (March 2025).
- 1.5.2 In addition to the Design Principles and Design Parameters Statement [EN010153/DR/7.1], other DCO requirements, certified documents and plans will operate to control and manage the detailed design of the Proposed Development, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope, within which the authorised development is to be undertaken, is explained in more detail below.
- 1.5.3 Article 4 (*Development consent etc. granted by this Order*) and Schedule 2 (Requirements) operate to create a "consent envelope" within which the Proposed Development would be brought forward:
 - (a) The Proposed Development is described in Schedule 1 of the Order, where it is referred to as the "authorised development". The authorised development is granted consent pursuant to Article 4(1).
 - (b) In Schedule 1 the Proposed Development (the authorised development) is divided into a series of component parts, referred to as "numbered works".
 - (c) Article 4(2) requires that the numbered works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans.
 - (d) The design of the Proposed Development is also controlled via Requirement 6 (detailed design approval) of Schedule 2 of the Order which requires approval of details of the Proposed Development's design and requires that the details submitted accord with the Design Principles and Design Parameters Statement [EN010153/DR/7.1]. The Design Parameters Statement set out the basis on which the assessment set out in the Environmental Statement [EN010153/DR/6.1] has been undertaken and secures

the key design mitigation measures referenced in the Environmental Statement **[EN010153/DR/6.1]**. The Design Parameters Statement captures the important parameters that are necessary to ensure that the Proposed Development is constructed and operated in such a way that the impacts and effects would not exceed the scenario assessed in the Environmental Statement **[EN010153/DR/6.1]**.

- (e) In addition to the Design Parameters Statement **[EN010153/DR/7.1]** and the Works Plans **[EN010153/DR/2.3]**, the design of the Proposed Development is also controlled by:
- (i) approval and implementation of the Landscape and Ecology Management Plan (Requirement 9);
 - (ii) approval and implementation of permanent fencing and means of enclosure (Requirement 10);
 - (iii) approval and implementation of a surface water drainage strategy (Requirement 11);
 - (iv) approval and implementation of a Public Rights of Way Management Plan (Requirement 15)
 - (v) approval and implementation of a ground conditions investigations and assessments strategy (Requirement 17); and
 - (vi) approval and implementation of an archaeological mitigation strategy (Requirement 18).

Where the Design Parameters Statement **[EN010153/DR/7.1]** do not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the environmental impact assessment and having regard to the other controls in place via the measures listed at (i) to (vi) above.

- (f) The construction phase of the Proposed Development (as set out in Schedule 1 of the Order and which is required to be constructed within the areas on the Works Plans) is also controlled by:
- (i) approval and implementation of temporary fencing and means of enclosure (Requirement 10);
 - (ii) approval and implementation of a surface water drainage strategy (Requirement 11);
 - (iii) approval and implementation of an Archaeological Mitigation Strategy (Requirement 18);
 - (iv) approval and implementation of a Construction Environmental Management Plan (Requirement 12);
 - (v) approval and implementation of a Construction Traffic Management Plan (Requirement 14);
 - (vi) approval and implementation of a Public Rights of Way Management Plan (Requirement 15);

- (vii) approval and implementation of a Soil Management Plan (Requirement 16);
 - (viii) approval and implementation of a Ground Conditions Investigations and Assessments Strategy (Requirement 17); and
 - (ix) approval and implementation of the Skills, Supply Chain and Employment Plan (Requirement 19).
 - (g) The ongoing operation and maintenance of the Proposed Development is controlled by:
 - (i) approval and implementation of the Landscape and Ecology Management Plan (Requirement 9);
 - (ii) approval and implementation of a surface water drainage strategy (Requirement 11);
 - (iii) approval and implementation of an Operational Environmental Management Plan (Requirement 13);
 - (iv) approval and implementation of a Soil Management Plan (Requirement 16); and
 - (v) the Skills, Supply Chain and Employment Plan (Requirement 19).
 - (h) The decommissioning of the Proposed Development is controlled by the approval and implementation of a Decommissioning Environmental Management Plan (Requirement 20).
- 1.5.4 The Application seeks flexibility to undertake the Proposed Development within the above envelope, in particular within the maximum areas and parameters secured via the Works Plans [EN010153/DR/2.3] and the Design Parameters Statement [EN010153/DR/7.1]. As set out in Chapter 2 of the Environmental Statement [EN010153/DR/6.1] and the individual technical chapters, the environmental impact assessment has assessed the upper extent of the areas and sizes allowed by the Works Plans [EN010153/DR/6.1] and the Design Parameters Statement [EN010153/DR/7.1]. As a result, the Environmental Statement [EN010153/DR/6.1] has assessed a worst case and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.
- 1.5.5 The Illustrative development layouts have been submitted to provide illustrative examples of the different design layouts that have been considered for the Proposed Development that could be built out within the "consent envelope" (the design aspect of which is controlled primarily through the Works Plans [EN010153/DR/2.3] and Design Parameters Statement [EN010153/DR/7.1]). These are provided for illustration only within the Environmental Statement figures [EN010153/DR/6.1] and are not sought to be secured.

2. THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 2.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by

Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each article of, and Schedule to, the Order is required for the Proposed Development.

- 2.1.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**model provisions**"). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions.
- 2.1.3 The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Proposed Development. This reflects the integrated consenting objective of the 2008 Act regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the 2008 Act, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152, so far as these are relevant to the Proposed Development. All powers provided for within the Order come within the scope of section 120 of, and Schedule 5 to, the 2008 Act.
- 2.1.4 The provisions contained in the Order are briefly described below and then considered in more detail in the following sections:-
- (a) **Part 1 (Preliminary): Article 1** sets out what the Order may be cited as and when it comes into force. **Article 2** sets out the meaning of the defined terms used in the Order. **Article 3** sets out the rules for using electronic communication in place of written documents under the Order;
 - (b) **Part 2 (Principal Powers): Articles 4 to 6** provide development consent for the Proposed Development, and allow it to be constructed, operated and maintained by the undertaker. **Articles 7 and 8** relate to the application and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
 - (c) **Part 3 (Streets): Articles 9 to 16** provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; temporarily prohibit or restrict the use of streets and public rights of way; permanently stop up and create new public rights of way; authorise vehicular use of public rights of way; enter into agreements with street authorities; and implement temporary traffic regulation measures;
 - (d) **Part 4 (Supplemental Powers): Articles 17 to 20** set out four supplemental powers relating to the discharge of water; undertaking protective works to buildings; the authority to survey and investigate land; and the temporary suspension of navigation;
 - (e) **Part 5 (Powers of Acquisition): Articles 20 to 34** provide for the undertaker to be able to compulsorily acquire the Order Land and rights over and within it, and to be able to temporarily use parts of the Order Land for the construction, maintenance or decommissioning of the Proposed Development. Article 22 sets out a time limit for the exercise of the compulsory acquisition powers

and Article 24 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 30 and 31 provide for the temporary use of land for constructing and maintaining the Proposed Development. Article 32 provides for powers in relation to the land and apparatus of statutory undertakers;

- (f) **Part 6 (Miscellaneous and General): Articles 35 to 48** include various general provisions in relation to the Order:-
 - (i) **Article 35** sets out who has the benefit of the powers contained in the Order and **Article 36** sets out how those powers can be transferred.
 - (ii) **Articles 37 and 38** provide (respectively) for how landlord and tenant law applies in relation to the Order and that any planning permission or development consent granted within the Order limits is not considered a breach of the Order, even if there are inconsistencies;
 - (iii) **Articles 39** provides powers in relation to the felling or lopping of trees and the removal of hedgerows in relation to the Proposed Development;
 - (iv) **Articles 40 to 46** include provisions relating to the certification of plans and documents relevant to the Order; no double recovery; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedules 13 - 27); crown rights; service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; and the incorporation of the mineral code.

2.1.5 There are then 27 Schedules to the Order, providing for:

- (a) **Schedule 1** – the description of the Proposed Development;
- (b) **Schedule 2** – the requirements that apply to the Proposed Development (i.e. the controls that apply to the Order, similar to planning conditions). Schedule 12 then contains details of the procedure for discharge of requirements required under the Order;
- (c) **Schedule 3 to 6** – matters in relation to street works and alterations, public rights of way and access to works
- (d) **Schedule 7** – details of land in which only new rights may be acquired;
- (e) **Schedule 8** – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- (f) **Schedule 9** – details of hedgerows to be removed as known at this time;

- (g) **Schedule 10** – the documents and plans to be certified by the Secretary of State;
- (h) **Schedule 11** – arbitration rules that apply to most arbitrations in connection with the Order;
- (i) **Schedule 13 to 27** – provisions for the protection of statutory undertakers and their apparatus; and

3. **PURPOSE OF THE ORDER**

- 3.1.1 The Proposed Development involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant requires development consent under the 2008 Act in order to construct, maintain, operate and decommission the Proposed Development. Under section 37 of the 2008 Act, development consent may only be granted by a DCO, following an application to the Secretary of State.
- 3.1.2 The Applicant is therefore making an application to the Secretary of State for a development consent order for the Proposed Development. In the Order, the Proposed Development is referred to as the "authorised development". The Order refers to the person authorised to exercise the powers in the Order as the "undertaker" and defines the undertaker as Frodsham Solar Limited.
- 3.1.3 The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the Order.
- 3.1.4 Section 115(1) of the 2008 Act provides that development consent may be granted for Associated Development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the authorised development are either the NSIP or are Associated Development, in order to include them in the Order.
- 3.1.5 The ground mounted solar photovoltaic generating station within Work No. 1 in Schedule 1 to the Order constitutes "development for which development consent is required", and as such is the NSIP.
- 3.1.6 The Order also authorises Associated Development, included at Work Nos. 2 to 8 of Schedule 1 of the Order, which includes the scheme BESS. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the 2008 Act.
- 3.1.7 The approach taken by the Applicant between those parts of the authorised development which form the NSIP and those parts that form Associated Development follows the approach taken by other DCO applications to date, including the **Cottam Solar Project Order 2024**, and the **Gate Burton Energy Park Order 2024** which also comprised ground mounted solar PV panel arrays and incorporated BESS as associated development.
- 3.1.8 In particular, Work Nos. 2 to 8 are:
 - (a) all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the

generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);

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

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

3.2 Compulsory Acquisition

3.2.1 In addition to providing for the construction, maintenance, operation and decommissioning of the Proposed Development, the Order will, in accordance with section 122, section 120(3) and Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.

3.2.2 The Book of Reference [EN010153/DR/4.3] sets out a description of, and interests included in, the Order Land, split by "plots", and these are shown on

the Land and Crown Land Plans [EN010153/DR/2.2]. The Book of Reference [EN010153/DR/4.3] is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests, and the identification of those interests is explained in both the Book of Reference [EN010153/DR/4.3] and the Consultation Report [EN010153/DR/5.1]. The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired and other rights and interests that will be affected. The Order and the Book of Reference [EN010153/DR/4.3] should be read together with the Land and Crown Land Plans [EN010153/DR/2.2] and the Statement of Reasons [EN010153/DR/4.1], which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

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

3.3 Statutory undertakers' land and apparatus

- 3.3.1 The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order Land are identified in the Book of Reference [EN010153/DR/4.3].
- 3.3.2 Section 127(2) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- (a) the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - (b) the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 3.3.3 Section 127(5) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land to the extent that:
- (a) the land can be purchased without serious detriment to the carrying on of the undertaking; or
 - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- 3.3.4 Section 138 of the 2008 Act states that a DCO may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.
- 3.3.5 The Order includes protective provisions in respect of statutory undertakers (see Article 43 and Schedule 13 to 27). Further details as to how the tests under sections 127 and 138 of the 2008 Act have been satisfied are set out in the Statement of Reasons [EN010153/DR/4.1]

4. PROVISIONS OF THE ORDER

- 4.1.1 The Order consists of 48 operative provisions, each referred to as articles and 27 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below. Equally, the Proposed Development is referred to as the "authorised development" in the Order and so for ease this document refers to the "authorised development" when explaining the provisions of the Order.

4.2 Part 1 (Preliminary) and Part 2 (Principal Powers)

- 4.2.1 Articles 1 (*Citation and commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.
- 4.2.2 Article 2 (*Interpretation*) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:
- (a) definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 10 to the Order;
 - (b) the definition of "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary, markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Mallard Pass Solar Farm 2024**;
 - (c) the definition of "authorised development" means the authorised development and Associated Development described in Schedule 1 to the Order and includes development as defined in section 32 of the 2008 Act. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of Associated Development is included in the definition of "authorised development" and is described in detail in Schedule 1, as it is considered that this drafting is neater;
 - (d) the definition of "commence" is defined so as to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of certain relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised

development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as "permitted preliminary works", there may be a requirement to submit relevant details to the Relevant Planning Authority. Where this is the case, the relevant requirement has been adapted to expressly prevent the relevant "permitted preliminary works" from being carried out until those details have been approved. Furthermore, Requirement 8 provides that the permitted preliminary works must be carried out in accordance with the measures set out in appendix 2-3 of the ES;

- (e) a definition of "limits of deviation" has been included and operates by reference to the Works Plans [EN010153/DR/2.3]. These are the areas within which the authorised development can be constructed and are required so that the design of the authorised development does not lead to effects that would exceed the worst-case scenario assessed in the Environmental Statement [EN010153/DR/6.1]. See further below in relation to Article 4 and above in relation to the parameters and consent envelope;
- (f) a definition of "maintain" has been added to make clear what activities are authorised under Article 5 during the operation of the authorised development. The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the authorised development will involve, particularly to keep up with changing standards, controls and advances in technology. The approach has taken precedent in **Mallard Pass Solar Farm Order 2024**, and **Gate Burton Energy Park Order 2024**. The Outline Operational Environmental Management Plan [EN010153/DR/7.6] contains controls on how replacement activities are carried out. Given this and the nature of the Proposed Development compared to other schemes (being a project located not in the rural countryside, not in the vicinity of any residential properties and with traffic taken very close to the motorway) it is not considered necessary to include the proviso of not replacing all of Work No. 1 at the same time, as has been included in recent solar DCOs.

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

- (i) **Maintenance and inspection:** throughout the life of the Proposed Development there will be a planned maintenance regime and, on occasion, the need for unplanned maintenance due to plant failures. It is

anticipated that staff will attend when required for maintenance and cleaning activities;

- (ii) **Repair/ refurbish/ replace:** through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced;
 - (iii) **Adjust and alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions;
 - (iv) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed;
 - (v) **Reconstruct:** If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;
 - (vi) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part.
- (g) the definition of "Order land" means the land shown on the Land and Crown Land Plans [EN010153/DR/2.2] which is within the limits of land to be acquired or used and described in the Book of Reference [EN010153/DR/4.3]. This land is coloured:
- (i) pink (land to be permanently acquired); and
 - (ii) blue (land in which the undertaker can create and acquire new rights); and
- (h) the definition of "Order limits" means the limits shown on the Works Plans [EN010153/DR/2.3] within which the authorised development may be carried out;
- (i) the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing a network or service to members of the public and, insofar as they may have assets or apparatus within the Order limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is precedent for this approach, for instance the **Longfield Solar Farm Order 2023** and the **Gate Burton Energy Park Order 2024**
- (j) the "undertaker" is defined as Frodsham Solar Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 36 and 37.

- 4.2.3 Paragraph (2) of Article 2 has been included to reflect that "rights over land" include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts and incidents, including restrictive covenants. Paragraph (2) also makes it clear that references to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another.
- 4.2.4 Paragraph (3) of Article 2 has been included to enable efficient drafting within the Order – rather than having to spell out all of the phases of the authorised development that the various Order powers apply to each time, this paragraph allows for the phrase “purposes of the authorised development” to be utilised where appropriate throughout. As a consequence of this approach, minor amendments have been made to standard drafting throughout the Order to refer to this phraseology (and minor tweaks which fall out of this as a consequence).
- 4.2.5 Paragraphs (4) to (8) of Article 2 have been added to provide clarity (respectively) that all distances, directions, capacities and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans [EN010153/DR/2.3]; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; and that all areas described in the Book of Reference [EN010153/DR/4.3] are approximate.
- 4.2.6 Article 3 (*Electronic communications*) clarifies how documents and communications under the Order may be handled electronically. It ensures references to documents and written communications include those in electronic form, provided certain conditions are met. The Article also provides that recipients may request paper copies within seven days of receiving an electronic document, and the sender must comply promptly. Additionally, it allows recipients to revoke their consent to electronic communications, with such revocation taking effect no sooner than seven days after notice is given
- 4.2.7 Article 4 (*Development consent etc. granted by this Order*) grants development consent for the authorised development. This article is adapted from the model provisions. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The content of the works contained within each work number is described in greater detail above.
- 4.2.8 Paragraph (2) of Article 4 requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans [EN010153/DR/2.3]. This is in order to provide certainty as to what has been consented by the Order, in respect of which areas of land.
- 4.2.9 The purpose of Article 4(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.

- 4.2.10 Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the authorised development by reference to the Works Plans [EN010153/DR/2.3], whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The Environmental Statement [EN010153/DR/6.1] accompanying the application for development consent has assessed the authorised development within the full envelope provided by the limits of deviation, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the Environmental Statement [EN010153/DR/6.1]. Further detail in this respect is provided above.
- 4.2.11 Article 5 (*Operation of generating station*) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station.
- 4.2.12 Article 6 (*Power to maintain the authorised development*) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The Environmental Statement [EN010153/DR/6.1] has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or different environmental effects to those identified in the Environmental Statement [EN010153/DR/6.1].
- 4.2.13 Article 7 (*Application and modification of statutory provisions*) disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Great Yarmouth Third River Crossing Development Consent Order 2020**, the **Longfield Solar Farm Order 2023** and the **Gate Burton Energy Park Order 2024**.
- 4.2.14 Article 7 provides for the disapplication of the following specified provisions:
- (a) section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the lead local flood authority or relevant internal drainage board;
 - (b) section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;

- (c) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991 in respect of flood risk activity only;
- (e) Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) permit(s) is required;
- (f) Section 28E of the Wildlife and Countryside Act 1981 relating to duties to sites of scientific interest; and
- (g) the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 30 and 31 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced. 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 30 and 31. This approach has precedent and has been accepted by the Secretary of State; see for example the **Mallard Pass Solar Farm 2024**, the **Gate Burton Energy Park Order 2024**, the **Cleve Hill Solar Park Order 2020**.

4.2.15 Following the undertaking of a local legislation search, the Applicant can confirm that there is no local legislation requiring disapplication by the Draft Order.

4.2.16 Article 7 also provides for amendments to be made to the regimes relating to trees and hedgerows under the Forestry Act 1967 and the Hedgerow Regulations 1997. This seeks to deal with the lacunae in these statutes where works can be undertaken to trees and hedgerows pursuant to a planning permission or a 'deemed' planning permission (such as under the Transport and Works Act 1992). However, due to the operation of section 33 of the Planning Act 2008 not 'deeming' planning permission, but instead saying it is not required, DCO development does not benefit from these provisions, meaning that NSIP development is left in a worse position than 'normal' planning development, which is considered not appropriate. With the controls set out in the Requirements, the local planning authority will still be able to consider the impacts of such works, the provisions of article 7 simply mean that separate consents are not required to be obtained. This approach, in respect of the Forestry Act 1967, has precedent in the **Cottam Solar Project Order 2024**, **Gate Burton Energy Park Order 2024** and **The Sunnica Energy Farm Order 2024**. The Hedgerow and Tree Preservation provisions are preceded in **Mallard Pass Solar Farm 2024**.

4.2.17 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, the Water Resources Act 1991. Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Proposed Development.

- 4.2.18 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators in considering the detailed design of the Proposed Development as it is brought forward. In respect of the Land Drainage Act 1991 and the Water Resources Act 1991, protective provisions have been brought forward for both the Environment Agency and the lead local flood authority (the latter based on the precedent of the Hynet Carbon Dioxide Pipeline DCO, which is located close to the Proposed Development within the area of the same lead local flood authority).
- 4.2.19 28E of the Wildlife and Countryside Act 1981 relating to duties to sites of special scientific interest (known colloquially as ‘SSSI consent’) is sought to be disapplied, as such as consent would otherwise be necessary for the works to create the NBBMA, which lie partly within a SSSI. The Applicant proposes that instead Natural England is a consultee on the discharge of the details of the Non Breeding Bird Mitigation Strategy, which will set out the detail of the works to be undertaken, the principle of which is sought to be consented through this DCO. This has precedent in projects such as the **A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016**.
- 4.2.20 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** [EN010153/DR/5.5].
- 4.2.21 Article 7(4) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.
- 4.2.22 Article 8 (Defence to proceedings in respect of statutory nuisance) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 8 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. It has however been adapted to account for the operational and decommissioning phases as well, where controls in the OEMP, and in the DEMP, should be able to be taken into account in the consideration of nuisance claims.

4.3 **Part 3 (Streets)**

- 4.3.1 Article 9 (*Street works*) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 3 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 9 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 Article 8 of the **Mallard Pass Solar Farm 2024**. In addition, as the Applicant is seeking to construct part of its cable route within the street (as shown on the Access and Rights of Way Plans [EN010153/DR/2.4]) and the Works Plans [EN010153/DR/2.3]), this article has been adapted to provide for street works to be able to be undertaken to deal with types of apparatus that may be required for the authorised development;

- 4.3.2 Article 10 (*Power to alter layout, etc., of streets*) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 4 then sets out the alterations to streets. 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. It has been extended to include streets outside the Order limits to allow for unforeseen circumstances during the construction stage. Article 10 has precedent and appears in the **Cottam Solar Project Order** and the **Mallard Pass Solar Farm DCO**.
- 4.3.3 Article 11 (*Construction and maintenance of altered streets*) provides that the permanent alterations to the streets listed Schedule 4 must be completed to the reasonable satisfaction of the street authority and in a form reasonably required by the street authority. Unless otherwise agreed, these alterations must be maintained at the undertaker's expense for a period of 12 months from their completion, after which maintenance becomes the responsibility of the street authority (paragraph (1)). The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 4.3.4 Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. Paragraph (4) 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 similar to Article 10 in the **Mallard Pass Solar Farm Order 2024** and Article 10 in the **Gate Burton Energy Park Order 2024**.
- 4.3.5 Article 12 (*Temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way*) provides for the temporary alteration, diversion, prohibition or restriction, of the use 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 divert certain public rights of way in order to construct or decommission the authorised development, as provided for on the street works, public rights of way, vehicular usage and access plans [EN010153/DR/2.4]. Schedule 5 is comprised of three parts (streets and public rights of way subject to temporary closure; temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way; and temporary use of motor vehicles on public rights of way).

- 4.3.6 The authorisation under Article 12 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. This authorisation constitutes lawful authority for the purposes of section 34 of the Road Traffic Act 1988. The Article broadly follows the approach in the model provisions (save that it applies to streets and public rights of way) 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 to the Order and as shown on the street works, public rights of way, vehicular usage and access plans [EN010153/DR/2.4]. Article 16 (see below) deals with traffic regulation more widely.
- 4.3.7 An addition to the precedents that have been made for this Order is to provide for approval of a relevant Public Rights of Way Management Plan to have taken place before these powers can be used. This will ensure that the Relevant Planning Authority has sight of the diversion and management measures to be put in place before a temporary alteration, diversion, prohibition or restriction takes place.
- 4.3.8 Article 12(7) 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 (2) provides an additional power to the undertaker which allows it to use any public right of way temporarily closed or restricted as a temporary working site (which is not in the model provision). Similar wording to this Article has been used in other made Orders, including **Article 11 of the Mallard Pass Solar Farm Order 2024** and **Article 11 of the Sunnica Energy Farm Order 2024**.
- 4.3.9 Article 13 (*Permanent stopping up of, and creation of new public right of way and authorising vehicular use of public rights of way*) provides for the permanent stopping up of certain existing rights of way and the creation of new substitute rights of way. These have been brought forward to either recognise the current routes used by the public within the Order limits, as being different from the route on the Definitive Map, and to allow for an upgrade in the status of certain routes to allow a greater range of users to utilise them. These are shown on the street works, public rights of way, vehicular usage and access plans [EN010153/DR/2.4]. The article (paragraph (2)) ensures that the existing routes cannot be stopped up until a substitute route has been agreed and provided
- 4.3.10 It also authorises the temporary use of motor vehicles on specified public rights of way where such use would otherwise be unlawful.
- 4.3.11 Under Article 13, following the opening of any newly constructed or diverted public right of way, the undertaker must provide plans and a statement of modifications to the definitive map and statement. These documents are deemed to constitute a legal event under the Wildlife and Countryside Act 1981. Article 13(7) 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.
- 4.3.12 Article 14 (*Access to works*) 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 to the Order. This

article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. The Article also provides that other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the Relevant Planning Authority, in consultation with the highway authority.

- 4.3.13 Article 15 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets, closure, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 9 (street works), 11 (construction and maintenance of altered streets) and 14 (access to works) of the Order and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development. This provision has precedent in the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024** and is required so that the undertaker may enter into agreements with the relevant street authorities.
- 4.3.14 Article 15 (*Traffic regulation measures*) provides the undertaker with powers to make temporary traffic regulation provisions for the purposes of constructing the authorised development. These include imposing speed limits, controlling stopping up and loading, prescribing traffic routes and restricting use by vehicular or non-vehicular traffic. These specific measures are required to safely regulate traffic. 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 power is appropriately regulated as it may only be exercised after consultation with the chief officer of police for the area and with the consent of the traffic authority concerned.
- 4.3.15 The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act. For example, similar provision is contained within the **Great Yarmouth Third River Crossing Development Consent Order 2020** and the **Mallard Pass Solar Farm Order 2024**.

4.4 **Part 4 (Supplemental Powers)**

- 4.4.1 Article 17 (*Discharge of water*) is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order.

- 4.4.2 Article 18 (*Protective works to buildings*) is a model provision which is included in most DCOs made to date. 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 need to be carried out in respect of 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 landowner/occupier within a period of 10 days from the day on which the notice was served. The article also confirms that section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to entry or possession under this power.
- 4.4.3 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. Further updates have also been made to allow for this power to be utilised during the decommissioning phase, which is considered sensible and beneficial to third parties.
- 4.4.4 A definition of "building" has also been included within Article 2 (*Interpretation*) for clarity.
- 4.4.5 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).
- 4.4.6 Article 19 (*Authority to survey and investigate the land*) is a model provision that enables the undertaker to enter onto any land within the Order limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The Applicant has amended this to include boreholes and trenches. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 4.4.7 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.
- 4.4.8 The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development, and has precedent in the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024** and the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.

- 4.4.9 Article 20 (Temporary suspension of navigation) provides for the temporary suspension of navigation within the parts of the river Weaver that are within the Order limits, if required in connection with the construction, inspection and maintenance of the authorised development, following consultation with the Harbour Authority. Such power is required to enable the undertaker to construct and maintain the new cable crossing in the most effective manner, and to be able to deal with urgent issues efficiently.
- 4.4.10 Paragraphs (2) to (4) provide that the suspension of navigation must be affected for the minimum possible amount of time and in a way that causes the minimum amount of disruption to users of the river Weaver, and that such suspensions must be publicised in advance.
- 4.4.11 Paragraphs (5) provides a mechanism for vessels to enter into the closed areas with the consent of the undertaker.
- 4.4.12 No provision is made for compensation deriving from the utilisation of this power. This is because it involves interference with a public, not a private right. The Applicant notes that the absence of such provision is reflected in the comparable article in **The Lake Lothing (Lowestoft) Third Crossing Order 2020** which this article is based upon.

4.5 **Part 5 (Powers of Acquisition)**

- 4.5.1 Article 21 (*Compulsory acquisition of land*) is a model provision that provides for the compulsory acquisition of such land as is required for the authorised development, or to facilitate, or is incidental to, the authorised development. It also allows the undertaker to use any acquired land for the purpose authorised by the Order or any other purpose in connection with, or ancillary to the undertaking. The Article is necessary to secure the delivery of the authorised development as set out in more detail in the Statement of Reasons accompanying the application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 24 (Private rights). Similarly, Article 23 (Compulsory acquisition of rights) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the authorised development. This approach has precedent in the **Gate Burton Energy Park Order 2024**.
- 4.5.2 Article 21(2) makes clear that the powers in this Article are subject to the powers and restrictions in article 23 (compulsory acquisition of rights) and 44 (crown rights), to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land.
- 4.5.3 Article 22 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. 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.
- 4.5.4 Article 23 (*Compulsory acquisition of rights*) enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required

for any purpose for which the land may be acquired under article 21 (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 44 (crown rights). The provisions of Article 23(2) to (4) allow the right to acquire land under this article to be exercised by statutory undertakers with the Secretary of States consent pursuant to Article 36 or those parties benefitting from protective provisions in Schedule 13-27. Such transferees are treated as the undertaker for all purposes except compensation, which remains the undertaker's responsibility. This is considered prudent to allow for the circumstances that the consequences of the application of the protective provisions is that new rights are required for those statutory undertaker's apparatus. This has precedent in the **A122 (Lower Thames Crossing) Development Consent Order 2025**.

- 4.5.5 The Article provides that, in respect of the Order Land set out in Schedule 9 (Land in which only new rights etc. may be acquired), the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. This also includes the acquisition of existing rights and the benefit of restrictive covenants.

- 4.5.6 It also allows for the undertake to utilises powers of acquisition of new rights and imposition of restrictive covenants over all of the Order land. 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 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.

- 4.5.7 This Article is a departure from the model provisions, but it has precedent in many DCOs including **the Cleve Hill Solar Park Order 2020, Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 4.5.8 Article 24 (*Private rights*) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in article 21 (compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (Compulsory acquisition of rights); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development.

- 4.5.9 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.

- 4.5.10 Article 25 (*Application of the 1981 Act*) is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act, rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 4.5.11 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 which has precedent in numerous DCOs including the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024**.
- 4.5.12 Article 26 (*Acquisition of subsoil only*) is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (either pursuant to article 21 or article 23), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners.
- 4.5.13 Article 27 (*Power to override easements and other rights*) provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the **Sunnica Energy Farm Order 2024**, and the **Cottam Solar Project Order 2024**.
- 4.5.14 Article 28 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order, and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Article 18 (Protective work to buildings), Article 30 (Temporary use of land for constructing the authorised development) or Article 31 (Temporary use of land for maintaining the authorised development). These modifications have precedent in numerous made DCOs and other legislation including Schedule 14 to the High Speed Rail (**London - West Midlands**) **Act 2017**, the **Wrexham Gas Fired Generating Station Order 2017** and the **Sunnica Energy Farm Order 2024**, and the **Cottam Solar Project Order 2024**.
- 4.5.15 Article 29 (*Rights under or over streets*) is a model provision which has been included in the majority of DCOs made to date to enable the undertaker to

enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the authorised development.

- 4.5.16 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Land, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.
- 4.5.17 Article 30 (Temporary use of land for constructing the authorised development) allows the undertaker to enter and take temporary possession of any of any land within the Order limits for the purpose of constructing the authorised development, provided that no notice of entry has been served under section 11 of the 1965 Act and no declaration has been made under section 4 of the 1981 Act. The undertaker may use the land for a range of construction related activities including the removal of structures and vegetation, the construction of temporary working site with access, the works mentioned in Schedule 1 and the carrying out of mitigation works. The undertaker must not remain in possession of any land under this article for longer than reasonably necessary, and in any event not beyond one year from the date of final commissioning of the relevant part of the authorised development, unless a notice of entry or declaration has been made for development for which temporary possession of the land was taken. The Article also requires the undertaker to give 14 days notice before taking possession, and to restore the land following the temporary works.
- 4.5.18 Allowing promoters to undertake temporary possession powers on all Order land reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 4.5.19 Wording has been added at paragraph (10) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 8 (land in which only new rights etc. may be acquired), and nor are the powers under Article 26 (Acquisition of subsoil only) or Article 29 (Rights under or over streets) precluded.
- 4.5.20 Article 31 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 4.5.21 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 commences operation as this is more appropriate for this type of development, except in relation to landscaping (or, in an addition to precedents on the basis that they need to be maintained just as much as landscaping to ensure environmental

outcomes are achieved) and ecological works where “the maintenance period” means such period as set out in the landscape and ecology management plan which is approved by the relevant planning authority pursuant to Requirement 9, beginning with the date on which that part of the landscaping is completed. Similar wording has been used in other made Orders in connection with generating stations, including the **Sunnica Energy Farm Order 2024**, the **Cottam Solar Project Order 2024** and the **Drax Power (Generating Stations) Order 2019**.

- 4.5.22 Articles 30 and 31 are broadly based on the model provisions and provide for the payment of compensation for that temporary use of the land.
- 4.5.23 Article 32 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 43 below) included at Schedule 13 - 27 of the Order. Further details on statutory undertakers' land and apparatus is included in the Statement of Reasons [EN010153/DR/4.1]. This power is required over the whole of the Order Land and similar wording has been used in other made Orders including the **Cottam Solar Project Order 2024** and **Gate Burton Energy Park Order 2024**.
- 4.5.24 Article 33 (*Apparatus and rights of statutory undertakers temporarily closed streets*) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily closed by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 13 to 27.
- 4.5.25 Article 34 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 32 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

4.6 Part 6 (Miscellaneous and General)

- 4.6.1 Article 35 (*Benefit of the Order*) overrides section 156(1) of the 2008 Act (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the Proposed Development and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the **Cottam Solar Project 2024**.
- 4.6.2 The article also makes specific provision for Work No. 4A (iii), in respect of which the provisions of the Order are for the benefit of the undertaker and SP Manweb, to allow either party to construct and operate the works given the interfaces with existing SP Manweb infrastructure. The article provides for a specific relevant party other than the undertaker to benefit from the Order in respect of limited Works. This is a standard approach which is administratively less burdensome than the transfer of benefit procedure in Article 36 (Consent to transfer the benefit of the Order). All protections and requirements within

the draft DCO apply, regardless of whether the works are constructed and operated by the undertaker or SP Manweb. The Approach has precedent in article 32 of the **Longfield Solar Farm Order 2023**.

- 4.6.3 Article 36 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- (a) the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989;
 - (b) the transferee or lessee is the beneficiary of protective provisions in schedule 13 to 27 and the transfer relates to works required under those provisions
 - (c) the transferee or lessee is a holding company or subsidiary of the undertaker; or
 - (d) the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 4.6.4 Article 36(1) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 4.6.5 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The provision that the undertaker is able to transfer the Order to a holding company or subsidiary is to allow commercial flexibility for the undertaker in the event that it would be preferable that a connected corporate entity takes the benefit of all or part of the Order. As with article 23, the ability to transfer the benefit to those parties who have the benefit of protective provisions, is to ensure that the diversion of apparatus can be undertaken by those parties, rather than the undertaker, where that would be preferred by those parties.
- 4.6.6 Article 36(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State and the relevant planning authority in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 36(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in a number of recent DCOs including **Mallard Pass Solar Farm Order 2024**.
- 4.6.7 Article 36(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- (a) the transferred benefit will include any rights that are conferred and any obligations that are imposed;

- (b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
 - (c) the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 4.6.8 This approach has precedent in the **Gate Burton Energy Park Order 2024** and the **Cleve Hill Solar Park Order 2020**.
- 4.6.9 Article 37 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the authorised development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the Proposed Development.
- 4.6.10 Article 38 (*Planning permission etc.*) permits certain permits certain development authorised by a planning permission granted under the 1990 Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. These provisions have precedent in the **M20 Junction 10a Development Consent Order 2017** and the **A30 Chiverton to Carland Cross Development Consent Order 2020**.
- 4.6.11 Article 38(2) provides that the land within the Order limits in which the undertaker holds an interest shall be treated as “operational land of a statutory undertaker” for the purposes of the 1990 Act. The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the authorised development will benefit from certain permitted development rights on that land in connection with the operation of the development. The **A19/A184 Testo’s Junction Alteration Development Consent Order 2018** and the **A30 to Chiverton to Carland Cross Development Consent Order 2020** followed the same approach. Other DCOs often have this provision as a separate article. The Applicant has chosen to include this provision in this article as it relates to “planning permissions” under the 1990 Act, and so is regarded as neater, more concise drafting than having a separate article.
- 4.6.12 Article 38(3) addresses the Supreme Court’s ruling in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.
- 4.6.13 Article 38(4) has been inserted to deal with the converse situation covered by Article 38(3) and confirms that development under other consents is not to prevent activity authorised under the Order.

- 4.6.14 Without Articles 38(3) or (4) there is a significant risk of the Proposed Scheme or other permissions and consents being undeliverable or subject to enforcement action. This article therefore works in tandem with Article 5 and reflects the precedent in the **A122 (Lower Thames Crossing) Development Consent Order 2025**.
- 4.6.15 Article 39 (*Felling or lopping of trees and removal of hedgerows*) is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development; constituting a danger for persons using the authorised development or obstructing or interfering with the passage of construction vehicles. The Article also allows the undertaker to remove those hedgerows specified in Schedule 9 (Hedgerows to be removed) along with the specific purpose of each removal.
- 4.6.16 Alongside that specific power, the Article also allows for a generic power for any hedgerows within the Order land to be removed where required for the purposes of the authorised development, to allow for construction flexibility.
- 4.6.17 The Article provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited.
- 4.6.18 Article 40 (Certification of plans and documents, etc.) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the Book of Reference [EN010153/DR/4.3], plans and Environmental Statement [EN010153/DR/6.1]) to the Secretary of State so that they can be certified as being true copies. The article refers to Schedule 13, where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 10 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.
- 4.6.19 Article 41 (no double recovery) provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss. This Article has precedent in numerous made Orders, including the **A122 (Lower Thames Crossing) Development Consent Order 2025**.
- 4.6.20 Article 42 (*Arbitration*) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 11 (Arbitration rules), has precedent in the **Gate Burton Energy Park Order 2024**, the **Cottam Solar Project Order 2024** and the **Sunnica Energy Farm Order 2024**, amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 4.6.21 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.

- 4.6.22 It applies Schedule 11 to the Order, which sets out further detail of the arbitration process. The detail of Schedule 14 is set out below.
- 4.6.23 In addition, Article 42(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 4.6.24 Article 43 (Protective Provisions) provides for Schedule 13 to 27, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail below. This is a model provision.
- 4.6.25 Article 44 (Crown Rights) prevents the undertaker from acquiring any Crown land (as defined in the 2008 Act), or from otherwise interfering with such land, without the written consent of the relevant Crown authority. The Crown's consent may be given unconditionally or subject to terms and conditions.
- 4.6.26 The proposed Order land includes parcels of land which constitute Crown land. This article has been included to ensure that any acquisition of other land holdings, creation or extinguishment of rights cannot create any interference with the rights of the Crown.
- 4.6.27 Article 45 (*Service of notices*) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. These provisions are based on those appearing in the **Sunnica Energy Farm Order 2024**, and numerous made DCOs.
- 4.6.28 Article 46 (*Procedure in relation to certain approvals etc.*) provides procedures in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within six 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.
- 4.6.29 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 12 (Procedure for discharge of requirements) (see below).
- 4.6.30 An article of this nature has precedent in the **Mallard Pass Solar Farm Order 2024**, amongst others, and is considered appropriate and justified in order to ensure that the authorised development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.
- 4.6.31 Article 47 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under articles 21, 23, 24, 29, 30, 31 and 32 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 a number of made DCOs, for example the **Sunnica Energy Farm Order 2024** the **Drax Power (Generating Stations) Order 2019**.

- 4.6.32 Article 48 (*Compulsory acquisition of land - incorporation of the mineral code*) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order limits, and that the Order limits is located within Mineral Consultation and Safeguarding Areas.

5. SCHEDULES

5.1 Schedule 1 (Authorised Development)

- 5.1.1 This Schedule describes the authorised development in detail and splits it into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.
- 5.1.2 The works set out in Schedule 1 to the Order are explained in detail above.
- 5.1.3 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement [EN010153/DR/6.1]. This is achieved through the following mechanisms in the Order:
- (a) Article 4 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 4(2) each numbered work must be situated within the area delineated on the Works Plans [EN010153/DR/2.3] – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the Environmental Statement [EN010153/DR/6.1].
 - (b) Schedule 1 provides that development which does not form part of a specific Work Number can only be brought forward if it does not lead to materially new or materially different effects from those assessed in the Environmental Statement.
 - (c) In terms of the detailed design, Requirement 6 of Schedule 2 (see below) prevents the undertaker from commencing any phase of the authorised development until it has obtained the approval of the relevant planning authority to the layout, scale, ground levels, external appearance, hard surfacing materials, vehicular and pedestrian access, parking and circulation areas refuse or other storage units, signs and lighting.
 - (d) Paragraph (2) of the detailed design requirement requires that the details submitted must accord with the Design Principles

[EN010153/DR/5.8] and Design Parameters Statement [EN010153/DR/7.1]. The Design Parameters Statement [EN010153/DR/7.1] contains the maximum parameters for the authorised development and are the same as those used for the assessment of effects in the Environmental Statement [EN010153/DR/6.1]. These parameters are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the Environmental Statement [EN010153/DR/6.1], recognising that the final massing may differ from (but will never be larger than) these maxima.

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

5.2 **Schedule 2 (Requirements)**

- 5.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the authorised development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the environmental impact assessment and any discussions with the Relevant Planning Authority or other relevant statutory consultee.
- 5.2.2 The requirements closely relate to the mitigation set out in the Environmental Statement [EN010153/DR/6.1] and specifically refer to the outline strategies or plans relied upon in the Environmental Statement, in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 5.2.3 Many of the requirements require submission of details for approval by the relevant planning authority. 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. 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.
- 5.2.4 In the undertaker's opinion, the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the Environmental Statement [EN010153/DR/6.1]; enforceable and precise in their language; and reasonable in all other respects.
- 5.2.5 In all cases where a Proposed Development or strategy or plan is to be submitted for approval, there is a requirement for the undertaker to implement the approved Proposed Development or strategy or plan. This is subject to requirement 5, as explained below.
- 5.2.6 *Requirement 1 – Interpretation:* This provides a definition in relation "ground conditions and investigations strategy" which applies to this Schedule only, rather than the Order as a whole.

- 5.2.7 *Requirement 2 - Commencement of the authorised development:* This requirement provides that the authorised development must not begin later than 5 years from the date of the Order coming into force.
- 5.2.8 *Requirement 3 – Phasing of the authorised development and date of final commissioning:* This requirement provides that no phase of the authorised development may commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the relevant planning authority. The scheme must include a timetable for the construction of the authorised development. The scheme must be implemented as approved.
- 5.2.9 *Requirement 4 – Requirement for written approval:* This requirement provides that where any approval, agreement or confirmation is required under these requirements, then such approval, agreement or confirmation must be provided in writing.
- 5.2.10 *Requirement 5 – Approved details and amendments to them:* This requirement provides that where any documents have been certified under Article 40 and where any plans, details or schemes have been approved by the relevant planning authority, the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the relevant planning authority, those documents, plans, details or schemes are to be taken to include the amendments approved by the relevant planning authority. Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement [EN010153/DR/6.1].
- 5.2.11 *Requirement 6 – Detailed design approval:* This requirement stipulates the details that must be submitted to and approved by the relevant planning authority before any phase of the authorised development can commence. The details submitted must be in accordance with the Design Parameters Statement. This includes a statement confirming how the Design Principles have been complied with. The authorised development must be carried out in accordance with the approved details.
- 5.2.12 *Requirement 7 – Battery Safety Management: – Battery safety management:* This requirement stipulates that Work No. 2 must not commence until a battery safety management plan, (which is substantially in accordance with the outline battery safety management plan) accompanied by an emergency response plan has been approved by the relevant planning authority. The relevant planning authority must consult with Cheshire Fire and Rescue Service and the Environment Agency before approving the battery safety management plan. The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.
- 5.2.13 *Requirement 8 – Permitted preliminary works:* The permitted preliminary works must be carried out in accordance with the measures set out in appendix 2-3 of the Environmental Statement [EN010153/DR/6.2].
- 5.2.14 *Requirement 9 – Landscape and ecology management plan:* The requirement stipulates that no phase of the authorised development may commence, no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecological management plan (which is substantially in accordance with the outline landscape and ecological

management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with Natural England. The landscape and ecological management plan must include details of the proposed hard and soft landscaping works and ecological mitigation and enhancement measures, and where applicable include:

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;
- (b) any hedgerows proposed for removal
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) existing trees to be retained;
- (e) an implementation timetable;

5.2.15 how the measures set out in the plan will be managed up until the date the decommissioning environmental management plan is implemented pursuant to Requirement 20 (Decommissioning and restoration);

- (a) information on the surveys required prior to commencement of, or following completion of, a numbered work must be set out, in order to monitor the effect of, or inform the ecological mitigation measures to be taken forward;
- (b) final routing, specification and maintenance regime for each permissive path;
- (c) details of the establishment and management regime for Work No.6B; and

5.2.16 details of the establishment, maintenance, management and monitoring regime for Work No. 6C which must be prepared following consultation by the undertaker with Natural England and the Royal Society for the Protection of Birds.

5.2.17 If, within five years of planting a shrub or tree as part of the approved plan, said plant or tree dies, is removed, or becomes damaged or diseased (in the opinion of the relevant planning authority), it must be replaced in the first available planting season with a species and size agreed with the relevant planning authority. The landscape and ecology management plan must be implemented as approved.

5.2.18 *Requirement 10 – Fencing and other means of enclosure:* The undertaker is required to obtain the written approval from the relevant planning authority for any proposed permanent and temporary fences, walls or other means of enclosure, for each phase prior to commencement of the phase in question. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development. Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

5.2.19 *Requirement 11 – Surface and ground water management:* This requirement provides that no phase of the authorised development may commence until

details of the surface water drainage strategy and ground water and surface water management plan for that phase have been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency and Natural England. The surface water drainage strategy must be substantially in accordance with both section 11 of the flood risk assessment and the outline surface water drainage strategy. The ground and surface water management plan must be submitted and approved by the relevant planning authority, such approval to be in consultation with the lead local flood authority. Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

5.2.20 *Requirement 12* – Construction environmental management plan: Under this requirement, no phase of the authorised development may commence, and no above ground site preparation for temporary facilities for the use of contractors and site clearance may start, until a construction environmental management plan for that phase has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency and and, in respect of a construction environmental management plan which relates to Work No. 6C only, Natural England. The construction environmental management plan must be substantially in accordance with the outline construction environmental management plan and be accompanied by or include the following:

- (a) an invasive non-native species management plan;
- (b) an environmental incident management and pollution prevention plan;
- (c) an unexpected contamination protocol;
- (d) a flood warning and evacuation plan (which must be substantially in accordance with appendix M of the flood risk assessment and drainage strategy);
- (e) an unexploded ordnance (UXO) management plan;
- (f) a construction noise management plan;
- (g) fish rescue plan;
- (h) a construction dust management plan; and
- (i) a construction waste management plan.

5.2.21 All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan. *Requirement 13* - Operational environmental management plan: This requirement provides that prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (which must substantially accord with the outline operational environmental management plan) must be submitted to and approved by the relevant planning authority, in consultation with the Environment Agency. The operational environmental management plan must include:

- (a) an invasive non-native species management plan (which must include a New Zealand Pygmyweed control and management strategy);
- (b) an emergency flood response and evacuation plan (which must be substantially in accordance with the framework flood warning and evacuation plan);
- (c) a pollution incidents response plan;
- (d) emergency spillage plan;

- (e) measures in relation to environmental and traffic management to be undertaken during replacement activities; and
 - (f) waste management plan
- 5.2.22 The operation of the authorised development must be carried out in accordance with the approved operational environmental management plan.
- 5.2.23 *Requirement 14 - Construction traffic management plan:* This requirement provides that no phase of the authorised development may commence until a construction traffic management plan (which must substantially accord with the outline construction traffic management plan) has been submitted to and approved by the relevant planning authority in consultation with National Highways and the relevant highways authority. The construction traffic management plan must be implemented as approved.
- 5.2.24 *Requirement 15 – Public rights of way:* this requirement provides that no phase of the authorised development may commence until a public rights of way management plan (which must be substantially in accordance with the outline public rights of way plan) has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The public rights of way plan must be implemented as approved.
- 5.2.25 *Requirement 16 – Soil management plan:* This requirement provides that no phase of the authorised development may commence until a soil management plan (which must be substantially in accordance with the outline soil management plan) has been submitted to and approved by the relevant planning authority in consultation with Natural England. The authorised development must be carried out in accordance with the approved soil management plan.
- 5.2.26 *Requirement 17 – Ground conditions:* This requirement stipulates that no phase of the authorised development may commence, and no demolition or decommissioning of existing structures, intrusive environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only may start, until a ground conditions investigations and assessments strategy for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. The authorised development must be carried out in accordance with the ground conditions investigations and assessments strategy approved.
- 5.2.27 *Requirement 18 – Archaeological mitigation strategy:* This requirement stipulates that no phase of the authorised development may commence until an archaeological mitigation strategy, including any required written scheme of archaeological investigation for that phase, has been submitted to and approved by the Relevant Planning Authority in consultation with Cheshire Archaeology Planning Advisory Service. Any archaeological mitigation strategy submitted must include details of the measures set out in 11.9 of the Environmental Statement. The authorised development must be implemented in accordance with the archaeological mitigation strategy as approved.
- 5.2.28 *Requirement 19 – Skills, supply chain and employment:* this requirement stipulates that no phase of the authorised development may commence until a skills, supply chain and employment plan for construction (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority. Also, prior to the date of final commissioning of any phase of the authorised development a skills, supply

chain and employment plan (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase must be submitted to and approved by the relevant planning authority. These skills and employment plans must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction or the operation and maintenance (as applicable) of the authorised development, and the means for publicising such opportunities. Any skills and employment plan must be implemented as approved.

5.2.29 *Requirement 20 – Decommissioning:* This requirement provides that prior to the commencement of any part of any decommissioning works, the undertaker must submit a decommissioning environmental management plan for that part to the relevant planning authority in consultation with the Environment Agency, National highways and the relevant highways authority. The decommissioning environmental management plan for that part must substantially accord with the outline decommissioning environmental management plan and include the following:

- (a) measures to manage impacts to public rights of way;
- (b) a decommissioning traffic management plan;
- (c) a decommissioning groundwater and surface water management plan;
- (d) an invasive non-native species management plan;
- (e) an environmental incident management and pollution prevention plan;
- (f) an unexpected contamination protocol;
- (g) a flood warning and evacuation plan;
- (h) a skills, supply chain and employment plan for the decommissioning works;
- (i) a decommissioning noise management plan;
- (j) a decommissioning dust management plan; and
- (k) a decommissioning waste management plan.

5.2.30 The plan submitted must be implemented as approved. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

5.3 **Schedule 3 (Streets subject to street works)**

5.3.1 This Schedule sets out the streets that are to be subject to street works by reference to the Access and Rights of Way Plans [EN010153/DR/2.4]. The Schedule relates to Article 9 (Street works).

5.4 **Schedule 4 (Permanent Alteration of streets)**

- 5.4.1 This Schedule sets out the streets that are to be permanently altered by reference to the Access and Rights of Way Plans [EN010153/DR/2.4]. This Schedule relates to Articles 10 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).

5.5 **Schedule 5 (Temporary prohibition or restriction of use of streets and public rights of way and authorising vehicular use on public rights of way)**

- 5.5.1 This Schedule sets out the locations of the public rights of way to be temporarily closed (Part 1), the temporary alteration, prohibition, diversion or restriction of the use of streets and public rights of way (Part 2). It references the Access and Rights of Way Plans [EN010153/DR/2.4]. This Schedule relates to Article 12 (Temporary stopping up of *streets and private means of access*).

5.6 **Schedule 6 (Access to works)**

- 5.6.1 This Schedule sets out the permanent means of accesses to works to the authorised development. It references the Access and Rights of Way Plans [EN010153/DR/2.4]. The Schedule relates to Article 14 (Access to works).

5.7 **Schedule 7 (Land in which only new rights etc. may be acquired)**

- 5.7.1 This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of the table correlate with the relevant plot numbers shaded blue on the Land and Crown Land Plans [EN010153/DR/2.2] and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 23 (Compulsory acquisition of rights).

5.8 **Schedule 8 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

- 5.8.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the **Mallard Pass Solar Farm Order 2024 and the East Anglia ONE North Offshore Wind Farm Order 2022**. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 23 (Compulsory acquisition of rights).

5.9 **Schedule 9 (Hedgerows to be removed)**

- 5.9.1 This Schedule sets out the specific hedgerows to be removed pursuant to Article 39 (Felling or lopping of trees and removal of hedgerows) and listing in Column 2 the number of hedgerow and extent of removal.

5.10 **Schedule 10 (Documents and plans to be certified)**

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

5.11 **Schedule 11 (Arbitration rules)**

- 5.11.1 This Schedule relates to Article 42 (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 pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible.
- 5.11.2 Schedule 11 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 5.11.3 The timetable for the process is as follows:
- (a) Within 14 days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
 - (b) Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
 - (c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a statement of reply.
- 5.11.4 The parties would be liable for their own costs of the arbitration, unless otherwise directed by an award made by the arbitrator. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

5.12 **Schedule 12 (Procedure for discharge of requirements)**

- 5.16.1 This Schedule provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the Relevant Planning Authority requires further information to be provided in relation to that application. Schedules similar to Schedule 16 have been used in various orders and can be seen in a similar form in the **Cleve Hill Solar Park Order 2020** and the **Little Crow Solar Park Order 2022**. The bespoke process is required in order to ensure that applications under Requirements are dealt with efficiently so that the anticipated timeframe of the authorised development is not disrupted. Deemed consent of applications is required for the same reason and ensures that the nationally-needed authorised development will not be slowed down by the discharge of requirements.

5.13 Schedules 13 - 27 (Protective provisions)

5.13.1 These Schedules set out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 43 (Protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers in Schedule 13, and electronic communications code operators in Schedule 14).

5.13.2 In addition, each of Schedules 15 - 27 contain provisions for the benefit of a particular body and these remaining Schedules are at varying stages of negotiation with the relevant parties. The versions of the protective provisions contained within Schedules 15 – 27 of the Order represent the latest point that negotiations have reached with each party, and therefore are not agreed and are subject to change. In addition, there may be a need for additional Schedules in the event that any other parties request bespoke protective provisions and the undertaker is willing to negotiate them. The relevant bodies are as follows:

- (a) Schedule 15 - Cadent Gas Limited
- (b) Schedule 16 - National Gas Transmission Plc as Gas Undertaker
- (c) Schedule 17 - Frodsham Wind Farm Limited
- (d) Schedule 18 - SP Manweb As Electricity Undertaker
- (e) Schedule 19 - Shell Group Limited
- (f) Schedule 20 - Essar Ltd
- (g) Schedule 21 - National Grid Electricity Transmission Plc as Electricity Undertaker
- (h) Schedule 22 - United Utilities Water Limited
- (i) Schedule 23 - Environment Agency
- (j) Schedule 24 - British Pipelines Agency
- (k) Schedule 25 - Drainage Authority (being the lead local flood authority)
- (l) Schedule 26 - Highway Authorities
- (m) Schedule 27 - National Highways Limited.