



Fosse Green Energy

EN010154

3.2 Explanatory Memorandum to the Draft DCO

VOLUME

3

Planning Act 2008 (as amended)

Regulation 5(2)(c)

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

20 January 2026

Planning Act 2008

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

Fosse Green Energy
Development Consent Order 202[]

3.2 Explanatory Memorandum to the Draft DCO (Clean)

Regulation Reference	Regulation 5(2)(c)
Planning Inspectorate Scheme Reference	EN010154
Application Document Reference	EN010154/APP/3.2
Author	Fosse Green Energy Limited

Version	Date	Issue Purpose
Rev 1	18 July 2025	DCO Submission
Rev 2	20 January 2026	Deadline 1 Submission

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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.
- 1.1.2 The Applicant is seeking development consent from the Secretary of State for Energy Security and Net Zero (Secretary of State) for the Proposed Development, which will comprise the construction, operation and maintenance, and decommissioning of a solar photovoltaic (PV) electricity generating facility, with an on-site Battery Energy Storage System (BESS) and other associated infrastructure, with a total capacity exceeding 50 megawatts (MW), along with an import and export connection via the national transmission network at the proposed National Grid substation near Navenby.
- 1.1.3 The Proposed Development is situated within the administrative area of North Kesteven District Council (NKDC) and Lincolnshire County Council (LCC).
- 1.1.4 A Development Consent Order (DCO) is required for the Proposed Development as it falls within the definition and thresholds for a Nationally Significant Infrastructure Project (NSIP) under sections 14(1) and 15(1) and (2) of the Planning Act 2008 (the PA 2008). This is because it consists of a ground mounted solar PV generating station with a gross electrical output capacity exceeding 50MW.
- 1.1.5 The DCO, if made, would be known as The Fosse Green Energy Order 202[*]. A draft of the DCO has been submitted with the Application – **Draft Development Consent Order [EN010154/APP/3.1]**.
- 1.1.6 This Explanatory Memorandum has been prepared to explain the purpose and effect of each Article of, and schedules to, the DCO, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations). It should be read in conjunction with the suite of documents accompanying the Application, in particular the **Draft Development Consent Order [EN010154/APP/3.1]**, the **Environmental Statement [EN010154/APP/6.1]**, **Works Plans [EN010154/APP/2.2]**, **Land Plans [EN010154/APP/2.1]**, **Book of Reference [EN010154/APP/4.3]**, **Statement of Reasons [EN010154/APP/4.1]**, **Consultation Report [EN010154/APP/5.1]** and **Statement of Need [EN010154/APP/7.1]**.

1.2 Fosse Green Energy Limited

- 1.2.1 The Applicant is a limited company registered at Companies House under company number 13438725 and whose registered office is at 22 Grosvenor Gardens, London, United Kingdom, SW1W 0DH. More information on the Applicant's ownership and corporate structure is set out in the **Funding Statement [EN010154/APP/4.2]**.

1.3 The Site

- 1.3.1 The DCO Site comprises a total area of approximately 1,368 hectares (ha) and comprises the Principal Site and Cable Corridor. The Principal Site is the area which contains the ground-mounted solar photovoltaic (PV) panels, Solar Stations, Battery Energy Storage System (BESS), Onsite Substation, planting and mitigation areas, interconnecting cables between solar PV areas, and associated infrastructure. It has a total area of approximately 1,070ha. The Cable Corridor will comprise the underground electrical infrastructure required to connect the Principal Site to the proposed National Grid substation near Navenby. The Cable Corridor partially overlaps the Principal Site and is approximately 351ha and approximately 10km in length.
- 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 Plans [EN010154/APP/2.1]** and **Works Plans [EN010154/APP/2.2]**. The powers in the DCO 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 2 (The Site and Surroundings) of the **Environmental Statement [EN010154/APP/6.1]**.

1.4 The Proposed Development

- 1.4.1 A detailed description of the Proposed Development can be found in Chapter 3 (The Proposed Development) of the **Environmental Statement [EN010154/APP/6.1]**. It comprises a generating station of more than 50MW, being the NSIP, which is described in Work No.1 in Schedule 1 to the **Draft Development Consent Order [EN010154/APP/3.1]**. The Proposed Development also includes Associated Development, which comprises Work Numbers 1 to Work Number 9 in Schedule 1 to the **Draft Development Consent Order [EN010154/APP/3.1]**.
- 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. PV modules fitted to mounting structures;
 - ii. Solar stations and ancillary equipment;
 - iii. monitoring and control systems housed within the containers or enclosures comprised in Work No. 1 or located separately in its own container or enclosure;
 - iv. acoustic fencing; and
 - v. electrical cables.

- 1.4.3 The description of Work No.1 refers to a gross electrical output capacity of over 50MW. This is consistent with sections 14 and 15 of the PA 2008, which stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.
- 1.4.4 The description of the NSIP at Work No.1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes reference to the means by which the parameters of the Proposed Development will be constrained and it is on this basis that an Environmental Impact Assessment (EIA) has been undertaken, as is set out in the **Environmental Statement [EN010154/APP/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 as the parameters of the consent envelope are adequately captured in the DCO.
- 1.4.5 There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the 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 **Statement of Need [EN010154/APP/7.1]**. The approach taken has precedent in the **Cleve Hill Solar Park Order 2020**, the **Little Crow Solar Park Order 2022** and the **Mallard Pass Solar Farm Order 2024**.
- 1.4.6 The Associated Development for the purposes of section 115 of the PA 2008 comprises Work Nos. 2 to 9 of the Proposed Development as provided for in Schedule 1 to the DCO. As further explained below, the Applicant is seeking consent to construct either Work No. 2 or Work No. 3. The Associated Development comprises the following elements:
- a. Work No. 2 – Centralised Battery and Energy Storage System Compound to store energy generated by the solar panels including battery energy storage system; a structure protecting the battery energy storage system; heating, ventilation and air conditioning (HVAC) or liquid cooling systems; conversion units including inverters, transformers, switchgear and energy management system; battery stations; monitoring and control systems; electrical cables connecting to Work No. 1 and Work No. 4; fire safety infrastructure; water storage structure and fencing;
 - b. Work No. 3 – Distributed Battery and Energy Storage System including battery energy storage system; a structure protecting the battery energy storage system; HVAC or liquid cooling systems; monitoring and control systems; battery management system to monitor and control the stage of charge, temperature, and the overall health of the batteries; DC/DC converter; fire safety infrastructure, mitigation and control measures; electrical cables connecting to Work No. 1 and Work No. 4 and fencing;
 - c. Work No. 4 – works in connection with an onsite substation, including a substation, transformers, 400kV air insulated switchgear, switch room

buildings and ancillary equipment; control building housing offices, storage, welfare facilities, parking areas and access; workshop, store and ancillary structures; monitoring and control systems; harmonic filters and fencing.

- d. Work No. 5A – works to lay high voltage electrical cables, access and temporary construction compound laydown areas for the electrical cables, to connect to the proposed National Grid substation near Navenby including works to lay electrical cables including 400 kV cable connecting Work No. 4 to the proposed National Grid substation near Navenby; laying down of internal access tracks, including the laying and construction of drainage infrastructure, signage and information boards; temporary construction compounds and material storage; joint bays, link boxes, cable ducts, cable protection, joint protection, manholes; marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; and tunnelling, boring and drilling works.
- e. Work No. 5B - high voltage connection works to the proposed National Grid substation near Navenby to facilitate connection of the authorised development to the proposed National Grid substation near Navenby. This comprises busbars and connectors; a 400kV 3 phase circuit breaker; a 3 phase set of current transformers; a 3 phase high accuracy metering current and voltage transformer assembly; a 3 phase 400kV line disconnector/earth switch; a 3 phase set of 400kV high voltage cable sealing ends and cables connecting the National Grid substation near Navenby with Work No. 5A; and protection and control works in the relay room or erection of a new building to house protection and control works apparatus if required.
- f. Work No. 6 – works to lay electrical cables up to 33 kV connecting Work No. 1 to Work No. 2 or Work No. 3, and Work No. 4 including works to lay electrical and data cables; joint bays, link boxes, cable ducts, cable protection, joint protection and manholes; marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; and tunnelling, boring and drilling works including temporary compounds for the tunnelling, boring or drilling works.
- g. Work No. 7 – temporary construction and decommissioning compound and laydown areas comprising areas of hardstanding; HGV, vehicle and cycle parking; site and welfare offices, canteens and workshops; area to store materials and equipment; storage and waste skips; area for download and turning; security infrastructure; safety infrastructure; site drainage and waste management infrastructure; and electricity, water and telecommunications connection.
- h. Work No. 8A - works to facilitate access to Work Nos. 1 to 7 including creation of accesses from the public highway (including three emergency accesses); works to alter the layout of any street or highway; works to private roads; creation of visibility splays; removal of vegetation; works to

widen and surface the streets; and making and maintaining passing places.

- i. Work No. 8B - ancillary works to facilitate access comprising removal of vegetation; relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings; works to private roads; works to facilitate traffic management and works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments.
- j. Work No. 9 - works to create, enhance and maintain green infrastructure and environmental mitigation including landscape and biodiversity mitigation and enhancement areas; habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure; the laying down of permissive paths, signage and information boards; improvements to existing and laying down of new or diverted public rights of way or permissive paths, signage and information boards; and screening.

1.4.7 The **Draft Development Consent Order [EN010154/APP/3.1]** provides for both the centralised and distributed BESS options in Work No. 2 and 3 in Schedule 1. However, pursuant to Requirement 6 at Schedule 2 to the DCO, the undertaker may only commence either Work No. 2 or Work No. 3 and works on the chosen option must not commence until that choice has been providing in writing to the relevant planning authority. The flexibility for the undertaker to be able to choose between Work No. 2 and Work No. 3 at the detailed design stage is necessary because BESS are continuing to evolve and advance. As such, there is a need for the Applicant to maintain commercial flexibility to meet the changing demands of the UK market prior to construction and to enable the Applicant to adopt the most up to date technology at the point of commencement of development. As such, both the centralised and distributed BESS options have been retained for flexibility in the DCO application and the **Environmental Statement [EN010154/APP/6.1]** considers and assesses the worst case scenario, or where this is not clear assesses both options both BESS options as appropriate.

1.4.8 The Associated Development 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 only insofar as these works or operations do not give rise to any materially new or materially different environmental effects from those assessed in the **Environmental Statement [EN010154/APP/6.1]**, including:-

- a. Fencing gates, boundary treatments and other means of enclosure;
- b. bunds, embankments, trenching and swales;
- c. works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;

- d. irrigation infrastructure, surface water drainage systems, runoff outfalls, SuDs ponds, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- e. 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;
- f. works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- g. works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, lightning protection masts, weather stations, storage containers, communication infrastructure, and perimeter fencing;
- h. improvement, maintenance, repair and use of existing streets, private tracks and access roads;
- i. laying down, maintenance and repair of new internal access tracks, ramps, means of access, cycle routes and roads, signage and information boards;
- j. temporary footpath diversions and closures;
- k. landscaping;
- l. temporary storage of materials prior to installation;
- m. site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- n. tunnelling, boring and drilling works; and
- o. any other further associated development comprising such other works or operations as may be necessary or expedient for the purposes of the authorised development or in connection with the authorised development but only within the Order Limits and insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the **Environmental Statement [EN010154/APP/6.1]**.

1.5 Proposed Development Parameters and the “consent envelope”

- 1.5.1 The detailed design of the Proposed Development must be in accordance with the **Design Commitments at Appendix A of the Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]**, as well as with details approved under other requirements a listed in Requirement 6 (detailed design approval) of Schedule 2 of the **Draft Development Consent Order [EN010154/APP/3.1]**. 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 [EN010154/APP/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 (July 2018). This approach is explained in **Chapter 5: Environmental Impact Assessment Methodology** of the **Environmental Statement [EN010154/APP/6.1]**.

- 1.5.2 In addition to the **Design Commitments** at **Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]**, 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 3 (Development consent etc. granted by this Order) and Schedule 2 (Requirements) of the **Draft Development Consent Order [EN010154/APP/3.1]** 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 **Draft Development Consent Order [EN010154/APP/3.1]**, where it is referred to as the "authorised development". The authorised development is granted consent pursuant to Article 3(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 3(2) requires that the numbered works authorised by the Order are situated within the corresponding numbered area shown on the **Works Plans [EN010154/APP/2.1]** and within the limits of deviation.
 - d. The design of the Proposed Development is also controlled via Requirement 6 (detailed design approval) of Schedule 2 of the **Draft Development Consent Order [EN010154/APP/3.1]**, which requires approval of details of the Proposed Development's design by North Kesteven District Council, in consultation with Lincolnshire County Council, and requires that the details submitted for approval accord with the **Design Commitments** at **Appendix A** of the **Design Approach Document [EN010154/APP/7.3]**, the **Proposed Development Parameters [EN010154/APP/7.4]** and any details approved under requirements 8 (landscape and ecological management plan), 9 (fencing and other means of enclosure), 10 (surface and foul water drainage) and 11 (archaeology). The **Design Commitments** at **Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]** set out the basis on which the assessment set out in the **Environmental Statement [EN010154/APP/6.1]** has been undertaken and secure the key design mitigation measures referenced in the **Environmental Statement**

[EN010154/APP/6.1]. The **Design Commitments** at **Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]** capture 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 [EN010154/APP/6.1]**.

- e. In addition to the **Design Commitments** at Appendix A of the **Design Approach Document [EN010154/APP/7.3]**, the **Proposed Development Parameters [EN010154/APP/7.4]** and the **Works Plans [EN010154/APP/2.2]**, the design of the Proposed Development is also controlled by:
- i. approval and implementation of the Landscape and Ecological Management Plan (Requirement 8) including the final routing, specification and maintenance regime for each permissive path);
 - ii. approval and implementation of permanent fencing and means of enclosure (Requirement 9);
 - iii. approval and implementation of any surface and foul water drainage scheme or system (Requirement 10);
 - iv. a requirement that the authorised development is carried out in accordance with the written scheme of archaeological investigation (Requirement 11);
 - v. the requirement for the design of the Proposed Development to comply with operational noise assessment (Requirement 16); and
 - vi. approval of details in relation to the provision of permissive paths (Requirement 17).
- f. Where the **Design Commitments** at **Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]** do not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the EIA and having regard to the other controls in place via the measures listed at (i) to (vi) above.
- g. The construction phase of the Proposed Development (as set out in Schedule 1 of the **Draft Development Consent Order [EN010154/APP/3.1]**, and which is required to be constructed within the areas on the **Works Plans [EN010154/APP/2.2]**), is also controlled by:
- i. approval and implementation of temporary fencing and means of enclosure (Requirement 9);
 - ii. approval and implementation of any surface and foul water drainage Proposed Development or system (Requirement 10);
 - iii. approval and implementation of a written scheme of archaeological investigation (Requirement 11);

- iv. approval and implementation of a **Framework Construction Environmental Management Plan [EN010154/APP/7.7]**, (Requirement 12);
 - v. approval and implementation of a **Framework Construction Traffic Management Plan [EN010154/APP/7.18]**, (Requirement 14);
 - vi. approval and implementation of a **Framework Soil Management Plan [EN010154/APP/7.10]** (Requirement 15); and
 - vii. the **Framework Employment, Skills and Supply Chain Plan [EN010154/APP/7.16]** (Requirement 19).
- h. The ongoing operation and maintenance of the Proposed Development is controlled by:
- i. approval and implementation of a **Framework Battery Safety Management Plan [EN010154/APP/7.17]** (Requirement 7)
 - ii. approval and implementation of the **Framework Landscape and Ecological Management Plan [EN010154/APP/7.15]** (Requirement 8);
 - iii. approval and implementation of any surface and foul water drainage scheme (Requirement 10);
 - iv. approval and implementation of a **Framework Operational Environmental Management Plan [EN010154/APP/7.8]** (Requirement 13);
 - v. approval and implementation of a **Framework Soil Management Plan [EN010154/APP/7.10]** (Requirement 15);
 - vi. an operational noise assessment has been compiled, submitted to and approved (Requirement 16); and
 - vii. the **Framework Employment, Skills and Supply Chain Plan [EN010154/APP/7.16]** (Requirement 19).
 - viii. The decommissioning works must commence no later than 60 years following the date of the final commissioning and the Proposed Development is controlled by the approval and implementation of a **Decommissioning Environmental Management Plan [EN010154/APP/7.9]** (Requirement 20).
- 1.5.4 The Application seeks flexibility to undertake the Proposed Development within the above envelope, in particular within the Limits of Deviation secured via the **Works Plans [EN010154/APP/2.2]** and the maximum areas and parameters secured by the **Design Commitments at Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]**. As set out in **Chapter 3: The Proposed Development** and **Chapter 5: Environmental Impact Assessment Methodology** of the Environmental Statement **[EN010154/APP/6.1]** and the individual technical chapters, the EIA has assessed the worst-case parameters for the Proposed Development, under the Rochdale Envelope approach, in order to predict likely worst-case overall impacts for each topic. As explained in those chapters of the **Environmental**

Statement [EN010154/APP/6.1], the worst case parameters have been defined for assessment purposes based on the detail shown on the **Works Plans [EN010154/APP/2.2]**, in the **Design Commitments at Appendix A** of the **Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]**. As a result, the **Environmental Statement [EN010154/APP/6.1]** has assessed a worst case scenario and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.

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 **Draft Development Consent Order [EN010154/APP/3.1]**, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each Article of, and Schedule to, the DCO is required for the Proposed Development.
- 2.1.2 This Explanatory Memorandum 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 **Draft Development Consent Order [EN010154/APP/3.1]** compared to the model provisions.
- 2.1.3 The **Draft Development Consent Order [EN010154/APP/3.1]** 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 PA 2008 regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the PA 2008, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152 of the PA 2008 so far as these are relevant to the Proposed Development. All powers provided for within the DCO come within the scope of section 120 of, and Schedule 5 to, the PA 2008.
- 2.1.4 The provisions contained in the **Draft Development Consent Order [EN010154/APP/3.1]** are briefly described below and then considered in more detail in the following sections:-
- a. Part 1 (Preliminary): Article 1 sets out what the DCO may be cited as and when it comes into force. Article 2 sets out the meaning of the defined terms used in the DCO;
 - b. Part 2 (Principal Powers): Articles 3 to 5 provide development consent for the Proposed Development, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 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 8 to 16 provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to temporarily prohibit or restrict the use of streets and public rights of way; permanently stop up public rights of way; to enter into

agreements with street authorities and provisions relating to traffic regulation measures;

- d. Part 4 (Supplemental Powers): Articles 17 and 18 set out two supplemental powers relating to the discharge of water and the authority to survey and investigate land;
- e. Part 5 (Powers of Acquisition): Articles 19 to 33 provide for the Applicant to be able to compulsorily acquire the DCO Land and rights over and within it for the construction, maintenance or decommissioning of the Proposed Development. Article 20 sets out a time limit for the exercise of the compulsory acquisition powers and Article 23 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 29 and 30 provide for the temporary use of land for constructing and maintaining the Proposed Development. Article 31 provides for powers in relation to the land and apparatus of statutory undertakers;
- f. Part 6 (Miscellaneous and General): Articles 34 to 47 include various general provisions in relation to the DCO:-
 - i. Article 34 sets out who has the benefit of the powers contained in the DCO and Article 35 sets out how those powers can be transferred.
 - ii. Articles 36 and 37 provide (respectively) for how landlord and tenant law applies in relation to the DCO and that the DCO Land will be "operational land" for the purposes of the Town and Country Planning Act 1990 (TCPA 1990);
 - iii. Article 38 permits certain development authorised by a planning permission granted under the TCPA 1990 that is within the Order Limits to be carried out pursuant to the terms of the planning permission without breaching the DCO.
 - iv. Articles 39 and 40 provide powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Development and in relation to trees subject to tree preservation orders;
 - v. Articles 41 to 47 include provisions relating to the certification of plans and documents relevant to the DCO (set out in Schedule 12); no double recovery, arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 14); service of notices under the DCO; procedure in relation to approvals required under the DCO; and guarantees in respect of the payment of compensation.

2.1.5 There are 15 Schedules to the DCO, 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 DCO, similar to planning conditions). Schedule 15 then contains details of the procedure for discharge of requirements required under the DCO;

- c. Schedule 3 - a list of the local legislation relating to railways, turnpikes, rivers and other watercourses that the DCO will disapply and modify insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the DCO;
- d. Schedules 4 to 8 – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to temporary traffic regulation measures;
- e. Schedule 9 - details of land in which only new rights may be acquired;
- f. Schedule 10 - amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the DCO;
- g. Schedule 11 – details of hedgerows to be removed known at this time;
- h. Schedule 12 - the documents and plans to be certified by the Secretary of State;
- i. Schedule 13 – arbitration rules that apply to most arbitrations in connection with the DCO;
- j. Schedule 14 - provisions for the protection of statutory undertakers and their apparatus; and
- k. Schedule 15 – procedure for the discharge of requirements.

3. Purpose of the DCO

- 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(1) and (2) of the PA 2008. The Applicant requires development consent under the PA 2008 in order to construct, maintain, operate and decommission the Proposed Development. Under section 37 of the PA 2008, 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 DCO, the Proposed Development is referred to as the "authorised development". The DCO refers to the person authorised to exercise the powers in the DCO as the "undertaker" and defines the undertaker as Fosse Green Energy Limited.
- 3.1.3 The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the DCO.
- 3.1.4 Section 115(1) of the PA 2008 provides that development consent may be granted for Associated Development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the authorised development are either the NSIP or are Associated Development, in order to include them in the DCO.
- 3.1.5 The ground mounted solar PV generating station within Work No. 1 in Schedule 1 to the DCO constitutes "development for which development consent is required", and as such is the NSIP.
- 3.1.6 The DCO also includes other development, which is Associated Development, included at Work Nos. 2 to 9 of Schedule 1 of the DCO. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the PA 2008.
- 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, most notably the **Cleve Hill Solar Park Order 2020** and the **Mallard Pass Solar Farm Order 2024**, which also comprised ground mounted solar PV panel arrays and related development.
- 3.1.8 In particular, Work Nos. 2 to 9 are:
- a. all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
 - b. all subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));

- c. not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (paragraph 5(iii));
 - d. all proportionate to the nature and scale of the NSIP (paragraph 5(iv));
 - e. all of a nature which is typically brought forward alongside a solar generating station (paragraph 6);
 - 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. 4, 5A, and 6);
 - ii. In Annex A, "monitoring apparatus" (Work Nos 2, 3 and 4);
 - iii. In Annex A, "Formation of new or improved vehicular or pedestrian access, whether temporary or permanent"; highway improvements, "Alteration or construction of roads, footpaths", "Parking spaces for workers" and "lay down areas" (Work Nos. 4, 5A, 8A and 8B);
 - iv. In Annex A, Hard and soft landscaping would include landscaping and other works to mitigate adverse impacts (Work No. 9); and
 - v. In Annex A, "Security measures" and "Working sites, site offices and laydown areas" (Work Nos. 5A and 7).
- 3.1.9 As the DCO seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the DCO has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the PA 2008.

3.2 Compulsory Acquisition

- 3.2.1 In addition to providing for the construction, maintenance, operation and decommissioning of the Proposed Development, the DCO will, in accordance with section 122, section 120(3) and Schedule 5 of the PA 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.
- 3.2.2 The **Book of Reference [EN010154/APP/4.3]** sets out a description of, and interests included in, the Order Limits, split by "plots", and these are shown on the **Land Plans [EN010154/APP/2.1]**. The **Book of Reference [EN010154/APP/4.3]** is divided into parts, dependent upon whether interests are Category 1, 2 or 3 interests, and the identification of those interests is explained in both the **Book of Reference [EN010154/APP/4.3]** and the **Consultation Report [EN010154/APP/5.1]**. The DCO provides for land to be compulsorily acquired, rights to be compulsorily acquired and other rights and interests that will be affected. The DCO and the **Book of Reference [EN010154/APP/4.3]** should be read together with the **Land Plans [EN010154/APP/2.1]** and the **Statement of Reasons [EN010154/APP/4.1]** which sets out the justification for the inclusion of compulsory acquisition powers in the DCO.

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 DCO Land are identified in the **Book of Reference [EN010154/APP/4.3]**.

3.3.2 Section 127(2) and (3) of the PA 2008 state 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) and (6) of the PA 2008 state 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 PA 2008 states that a DCO may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.

3.3.5 The DCO currently includes generic protective provisions in respect of electricity, gas water and sewerage statutory undertakers and operators of electronic communications code networks (see Article 44 and Schedule 14). The Applicant has agreed bespoke protective provisions with Lincolnshire Fire and Rescue which are included in Part 3 of Schedule 14. The Applicant is already in discussions with the statutory undertakers likely to be affected by the Proposed Development and is currently seeking to agree the form of bespoke protective provisions with the affected undertakers. Details of those discussions are provided in the **Schedule of Negotiations and Powers Sought at Annex A to the Statement of Reasons [EN010154/APP/4.1]**. Once those bespoke protective provisions are in an agreed form they will be included in Schedule 14 of the DCO. Further details as to how the tests under sections 127 and 138 of the PA 2008 have been satisfied are set out in the **Statement of Reasons [EN010154/APP/4.1]**.



4. Provisions of the DCO

4.1.1 The DCO consists of 47 operative provisions, each referred to as Articles and 15 Schedules. The Articles are considered below in numerical order (split between the different Parts of the DCO), and the Schedules are considered along with the Article which introduces them or to which they relate. Given the DCO refers to the Applicant as the "undertaker", for ease when reading this document with the DCO we use the term "undertaker" when explaining the provisions of the DCO below. Equally, the Proposed Development is referred to as the "authorised development" in the DCO and so for ease this document refers to the "authorised development" when explaining the provisions of the DCO.

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

4.2.1 4.2.1 Articles 1 (Citation and commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the DCO should be cited and when it takes effect.

4.2.2 Article 2 (Interpretation) provides for the interpretation of the rest of the DCO, 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 DCO, and to add required definitions, including:

- a. definitions of documents submitted as part of the Application and which are referred to in the DCO have been added. These documents are more fully identified in the table in Schedule 12 to the DCO;
- b. the definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the DCO this has been expanded to include pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electrical cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the authorised development. This definition has precedent in the **Riverside Energy Park Order 2020** and **The Mallard Pass Solar Farm Order 2024**;
- c. the definition of "authorised development" means the authorised development and Associated Development described in Schedule 1 to the DCO and includes development as defined in section 32 of the PA 2008. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the DCO, 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 DCO 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 and site investigations, the display of notices and site clearance which are considered appropriate as the nature of these works (i.e. non-intrusive or 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 – for example a written scheme of archaeological investigation prior to intrusive archaeological investigations (Requirement 11).
- e. a definition of "limits of deviation" has been added and operates by reference to the **Works Plans [EN010154/APP/2.2]**. 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 [EN010154/APP/6.1]**. See further below in relation to Article 3 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:
 - i. The definition has been drafted to directly reflect the nature and context of the authorised development, including the lifecycle of the infrastructure that forms 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;
 - ii. For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:
 - A. 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 there will be up to 4 permanent staff onsite during the operational phase, with additional staff attending when required for maintenance and cleaning activities;
- B. 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;
 - C. 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;
 - D. Remove: Adjustment and replacement activities will require plant, equipment and material to be removed;
 - E. 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;
 - F. Improve: If, for example parts are replaced, they may be replaced with an improved version, particularly where more efficient or improved technology is available.
- iii. The definition of “maintain” should be read alongside the **Framework Operational Environmental Management Plan [EN010154/APP/7.8]** at paragraphs 2.3.1 to 2.3.6. This sets out how the undertaker will provide an annual maintenance schedule of planned maintenance activities to the relevant planning authority.
- g. the definition of "Order land" means the land which is required for or is used to facilitate, or is incidental to, or is affected by the authorised development as shown on the **Land Plans [EN010154/APP/2.1]** which is within the limits of land to be acquired or used and described in the **Book of Reference [EN010154/APP/4.3]**. This land is coloured:
 - i. pink (land to be permanently acquired);
 - ii. blue (land in which the undertaker can create and acquire new rights).
 - h. The **Land Plans [EN010154/APP/2.1]** also provide clarity as to land that is excluded from both the Order and the Order Land;
 - i. the definition of “Order Limits” means the limits shown on the **Works Plans [EN010154/APP/2.2]** within which the authorised development may be carried out;
 - j. 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 DCO 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 **Riverside Energy Park Order 2020** and **The Mallard Pass Solar Farm Order 2024**;

- k. the definition of "street works" has been amended to refer to the works listed in the street works Article (Article 8(1)) so as to ensure consistency between the powers in the Article and the definition itself; and
 - l. the "undertaker" is defined as Fosse Green Energy Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 34 (Benefit of the Order) and Article 35 (Consent to transfer the benefit of the Order).
- 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 DCO – 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 DCO to refer to this phraseology (and minor tweaks which fall out of this as a consequence).
- 4.2.5 Paragraphs (4) to (9) of Article 2 have been added to provide clarity (respectively) regarding the measurement of distances, directions, capacities and lengths, which are all approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the **Works Plans [EN010154/APP/2.2]**; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; that all areas described in the **Book of Reference [EN010154/APP/4.3]** are approximate and that references to 'days' within the DCO are to be understood as calendar days unless otherwise specified.
- 4.2.6 Article 3 (Development consent etc. granted by this Order) grants development consent for the authorised development. This Article is adapted from the model provisions. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different parts of the authorised development. This split of the authorised development between different work numbers enables the DCO 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.

- 4.2.7 Paragraph (2) of Article 3 requires that the works authorised by the DCO are situated within the corresponding numbered area shown on the **Works Plans [EN010154/APP/2.2]** and within the limits of deviation. This is in order to provide certainty as to what has been consented by the DCO, in respect of which areas of land.
- 4.2.8 The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the authorised development within the set limits, allowing for micrositing so that the Applicant can respond to the conditions 'on the ground'.
- 4.2.9 Limits of deviation and parameters are appropriate in the current DCO as they serve to precisely define the authorised development by reference to the **Works Plans [EN010154/APP/2.2]**, 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 [EN010154/APP/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 [EN010154/APP/6.1]**. Further detail in this respect is provided above.
- 4.2.10 Article 4 (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 PA 2008. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the DCO. It is included so that the undertaker has powers to operate the generating station.
- 4.2.11 Article 5 (Power to maintain the authorised development) provides for the maintenance of the authorised development at any time and is required so that the undertaker has power to maintain the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the DCO. 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 [EN010154/APP/6.1]** has assessed maintenance as defined in the DCO 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 assessed in the **Environmental Statement [EN010154/APP/6.1]**.
- 4.2.12 Article 6 (Application and modification of statutory provisions) disapplies a number of statutory provisions. Section 120 of the PA 2008 makes

comprehensive and wide-ranging provision about what may be included in a DCO, as part of the PA 2008's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO; 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** and **The Mallard Pass Solar Farm Order 2024**.

4.2.13 Article 6 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 DCO 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;
- e. the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within the Order; and
- f. the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under Articles 29 (temporary use of land for constructing the authorised development) and 30 (temporary use of land for maintaining the authorised development) of this DCO. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the authorised development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant Articles of the DCO, these being Articles 29 and 30. This approach has precedent and has been accepted by the Secretary of State; see for example the **Drax Power (Generating Stations) Order 2019**, the **Millbrook Gas Fired Generating Station Order 2019**, the **Cleve Hill Solar Park Order 2020** and the **Mallard Pass Solar Farm Order 2024**.

4.2.14 Article 6 also provides for amendments to be made to the regimes relating to trees and hedgerows under the Forestry Act 1967, the Hedgerow Regulations 1997 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012. 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 inappropriate. With the controls set out in the Requirements in Schedule 2 to the DCO, the local planning authorities will still be able to consider the impacts of such works, the provisions of Article 6 simply mean that separate consents are not required to be obtained. This approach, in respect of the Forestry Act 1967, has precedent in the **Great Yarmouth Third River Crossing Development Order 2020** and the Hedgerow and Tree Preservation provisions have precedent in **The Mallard Pass Solar Farm Order 2024**.

- 4.2.15 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the DCO is made, notably in relation to the provisions under the Land Drainage Act 1991 and the Water Resources Act 1991 through protective provisions for the protection of the Environment Agency (to be included in Schedule 14 to the DCO once they are in an agreed form) and the approvals required in the Requirements at Schedule 2 to the DCO. 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.
- 4.2.16 Section 150 of the Planning Act 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's approach to obtaining the other consents required for the Proposed Development is set out in greater detail in the **Consents and Positions Statement [EN0101054/APP/3.3]**.
- 4.2.17 Section 120(5)(a) of the PA 2008 provides for DCOs to apply, modify or exclude statutory provisions that relate to any matter for which provision may be made in the DCO. Section 120(5)(b) of the PA 2008 provides that a DCO may amend, repeal or revoke the statutory provisions of local application as appear to the Secretary of State to be “necessary or expedient” in consequence of a provision of or in connection with the DCO, or (in accordance with section 120(5)(c)) in order to give full effect to any other provision of the DCO. Precedent for most of the provisions sought for this DCO can be found in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and **The Mallard Pass Solar Farm Order 2024**. The Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the DCO. The Applicant has included a list of the historic legislation that it seeks to disapply under s120(5)(a) in Schedule 3 (Legislation to be disapplied), which relates to matters including railways, turnpikes, rivers and other watercourses within, and in the vicinity of, the Order Limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the

DCO, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6 disapplies the legislation listed in Schedule 3 (Legislation to be disapplied) in so far as the provisions still in force are inconsistent with how the powers in the DCO can be exercised. The Applicant seeks to disapply each of the enactments on the list in Schedule 3 (Legislation to be disapplied) on the basis that a clear alternative regime has been provided with the Draft Development Consent Order and the DCO is intended to provide a single unified consent for the Proposed Development. The Applicant considers that, due to the importance of NSIPs, it is expedient to disapply these provisions in order to ensure that the Proposed Development can be implemented as intended in the DCO.

- 4.2.18 Article 6(5) 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.
- 4.2.19 Article 7 (Defence to proceedings in respect of statutory nuisance) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 7 is a model provision, in recognition that such noise will arise and that provision to define its consequences in an appropriate and balanced manner will be needed. This will be true of the Proposed Development and for this reason it is necessary to include the Article in the DCO. It has however been adapted to account for the operational and decommissioning phases as well as construction. This is on the basis that there exist controls in the **Framework Operational Environmental Management Plan [EN010154/APP/7.8]**, an approved operational noise assessment pursuant to Requirement 16 (operational noise), and in the **Framework Decommissioning Environmental Management Plan [EN010154/APP/7.9]**, which should be able to be taken into account in the consideration of nuisance claims.

4.3 Part 3 (Streets)

- 4.3.1 Article 8 (Street Works) allows the undertaker to carry out certain works to a street for the purposes of the authorised development. It is necessary because implementation of the authorised development will require works to be undertaken to streets. Schedule 4 (Streets subject to street works) sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been 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 Order 2024**. In

addition, as the Cable Corridor will cross a number of streets, (as shown on the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]** and the **Works Plans [EN010154/APP/2.2]**, 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 9 (Application of the permit scheme) deals with the relationship between the DCO powers and the traffic management permit scheme operated by Lincolnshire County Council. Article 9(1) confirms that the permit scheme applies with the modifications set out in Article 9 to street works carried out under Article 8 (street works). Paragraphs (2) and (3) deal with refusal of a permit or the imposition of conditions and paragraph (4) deals with the right to appeal using the mechanism set out in Schedule 15 (Procedure for discharge of requirements). This Article has been included based on wording in the **Viking CCS Carbon Dioxide Pipeline Order 2025**, which was included in the drafting at the suggestion of Lincolnshire County Council. Similar wording is included in the **Southampton to London Pipeline Development Consent Order 2020** and the **National Grid (Bramford to Twinstead Reinforcement) Order 2024**. The Applicant will continue discussions with Lincolnshire County Council as to the need for this Article as well as any additional controls associated with the street works Articles in Part 3 of the **Draft Development Consent Order [EN010154/APP/3.1]**. The **Draft Development Consent Order [EN010154/APP/3.1]** and any associated control documents will be updated throughout the course of the Examination, to reflect any agreement in this respect.
- 4.3.3 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 5 (Alteration of streets) then sets out the alterations to streets (split into two parts showing temporary and permanent works respectively). This Article is necessary because, in order to construct, operate, maintain and decommission the authorised development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the authorised development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street) require the consent of the street authority in such a form as reasonably required by the street authority before they can be exercised, as provided for in paragraph (4). Article 10 has precedent and appears in the **Drax Power (Generating Stations) Order 2019**, the **Great Yarmouth Third River Crossing Development Consent Order 2020** and **The Mallard Pass Solar Farm Order 2024**.
- 4.3.4 Article 11 (Construction and maintenance of altered streets) provides that the permanent alterations to the streets listed in Part 1 of Schedule 5 (Alteration of streets) and restoration works carried out pursuant to Article 10(3) must be completed to the reasonable satisfaction of the street authority in a form reasonably required by the street authority and be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the street authority (paragraph (1 and (3))). Temporary alterations are set out in Part 2 of Schedule

- 5 (Alteration of streets) and must be completed to the reasonable satisfaction of the street authority, and maintained at the undertaker's expense for the duration that the temporary alterations are used by the undertaker for the purposes of the authorised development (paragraph (2)). The purpose of this Article is to define who will be responsible for the maintenance of altered streets following the carrying out of works and it is required to provide certainty as to who will be responsible for such maintenance.
- 4.3.5 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. This Article (and the incorporation of the defences in particular) is similar to Article 19 in the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 11 in the **Drax Power (Generating Stations) Order 2019** and Article 10 of **The Mallard Pass Solar Farm Order 2024**.
- 4.3.6 Article 12 (Temporary prohibition or restriction of the use of streets and public rights of way) provides for the temporary closure, prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of any street or public right of way for the purposes of the authorised development or in connection with it. It is required because, in particular, the undertaker will need to temporarily divert certain streets or public rights of way in order to construct the authorised development, as shown on the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. Part 2 (temporary closure of public rights of way with diversions), Part 3 (permanent use of motor vehicles on public rights of way), Part 4 (temporary management of public rights of way) and Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 to the **Draft Development Consent Order [EN010154/APP/3.1]** are relevant.
- 4.3.7 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. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way rather than streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 6 to the **Draft Development Consent Order [EN010154/APP/3.1]** and as shown on the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. Article 12 mirrors Article 11 of the model provisions in providing that where the public right of way is specified in a Schedule to the DCO that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other public rights of way not specified in a schedule to the DCO there would be a requirement to obtain the consent of the street authority. Article 16 (traffic regulation measures) (see below) deals with traffic regulation more widely.
- 4.3.8 Article 12(5) provides that compensation is payable in respect of loss suffered by the suspension of any street. This provision is required so that persons who temporarily lose private rights of way because of the suspension of a street or

public right of way can be appropriately compensated. Paragraph (6) provides an additional power to the undertaker which allows it to use any street or public right of way temporarily stopped up as a temporary working site (which is not in the model provision). Paragraph (8) also makes it clear that the powers under Article 12(1) can be exercised multiple times. Similar wording to this Article has been used in other made Orders, including Article 11 of the **Wrexham Gas Fired Generating Station Order 2017**, Article 12 of the **Meaford Gas Fired Generating Station Order 2016**, Article 13 of the **Riverside Energy Park Order 2020** and Article 11 of **The Mallard Pass Solar Farm Order 2024**.

- 4.3.9 Article 13 (Stopping up of public rights of way) provides the undertaker with the power to stop up the public rights of way shown on the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]** with a brown dashed line. These public rights of way will be permanently stopped up with a replacement route to be provided, as shown on the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. Where the route is stopped up, all public rights of way over or along this route are also extinguished and private rights over or along the route are extinguished or cease to have effect (subject to the provisions in Article 23 (private rights)). The undertaker can use as much of the route as is bounded on both sides by land owned by the undertaker as necessary for the authorised development (paragraph 4). Paragraph 6 notes that the Article is subject to Article 32 (apparatus and rights of statutory undertakers in stopped up streets). 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.
- 4.3.10 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 7 to the DCO. This Article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the authorised development. For clarity, Schedule 7 is split into Part 1 (permanent means of access) and Part 2 (temporary means of access). 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. Paragraph 2 states that if the relevant planning authority has not given approval within 28 days of receiving the application for approval, then it is deemed to have approved it. This paragraph has precedent in the **Heckington Fen Solar Park Order 2025**. The Article also clarifies that approval of the relevant planning authority for the access works sought under this Article is not required if approval for those works has already been given pursuant to Requirement 6(1) (detailed design approval). 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, stopping up, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 8 (street works), 11 (construction

and maintenance of altered streets) and 14 (access to works) of the DCO and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the authorised development as those powers are not required for the authorised development. This provision has precedent in the **Riverside Energy Park Order 2020** and is required so that the undertaker may enter into agreements with the relevant street authorities.

- 4.3.11 Article 16 (Traffic regulation measures) provides the undertaker with powers to place temporary traffic signs and signals and impose temporary speed limits in the extents of the roads specified in Parts 1 and 2 of Schedule 8 (traffic regulation measures) and shown on the **Traffic Regulation Measures Plans [EN010154/APP/2.4]**. Schedule 8 (traffic regulation measures) identifies the relevant roads and specifies the extent of the roads that will be subject these provisions. These specific measures are required to safely regulate traffic. Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Proposed Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned.
- 4.3.12 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 PA 2008. For example, similar provision is contained within the **Network Rail (Norton Bridge Area Improvements) Order 2014**, **National Grid (Hinkley Point C Connection Project) Order 2016**, the **Great Yarmouth Third River Crossing Development Consent Order 2020** and more recently in **The Mallard Pass Solar Farm Order 2024**.

4.4 Part 4 (Supplemental Powers)

- 4.4.1 Article 17 (Discharge of water) is largely based on the 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 DCO. Paragraph 17(8) provides for the deemed consent of the relevant consent body if that body fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval

under paragraph (4)(a). This paragraph has precedent in **Heckington Fen Solar Park Order 2025**.

- 4.4.2 Article 18 (Authority to survey and investigate the land) is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the authorised development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the authorised development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 4.4.3 The model provision has been modified so that no trial holes are to be made:
- a. in land located within the highway boundary without the consent of the highway authority; or
 - b. in a private street without the consent of the street authority.
- 4.4.4 Paragraph 7 of this Article states that if either a highway authority or a street authority receives an application for consent for trial holes and fails to notify the undertaker of its decision within 28 days of receiving the application for consent then that authority is deemed to have granted consent. This paragraph has precedent in **Heckington Fen Solar Farm Order 2025**.
- 4.4.5 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 **Lake Lothing (Lowestoft) Third Crossing Order 2020** and **Heckington Fen Solar Farm Order 2025**.

4.5 Part 5 (Powers of Acquisition)

- 4.5.1 Article 19 (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. The Article is necessary to secure the delivery of the authorised development as set out in more detail in the **Statement of Reasons [EN010154/APP/4.1]** accompanying the application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 23 (Private rights). Similarly, Article 22 (Compulsory acquisition of rights) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the authorised development. This approach has precedent in the **Riverside Energy Park Order 2020** and the **Lake Lothing (Lowestoft) Third Crossing Order 2020**.
- 4.5.2 Article 19(2) makes clear that the powers in this Article are subject to the powers and restrictions in the other Articles in Part 5 of the DCO so that the

general power in Article 19 is read as being subject to the remainder of that Part, where relevant.

- 4.5.3 Article 20 (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 DCO 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 DCO and has precedent in the majority of made DCOs to date.
- 4.5.4 Article 21 (Compulsory acquisition of land – incorporation of the mineral code) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order Limits, and that the Order Limits are located within Mineral Consultation and Safeguarding Areas. The incorporation of the mineral code means that when the undertaker compulsorily acquires land under the DCO, it does not also acquire the rights to mine minerals.
- 4.5.5 Article 22 (Compulsory acquisition of rights) enables the undertaker to acquire rights or impose restrictive covenants over the DCO Land as may be required for any purpose for which the land may be acquired under Article 19 (Compulsory acquisition of land). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 23 (private rights) and Article 31 (statutory undertakers).
- 4.5.6 The Article provides that, in respect of those parts of the Order Land set out in Schedule 9 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required so that the undertaker can construct and maintain the authorised development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the authorised development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 9 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the authorised development and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 4.5.7 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenants for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker, and that the exercise by the relevant statutory undertaker of those rights is subject to the same

restrictions, liabilities and obligation as would apply under the DCO if they were to be exercised by the undertaker.

- 4.5.8 This Article is a departure from the model provisions, but it has precedent in many DCOs including the East Anglia Three Offshore Wind Farm Order 2017, the Cleve Hill Solar Park Order 2020, the Riverside Energy Park Order 2020, the Longfield Solar Farm Order 2023 and the Mallard Pass Solar Farm Order 2024.
- 4.5.9 Article 23 (Private rights) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 19 (Compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 22 (Compulsory acquisition of rights); 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 DCO. 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.
- 4.5.10 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the PA 2008 rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.
- 4.5.11 Article 24 (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 DCO. 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.
- 4.5.12 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 **Drax Power (Generating Stations) Order 2019** and **Heckington Fen Solar Farm Order 2025**.
- 4.5.13 Article 25 (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 19 (compulsory acquisition of land) or Article 22 (compulsory acquisition of rights)), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid

underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners.

- 4.5.14 Article 26 (Power to override easements and other rights) provides that in carrying out or using the development authorised by the DCO and doing anything else authorised by the DCO, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in Article 19 of the **Immingham Open Cycle Gas Turbine Order 2020** and Article 23 of the **Heckington Fen Solar Farm Order 2025**.
- 4.5.15 Article 27 (Modification of Part 1 of the Compulsory Purchase Act 1965) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the DCO by section 125 of the PA 2008. 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 DCO. Paragraphs (1) to (5) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the DCO. 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**, **Silvertown Tunnel Order 2018** and the **Heckington Fen Solar Farm Order 2025**.
- 4.5.16 Article 28 (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.
- 4.5.17 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.
- 4.5.18 Article 29 (Temporary use of land for constructing the authorised development) provides a general power allowing the Order Land to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the authorised

development for which temporary possession of the land was taken unless agreed otherwise with the landowner. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.

- 4.5.19 Land temporarily possessed under Article 29 may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 4.5.20 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 9 (land in which only new rights etc. may be acquired), and nor are the powers under Article 25 (Acquisition of subsoil only) or Article 28 (Rights under or over streets) precluded.
- 4.5.21 Article 30 (Temporary use of land for maintaining the authorised development) provides for the temporary use of land for maintenance of the authorised development during the maintenance period. 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.
- 4.5.22 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the Proposed Development is opened for use as this is more appropriate for this type of development, except in relation to landscaping where “the maintenance period” means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to Requirement 8 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 **Drax Power (Generating Stations) Order 2019** and the **Immingham Open Cycle Gas Turbine Order 2020**. However, in order to be able to carry out the landscaping commitments set out in the landscape and ecological management plan, the maintenance period has been extended to the period in the landscape and ecological management plan approved pursuant to Requirement 8. A similar provision was included in the **North Wales Wind Farm Connection Order 2016** and the **Drax Power (Generating Stations) Order 2019** and **Heckington Fen Solar Farm Order 2025**.
- 4.5.23 Articles 29 and 30 are broadly based on the model provisions and provide for the payment of compensation for that temporary use of the land.
- 4.5.24 Article 31 (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 44 below) included at Schedule 14 of the DCO. Further details on statutory undertakers' land and apparatus are included in the **Statement of Reasons [EN010154/APP/4.1]**. This power is required over the whole of Order Land and similar wording has been used in other made Orders including the **Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024 and Heckington Fen Solar Farm Order 2025**.

- 4.5.25 Article 32 (Apparatus and rights of statutory undertakers in stopped up streets) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up, altered or diverted or its use is temporarily prohibited or restricted by the DCO. 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 14.
- 4.5.26 Article 33 (Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under Article 31 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

4.6 Part 6 (Miscellaneous and General)

- 4.6.1 Article 34 (Benefit of the Order) overrides section 156(1) of the PA 2008 (which is permitted by section 156(2) of the PA 2008) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. This is with the exception of Work No. 5B where the provisions have effect for the benefit of the undertaker and National Grid Electricity Transmission Plc (NGET). This gives NGET the power to undertake Work No. 5B themselves should they prefer to do so as Work No. 5B is undertaken entirely on NGET 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 **Cleve Hill Solar Park Order 2020, the Longfield Solar Farm Order 2023, The Mallard Pass Solar Farm Order 2024 and Heckington Fen Solar Farm Order 2025**.
- 4.6.2 Article 35 (Consent to transfer the benefit of the Order) is a standard Article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the DCO. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the DCO 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 DCO except where:
- a. the transferee is National Grid Electricity Transmission Plc;

- b. the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
 - c. the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 4.6.3 Article 35(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 4.6.4 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 DCO, or there are no outstanding actual or potential compulsory purchase claims. Article 35(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State and the relevant planning authority in writing prior to the transfer or grant of the benefit of the provisions of the DCO. Article 35(5) to (7) provide further detail on the notification that is to be given, including that the undertaker must give at least 14 days' notice of the transfer to the Secretary of State. This is based on the notification procedure contained in Article 33 of the **Longfield Solar Farm Order 2023**.
- 4.6.5 Article 35(8) provides that where the undertaker has transferred the benefit of the DCO or granted the benefit of the DCO then:
 - a. the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - b. the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker; and
 - c. the benefits or rights conferred under paragraph (1) of the Article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 4.6.6 This approach has precedent in the **Cleve Hill Solar Park Order 2020** and **The Mallard Pass Solar Farm Order 2024**.
- 4.6.7 Article 36 (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.
- 4.6.8 Article 37 (Operational land for purposes of the 1990 Act) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to

operational land, such as permitted development rights, have effect as they would do if planning permission had been granted for the authorised development. Article 37 of the **A19/A184 Testo's Junction Alteration Development Consent Order 2018** and Article 42 of the **A30 to Chiverton to Carland Cross Development Consent Order 2020** followed the same approach.

- 4.6.9 Article 38 (Planning permission, etc.) permits certain development authorised by a planning permission granted under the TCPA 1990 that is within the Order Limits to be carried out pursuant to the terms of the planning permission without breaching the DCO. This provision ensures that the undertaker does not breach section 161 of the PA 2008 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** (Article 7) and the **A30 Chiverton to Carland Cross Development Consent Order 2020** (Article 7) and **The A122 (Lower Thames Crossing) Development Consent Order 2025** (Article 56).
- 4.6.10 Paragraph (2) addresses the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC [30]. That judgment relates to planning permissions granted under the TCPA 1990. 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.
- 4.6.11 Paragraph (2) ensures that enforcement action is not taken in respect of planning permissions granted under the TCPA 1990 which are inconsistent with the works and exercise of powers under the DCO. The provision is based on Article 3(3) of the **Lake Lothing (Lowestoft) Third Crossing Order 2020**. However, it differs from that precedent in that the provision reflects the terminology used by their Lordships in that case and confirms that planning permissions which conflict with the Proposed Development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Proposed Development and the development authorised under a planning permission. It is considered this is necessary to confirm that developments are not prevented.
- 4.6.12 Paragraph (3) has been inserted to deal with the converse situation and confirms that development under a planning permission is not to prevent activity authorised under the DCO.
- 4.6.13 Without paragraphs (2) or (3) there is a significant risk of the DCO or other permissions being undeliverable or subject to enforcement action.
- 4.6.14 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 within or overhanging land within the Order Limits or 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 11 (Hedgerows to be removed) along with the specific purpose of each removal.
- 4.6.15 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.
- 4.6.16 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.
- 4.6.17 Article 40 (Trees subject to tree preservation orders) provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. The Article is a model provision included in numerous made DCOs save that it applies generally to any tree subject to a TPO made before and after the date of the DCO coming into effect and either within or overhanging the Order Limits. This approach has precedent in the **Cleve Hill Solar Park Order 2020**. Article 41 (Certification of plans and documents, etc.) provides for the undertaker to submit various documents referred to in the DCO (such as the **Book of Reference [EN010154/APP/4.3]**, plans and **Environmental Statement [EN010154/APP/6.1]**) to the Secretary of State so that they can be certified as being true copies. The Article refers to Schedule 12 (documents and plans to be certified), where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 12 provide certainty as to which documents will be certified by the Secretary of State in relation to the DCO.
- 4.6.18 Article 42 (no double recovery) states that compensation is not payable in respect of the same matter both under this DCO and under any enactment, any contract or any rule of law. This Article has precedent in **The West Burton Solar Project Order 2025**.
- 4.6.19 Article 43 (Arbitration) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 13 (Arbitration rules), has precedent in the **Millbrook Gas Fired Generating Station Order 2019** and the **Cleve Hill Solar Park Order 2020**, 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.
- 4.6.20 The Article provides that differences under the DCO should be settled by arbitration unless another means of resolving a dispute is provided for in the

- DCO. 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.
- 4.6.21 It applies Schedule 13 to the DCO, which sets out further detail of the arbitration process. The detail of Schedule 13 is set out below.
- 4.6.22 In addition, Article 43(2) provides that any matter for which the consent or approval of the Secretary of State is required under the DCO is not subject to arbitration.
- 4.6.23 Article 44(Protective Provisions) provides for Schedule 14, which protects the interests of certain statutory undertakers, to have effect. This is set out in detail below. This is a model provision.
- 4.6.24 Article 45 (Service of notices) governs how any notices that may be served under the provisions of the DCO are deemed to have been served properly. In particular, it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the PA 2008 only apply to notices served under the PA 2008 itself and do not apply to notices served under the DCO. These provisions are based on those appearing in the **Transport and Works (Model Provisions for Railways and Tramways) Order 2006**, and numerous made DCOs.
- 4.6.25 Article 46 (Procedure in relation to certain approvals etc.) provides procedures in relation to consents and approvals required pursuant to the DCO (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within eight weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article.
- 4.6.26 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 15 (Procedure for discharge of requirements) (see below).
- 4.6.27 This Article has precedent in **The Mallard Pass Solar Farm Order 2024** 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 DCO
- 4.6.28 Article 47 (Guarantees in respect of payment of compensation) restricts the undertaker from exercising the powers conferred under Articles 19, 22, 23, 28, 29, 30 and 31 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the DCO. This provision is included in



order to protect the recipients of any compensation under the DCO 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 Mallard Pass Solar Farm Order 2024** and the **Heckington Fen Solar Park Order 2025**.

5. The DCO Schedules

5.1 Schedule 1 (Authorised Development)

- 5.1.1 This Schedule describes the authorised development in detail and split into different work numbers. Each of these work numbers represents a different part of the authorised development. This split of the authorised development between different work numbers is designed to enable the DCO 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 DCO.
- 5.1.2 The works set out in Schedule 1 to the DCO 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 [EN010154/APP/6.1]**. This is achieved through the following mechanisms in the DCO:
- a. Article 3 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the **Works Plans [EN010154/APP/2.2]** – 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 [EN010154/APP/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 [EN010154/APP/6.1]**.
 - 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; proposed finished ground levels; external appearance; hard surfacing materials; drainage, water, electrical, power and communications cables and pipelines; access, parking and circulation areas, junction improvements and passing places; and 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 Commitments at Appendix A of the Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]**. The details must also accord with any details approved under requirements 8 (landscape and ecological management plan), 9 (fencing and other means of enclosure), 10 (surface and foul water drainage) and 11 (archaeology). The **Design Commitments at Appendix A of the Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]** are certified documents pursuant to Article 41 (certification of plans and documents) and Schedule 12

(documents and plans to be certified). Those documents contain the maximum parameters for the authorised development and are the same as those used for the assessment of effects in the **Environmental Statement [EN010154/APP/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, as explained above, 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 the "consent envelope" is explained further at Section 1.5 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 DCO. 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 [EN010154/APP/6.1]** and specifically refer to the framework 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, for example, in relation to requirement 8 (landscape and ecological management plan). This is a departure from the model provisions. Where consultation is required under the DCO 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 [EN010154/APP/6.1]**; enforceable and precise in their language; and reasonable in all other respects.
- 5.2.5 In all cases where a strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved strategy or plan.

This is subject to requirement 4 (approved details and amendments to them), as explained below.

- 5.2.6 Requirement 1 – Interpretation: This provides a definition in relation to "relevant planning authority", the provisions of which reflect the request of North Kesteven District Council and Lincolnshire County Council. It also provides a definition of "date of final commissioning". Both these definitions apply to this Schedule only, rather than the DCO as a whole.
- 5.2.7 Requirement 2 - Commencement of the authorised development: This requirement provides that the authorised development must not commence later than 5 years from the date of the DCO coming into force.
- 5.2.8 Requirement 3 – 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.
- 5.2.9 Requirement 4 – Approved details and amendments to them: This requirement provides where any plans, details or schemes have been approved pursuant to any requirement 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. Where amendments are sought to any approved documents, plans, details or schemes and the initial approval was subject to a consultation process, the relevant planning authority is required to re-consult with those consultees before issuing a new approval. 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 [EN010154/APP/6.1]**.
- 5.2.10 Requirement 5 – Community Liaison Group: This requirement provides that the undertaker must establish a community liaison group prior to commencement of the authorised development, in order to facilitate liaison between representatives of people living in the vicinity of the Order Limits, and other relevant organisations in relation to the construction of the authorised development. The Community Liaison Group has, in fact, already been established by the undertaker in accordance with its terms of reference and held its first meeting. This requirement has, therefore, in effect already been discharged, but is included here to give comfort to local stakeholders that its operation will continue.
- 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 part of the authorised development can commence. The details submitted must be in accordance with the **Design Commitments at Appendix A of the Design Approach Document [EN010154/APP/7.3]** and the **Proposed Development Parameters [EN010154/APP/7.4]** and any details approved under requirements 8, 9, 10 and 11. The authorised

development must be carried out in accordance with the approved details. The Requirement does not apply to details of vehicular and pedestrian access, parking and circulation areas, junction improvements and passing places in Requirement 6(1)(g) if approval of these details has already been obtained pursuant to Articles 10 (power to alter layout, etc. of streets), 11 (construction and maintenance of altered streets) or 14 (access to works) to avoid duplication of approval processes for those aspects.

- 5.2.12 To provide a control on the flexibility sought under the DCO in relation to the chosen BESS infrastructure, Requirement 6 also provides at sub-paragraphs (5) and (6) that the undertaker may only commence either Work No. 2 or Work No. 3 and that the chosen work must not commence until an explanation of the choice made by the undertaker has been provided in writing to the relevant planning authority. The drafting in these sub-paragraphs reflects that adopted in other made DCOs that have sought optionality in their detailed design such as the **Hornsea Three Offshore Wind Farm Order 2020**.
- 5.2.13 Requirement 7 – Battery Safety Management: this requirement stipulates that Work No. 2 or Work No. 3 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority. The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 or Work No. 3 and must be substantially in accordance with the **Framework Battery Safety Management Plan [EN010154/APP/7.17]**. The relevant planning authority must consult with Lincolnshire Fire and Rescue and the Environment Agency. The battery safety management plan must be implemented as approved.
- 5.2.14 Requirement 8 – Landscape and ecological management plan: The requirement stipulates that no part of the authorised development may commence, and no part of the permitted preliminary works for that part comprising vegetation removal may start, until a written landscape and ecological management plan (which is substantially in accordance with the **Framework Landscape and Ecological Management Plan [EN010154/APP/7.15]**) is approved by the relevant planning authority in consultation with Lincolnshire County Council, Natural England and the Environment Agency.
- 5.2.15 In addition, the plan must include details of how the plan proposals will contribute to the achievement of a minimum of 30% biodiversity net gain in habitat units, 50% biodiversity net gain in hedgerow units and 10% biodiversity net gain in watercourse units during the operation of the authorised development based on the metric used to calculate those percentages specified in the **Biodiversity Net Gain Report [EN010154/APP/7.12]**.
- 5.2.16 Each landscape and ecological management plan approved under this requirement must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which each plan relates.
- 5.2.17 Requirement 9 – Fencing and other means of enclosure: The undertaker is required to submit details of and obtain the written approval from the relevant

planning authority for any proposed permanent and temporary fences, walls or other means of enclosure, for each part prior to commencement of the part of the authorised development or part of the permitted preliminary works in question. In respect of any permanent fences, walls or other means of enclosure:

- a. The details must be in accordance with the **Proposed Development Parameters [EN010154/APP/7.4]** and the **Design Commitments at Appendix A of the Design Approach Document [EN010154/APP/7.3]**;
- b. Any temporary fencing must be removed on completion of construction of the part of the authorised development for which it was used;
- c. The fencing, walls or other means of enclosure must be completed prior to the date of final commissioning for the phase it is associated with; and
- d. The fencing, walls or other means of enclosure must be properly maintained for the operational lifetime of that part of the authorised development.

5.2.18 Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

5.2.19 Requirement 10 – Surface and foul water drainage: This requirement provides that no part of the authorised development may commence until details of the surface water drainage scheme and foul water drainage system (if any) have been submitted to and approved by the local lead flood authority and the relevant planning authority in consultation with Anglian Water and the Environment Agency. The surface water drainage scheme and foul water drainage system must be substantially in accordance with the **Framework Surface Water Drainage Strategy at Appendix 9-D of the Environmental Statement [EN010154/APP/6.3]**. Any approved scheme must be implemented as approved.

5.2.20 Requirement 11 – Archaeology: This requirement stipulates that no part of the authorised development (which includes permitted preliminary works) may commence until:

- a. a scheme for additional trial trenching has been submitted to and approved by the relevant planning authority, in consultation with Historic England. The trial trenching must be carried out in accordance with scheme approved; and
- b. updates are made to the framework written scheme of investigation (WSI) to account for the results of the additional trial trenching carried out and that updated WSI is submitted to and approved by the relevant planning authority, in consultation with Historic England. The authorised development must be carried out in accordance with the approved WSI.

5.2.21 Requirement 12 – Construction environmental management plan: Under this requirement, no part of the authorised development may commence until a construction environmental management plan for that part (which must substantially accord with the **Framework Construction Environmental**

Management Plan [EN010154/APP/7.7]) has been submitted to and approved by the relevant planning authority for that part, in consultation with Lincolnshire County Council, National Highways and the Environment Agency. All construction works of any part of the authorised development must be carried out in accordance with the approved construction environmental management plan for that part.

- 5.2.22 Requirement 13 – Operational environmental management plan: This requirement provides that prior to the date of final commissioning for any part of the authorised development an operational environmental management plan (which must substantially accord with the **Framework Operational Environmental Management Plan [EN010154/APP/7.8]**) must be submitted to and approved by the relevant planning authority, in consultation with Lincolnshire County Council, National Highways and the Environment Agency. The operation of any part of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that part.
- 5.2.23 Requirement 14 - Construction traffic management plan: This requirement provides that no part of the authorised development may commence until a construction traffic management plan (which must substantially accord with the **Framework Construction Traffic Management Plan [EN010154/APP/7.18]**) has been submitted to and approved by the relevant planning authority in consultation with National Highways. The construction traffic management plan must be implemented as approved.
- 5.2.24 Requirement 15 – Soil management plan: This requirement provides that no part of the authorised development may commence until a soil management plan (which must be substantially in accordance with the **Framework Soil Management Plan [EN010154/APP/7.10]**) has been submitted to and approved by the relevant planning authority and Natural England. The soil management plan must be implemented as approved.
- 5.2.25 Requirement 16 – Operational noise: This requirement stipulates that no part of the authorised development may be operational until an operational noise assessment has been submitted to and approved by the relevant planning authority. The operational noise assessment must contain details of how the design of the authorised development for that part has incorporated mitigation to ensure operational noise rating levels as set out in the environmental statement are to be complied with for that part. The design as described in the operational noise assessment must be implemented and maintained as approved throughout the operation of that part of the authorised development.
- 5.2.26 Requirement 17 – Permissive Paths: this requirement requires that prior to the construction of a permissive path, the undertaker must submit details of that permissive path for approval to the relevant planning authority. The details must include:
- a. the final routing of the permissive path, such routing to be substantially in accordance with the routing as shown on the streets, rights of way and access plans;

- b. the specification of the permissive path; and
 - c. the maintenance regime for the permissive path
- 5.2.27 The permissive path must be provided and open to the public prior to the date of final commissioning in respect of the part of the authorised development which include the permissive path and must be provided and maintained in accordance with the approved details until that part of the authorised development is decommissioned.
- 5.2.28 Requirement 18 – Public right of way: This requirement provides that no part of the authorised development may commence until a public rights of way management plan (for any sections of public rights of way shown to be temporarily closed on the streets, rights of way and access plans) has been submitted to and approved by the relevant planning authority. The public rights of way management plan must be substantially in accordance with the **Framework Public Rights of Way Management Plan [EN010154/APP/7.14]** and must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.
- 5.2.29 Requirement 19 – Employment, skills and supply chain: this requirement stipulates that no part of the authorised development may commence until an employment, skills and supply chain plan (which must be substantially in accordance with the **Framework Employment, Skills, and Supply Chain Plan [EN010154/APP/7.16]**) in relation to that part has been submitted to and approved by the relevant planning authority, in consultation with Lincolnshire County Council. The employment, skills, supply chain plan must identify opportunities for individuals and businesses to access employment, skills and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities. The employment, skills and supply chain plan must be implemented as approved.
- 5.2.30 Requirement 20 – Decommissioning: This requirement provides that decommissioning works, which are set out in the decommissioning environmental management plan, must commence no later than 60 years following the date of the final commissioning.
- 5.2.31 Before decommissioning works can commence, the undertaker must submit to the relevant planning authority for its approval, in consultation with Lincolnshire County Council, National Highways and the Environment Agency, a decommissioning environmental management plan for that part which substantially accords with the **Framework Decommissioning Environmental Management Plan [EN010154/APP/7.9]**. No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted in relation to such works. The plan submitted must be implemented as approved. This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

5.3 Schedule 3 (Legislation to be disapplied)

- 5.3.1 This Schedule lists out the legislation that the DCO disapplies that relate to matters including railways, turnpikes, rivers and other watercourses within, and in the vicinity of, the Order Limits in so far as such legislation is in force and is incompatible with the powers contained within the DCO. As explained above in relation to Article 6, the legislation listed relates to matters including railways, turnpikes, rivers and other watercourses within, and in the vicinity of, the Order Limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively determine whether or not the provisions of the legislation were relevant to the DCO, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope.

5.4 Schedule 4 (Streets subject to street works)

- 5.4.1 This Schedule sets out the streets that are to be subject to street works by reference to the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. The Schedule relates to Article 8 (Street works).

5.5 Schedule 5 (Alteration of streets)

- 5.5.1 This Schedule sets out the streets that are to be permanently altered (Part 1) and temporarily altered (Part 2) by reference to the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. This Schedule relates to Articles 10 (Power to alter layout, etc., of streets) and 11 (Construction and maintenance of altered streets).

5.6 Schedule 6 (Streets and public rights of way)

- 5.6.1 This Schedule sets out the locations of the streets and public rights of way the use of which is to be temporarily prohibited or restricted (Part 1), the public rights of way to be temporarily closed and diverted (Part 2), the public rights of way over which the undertaker seeks authorisation to use motor vehicles permanently (Part 3), the public rights of way to be temporarily managed, and the public rights of way over which the undertaker seeks authorisation to use motor vehicles temporarily (Part 5). It references the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. This Schedule relates to Article 12 (Temporary stopping up of streets and private means of access) and 13 (Stopping up of public rights of way).

5.7 Schedule 7 (Access to Works)

- 5.7.1 This Schedule sets out the permanent means of access to works (Part 1) and temporary means of access (Part 2) to the authorised development. It references the **Streets, Rights of Way and Access Plans [EN010154/APP/2.3]**. The Schedule relates to Article 14 (Access to works).

5.8 Schedule 8 (Traffic regulation measures)

- 5.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 16 (Traffic regulation measures) and contains details of the nature of the measures for each affected street.

5.9 Schedule 9 (land in which only new rights etc. may be acquired)

- 5.9.1 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 Plans [EN010154/APP/2.1]**, with the relevant works listed in column 2 and the nature of the rights in column 3 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 22 (Compulsory acquisition of rights).

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

- 5.10.1 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 **Cleve Hill Solar Park Order 2020**, the **East Anglia ONE North Offshore Wind Farm Order 2022** and **The Mallard Pass Solar Farm Order 2024**. 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 22 (Compulsory acquisition of rights).

5.11 Schedule 11 (Hedgerows to be removed)

- 5.11.1 This Schedule sets out the specific hedgerows to be removed pursuant to Article 39 (Felling or lopping of trees and removal of hedgerows) and lists in column 2 the number of hedgerow and extent of removal by reference to the **Hedgerow Plans [EN010154/APP/2.9]**.

5.12 Schedule 12 (Documents and plans to be certified)

- 5.12.1 This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 41 (Certification of plans and documents, etc.).

5.13 Schedule 13 (Arbitration rules)

- 5.13.1 This Schedule relates to Article 43 (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.
- 5.13.2 Schedule 13 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 5.13.3 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.
- 5.13.4 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.

5.14 Schedule 14 (Protective provisions)

- 5.14.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule relates to Article 44 (Protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2), and Lincolnshire Fire and Rescue at Part 3).
- 5.14.2 The Applicant is already in discussions with the statutory undertakers likely to be affected by the Proposed Development, including Anglian Water, Cadent Gas, National Grid Electricity Limited, Network Rail, National Highways, Virgin Media, the Environment Agency and the British Pipeline Agency and is currently seeking to agree the form of bespoke protective provisions with the affected undertakers. Details of those discussions are provided in the **Schedule of Negotiations and Powers Sought at Annex A to the Statement of Reasons [EN010154/APP/4.1]**. As the parties have yet to reach an agreement on the protective provisions, these provisions are not yet included in Schedule 14 but are anticipated to be included a short time into

the Examination process, once those bespoke protective provisions are in an agreed form.

5.15 Schedule 15 (Procedure for discharge of requirements)

- 5.15.1 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 DCO. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances. Where an application has been made to the relevant planning authority, it has ten weeks to give notice of its decision to the undertaker. 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 15 have been used in various orders and can be seen in a similar form in the **Longfield Solar Farm Order 2023**, the **Cleve Hill Solar Park Order 2020**, **Little Crow Solar Park Order 2022**, **The Mallard Pass Solar Farm Order 2024** and the **Heckington Fen Solar Farm Order 2025**.
- 5.15.2 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.
- 5.15.3 Paragraph 5 sets out the amount of fee payable by the undertaker to the relevant planning authority on each occasion that the undertaker submits an application for consent, agreement or approval under this Schedule.