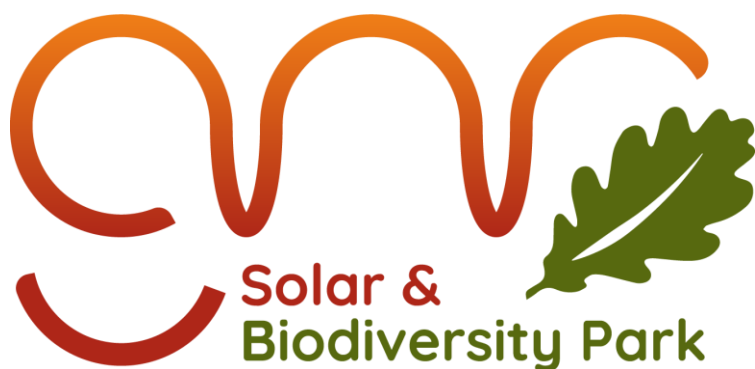




Elements Green Trent Limited

Great North Road Solar and Biodiversity Park

Explanatory Memorandum

Document reference – EN010162/APP/3.3A

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009, APFP Regulation 5(2)(c)

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1. GLOSSARY

“1990 Act”	The Town and Country Planning Act 1990
“1991 Act”	The New Roads and Street Works Act 1991
“2008 Act”	The Planning Act 2008 which is the legislation that governs applications for NSIPs, including pre- application consultation and publicity, the examination of applications and decision making by the Secretary of State
“Applicant”	Elements Green Trent Ltd (company registration number: 13665771) whose registered address is 1 Half Moon Street, London W1J 7AY. In the Order, the Applicant is referred to as the "undertaker"
“Application”	The Application for a DCO made to the Secretary of State under section 37 of the 2008 Act in respect of the Authorised Development. A DCO is required pursuant to section 31 of the 2008 Act because the Authorised Development comprises a NSIP under section 14(1)(a) and section 15 of the 2008 Act by virtue of it being a generating station in England with a capacity of over 50MW
“Associated Development”	development which falls within the definition in section 115 of the 2008 Act being development associated with an NSIP, does not consist of or include the construction or extension of one or more dwellings, and is within England
“Authorised Development”	The development to which the Application relates and which is described in Schedule 1 to the Order
“BESS Consent”	the planning permission reference 22/01840/FULM granted on appeal by the Planning Inspectorate on 3 May 2024 (appeal reference: APP/B3030/W/23/3334043) authorising the construction of a battery energy storage system and associated infrastructure partly within and partly outwith the Order Limits
“Book Reference”	of The Book of Reference, which accompanies the Application (and which has been updated throughout the Examination), which is a reference document providing details of all land ownership interests within the Order Land with reference to the Land Plans
“Consented BESS”	the development authorised by the BESS Consent
“County Authority”	Nottinghamshire County Council

“DCO”	A Development Consent Order made by the relevant Secretary of State pursuant to the 2008 Act to authorise a NSIP
“EIA”	Environmental Impact Assessment. The assessment of the likely significant environmental effects of the Authorised Development undertaken in accordance with the EIA Regulations
“EIA Regulations”	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the EIA of NSIPs must be carried out and the procedures that must be followed
“Environmental Statement”	The Environmental Statement which accompanies the Application, documenting the findings of the EIA
“Explanatory Memorandum”	This document, which explains the intended purpose and effect of the Order and the authorisations and powers it seeks
“kV”	Kilovolt
“Land Plans”	The plans which accompany the Application, showing the Order Land
“MW”	Megawatt
“NGET”	National Grid Electricity Transmission plc
“NPS”	National Policy Statement
“NSIP”	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act
“Order”	Great North Road Solar and Biodiversity Park Development Consent Order 20[•], being the DCO that would be made by the Secretary of State authorising the Authorised Development, a draft of which has been submitted as part of the Application (and further revisions of which have been submitted throughout the Examination)
“Order Land”	The land over which the Order would authorise compulsory acquisition and temporary possession
“Order Limits”	The limits of the land to which the Application relates and shown on the Works Plans
“Other Consents and Licences”	The Other Consents and Licences document, which accompanies the Application, which explains the Applicant's approach to obtaining all other necessary consents to deliver the Authorised Development beyond the Order
“Planning Authority”	Newark and Sherwood District Council

“PV” Photovoltaic

“Statement of Reasons” The Statement of Reasons which accompanies the Application and sets out the justification for the acquisition of or interference with the Order Land

“Works Plans” The plans, which accompany the Application, showing the Order Limits and the numbered works that form the Authorised Development and as described in Schedule 1 to the Order

2. INTRODUCTION

2.1 Overview

2.1.1 This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.¹

2.1.2 Regulation 5(2)(c) requires this memorandum to explain "the purpose and effect of provisions in the draft order".

2.2 Purpose of the Order

2.2.1 This Explanatory Memorandum has been prepared on behalf of the Applicant. It forms part of the Application. It should be read in conjunction with the suite of documents accompanying the Application,

2.2.2 The Applicant is seeking development consent for the Authorised Development.

2.2.3 A detailed description of the Authorised Development is included in Chapter 5 of the Environmental Statement (**EN010162/APP/6.2.5**).

2.2.4 The Authorised Development, is located within the administrative boundaries of the Planning Authority.

2.2.5 A DCO is required for the Authorised Development as it falls within the definition and thresholds for a NSIP under sections 14(1) and 15 of the 2008 Act. This is because the Authorised Development consists of a generating station with a gross electrical output capacity exceeding 50MW, this being a ground mounted solar PV generating station.

2.2.6 The DCO, if made, would be the Great North Road Solar and Biodiversity Park Development Consent Order 202[*]. A draft of the DCO has been submitted with the Application (**EN01062/APP/3.3**).

¹ S.I. 2009/2264

2.3 The Applicant

- 2.3.1 Elements Green Trent Ltd is a special purpose vehicle wholly owned by Elements Green Limited (Company No. 13665201). Elements Green Limited is a UK-headquartered developer, owner and long-term investor in renewable-energy infrastructure. Its recent achievements include securing planning permission for the Consented BESS for which construction commenced in March 2025. Further information on the Applicant's ownership and corporate structure is set out in the Funding Statement (**EN010162/APP/4.2**).

2.4 Authorised Development

- 2.4.1 As explained above, the Authorised Development satisfies the criteria for an NSIP. The Applicant, therefore, requires development consent under the 2008 Act in order to construct, operate, maintain and decommission the Authorised Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the 2008 Act).
- 2.4.2 Schedule 1 (authorised development) to the draft Order (**EN01062/APP/3.3**) contains a list of numbered works comprising the Authorised Development. The description of the Development 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 draft Order includes reference to the means by which the parameters of the Authorised Development will be constrained and it is on this basis that the EIA has been undertaken, as set out in the Environmental Statement (**EN010162/APP/6.2**) and explained further in relation to the 'consent envelope' in section 3.2.11 of this Explanatory Memorandum. The Applicant is confident those parameters are adequately secured in the draft Order.
- 2.4.3 An upper limit on capacity has not been included so that there is adequate flexibility for the Applicant in developing and operating the Authorised Development and allowing it to make effective use of land. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it still to construct the Authorised 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 appended to the Planning Statement (**EN010162/APP/5.4**).
- 2.4.4 The approach taken has precedent in numerous development consent orders for solar development, including the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024, Cleve Hill Solar Park Order

2020, the Little Crow Solar Park Order 2022 and the Longfield Solar Farm Order 2023.

- 2.4.5 It is also consistent with NPS EN-3² which states: “*AC installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application.*”

2.5 The NSIP

- 2.5.1 The Authorised Development comprises a generating station in England with a capacity of more than 50MW, being the NSIP, together with Associated Development. All elements of the NSIP are described in the sub-paragraphs below, along with the relevant definitions contained in Schedule 1 to the Order (**EN01062/APP/3.3**), and the Associated Development is described in section 2.6 below.

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

- (a) Solar modules fitted to mounting structures;
- (b) Electrical cabling and combiner boxes;
- (c) Conversion units including inverters, transformers, switchgear and monitoring and control systems; and
- (d) electrical cables connecting Work No. 1 to Work No. 2, Work No. 4 and Work No. 5B,

together with any part of Work Nos. 2, 3 and 8.

- 2.5.3 It will be noted that Work No. 1 includes any part of Work Nos 2, 3 and 8. This is required as the solar modules will need to connect into the main cabling network (Work No. 2); ecological mitigation (Work No. 3) will be provided around the solar modules; and access (Work No. 8) to the solar modules will be required for the purposes of constructing, maintaining, operating and decommissioning the NSIP. This approach is taken with all Works Nos. to provide the Applicant with the flexibility required for the purposes of the Authorised Development, whilst remaining within the envelope of the ‘worst-case’ scenario assessed in the Environmental Statement (**EN010162/APP/6.2**).

² Department for Energy Security & Net Zero (updated in 2024). National Policy Statement for Renewable Energy Infrastructure (EN-3)

2.6 Associated Development

- 2.6.1 The draft Order specifically authorises the Authorised Development. The Secretary of State may, under the provisions of section 115 of the 2008 Act, grant consent for development that is associated with the NSIP. As described in Works Nos. 2 to 8, the Associated Development forming part of the Authorised Development comprises (in summary):
- 2.6.2 **Work No. 2:** works to lay electrical cables, and temporary construction laydown areas, and compounds for the electrical cables including underground electrical cabling between 33 kV and 400 kV to connect various parts of the Authorised Development and works, plant, electrical equipment, buildings to each other.
- 2.6.3 **Work No. 3:** works to create, enhance and maintain green infrastructure, including soft landscaping including planting and vegetation management; landscape and biodiversity enhancement measures including habitat creation and management; and permissive routes, public rights of way diversions, signage and information boards.
- 2.6.4 **Work No. 4:** intermediate substations and associated works including substations, switch room buildings and ancillary equipment, including reactive power units; monitoring and control systems housed within a control building, together with offices and welfare facilities; surface water drainage systems; and car parking with EV charging points.
- 2.6.5 **Work No. 5A:** an energy storage facility (BESS) comprising battery energy storage cells with automatic fire suppression system; a structure (or structures) protecting the BESS mounded on a reinforced concrete foundation slab or concrete piling; interconnection units including heating, ventilation and air conditioning or liquid cooling systems housed either within the protective structure(s), attached to the structure(s) or located separately; conversion units; monitoring and control systems housed within the BESS protective structure(s) or in its own container or control room; cabling; surface water drainage systems; first responder information and notification kiosks; and fire safety infrastructure comprising fire suppression system.
- 2.6.6 **Work No. 5B:** a substation with works comprising an up to 400kV substation with associated transformer bays, feeder bays, cable sealing ends, transformers, switchgear buildings, concrete foundations and ancillary equipment including reactive power units; control building with associated offices, storage and welfare facilities; cabling and other electrical equipment; surface water drainage; car parking with EV charging points; and first responder information and notification kiosks.

- 2.6.7 **Work No. 6:** works to the existing National Grid substation at Staythorpe, Newark-on-Trent (owned and operated by NGET) to facilitate connection of the Authorised Development into the national grid, including electrical equipment including switchgear, cable sealing ends, busbars, protection and control equipment, compounds and associated buildings; earthing works; and works to lay underground electrical cables.
- 2.6.8 **Work No. 7:** works to the Consented BESS to facilitate connection of the Authorised Development into the national grid, including electrical equipment including switchgear, cable sealing ends, busbars, protection and control equipment, compounds and associated buildings; earthing works; upgrades to accesses and drainage works; and works to lay underground electrical cables.
- 2.6.9 **Work No. 8:** works to facilitate access to Work Nos. 1 to 7, including the creation of accesses from the public highway; the creation and maintenance of visibility splays; works to street furniture; works to widen and surface existing highways; and making and maintaining passing places.
- 2.6.10 Work Nos. 6 and 7 are both included in the draft Order to provide the Applicant with the option of connecting into the national grid directly or via the Consented BESS. The need for both options being included in the draft Order results from the Consented BESS not having yet been constructed. If it is constructed in time for the Authorised Development, then connecting via the Consented BESS substation allows for a shared connection, which is resource efficient and cost effective. Alternatively, the 400kV cable could run directly to the same connection point at the existing National Grid substation at Staythorpe.
- 2.6.11 As with Work No. 1, Work Nos. 2, 4, 5A, 5B, 6, 7 and 8 also include parts of other Work Nos. This is required to ensure that the cabling access and ecological mitigation works can be included in each of the principal works areas. Importantly, only ecological mitigation works are able to be carried out in those areas shown for Work No. 3 on the Works Plans (**EN010162/APP/2.3**), whereas these works can be carried out across the Order Limits outside areas identified solely for this purpose.
- 2.6.12 In order to ensure that the numbered works comprising the 'authorised development' in Schedule 1 may be constructed efficiently and without impediment, the Order includes 'further associated development' listed (a) to (o) in Schedule 1 following Work No. 8. This is a widely precedented approach and has been approved by the Secretary of State in other made DCOs for solar generating stations, such as The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.

- 2.6.13 Government guidance³ sets out that “associated development and works proposed to be included in a DCO must be demonstrably linked and subordinate to the NSIP, and required to ensure it can be built or operated. It is not acceptable to propose associated development in a DCO which is self-contained or effectively a separate NSIP development in its own right.” This guidance cross refers to previous guidance from 2013⁴ which considers associated development in more detail.
- 2.6.14 The 2013 guidance describes Associated Development as being “typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project, for example (where consistent with the core principles above) a grid connection for a commercial power station” (paragraph 6). It also sets out that Associated Development “requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development” (paragraph 5(i)).
- 2.6.15 All elements of the Authorised Development described in Schedule 1 to the draft Order, either constitute part of the NSIP or are associated development within the meaning of Section 115(2) of the 2008 Act, and so can properly be authorised by the Order.

2.7 Ancillary Matters

- 2.7.1 In addition to authorising the construction operation maintenance and decommissioning of the Authorised Development the draft Order (**EN01062/APP/3.3**) also contains several other ancillary powers to facilitate the Authorised Development.
- 2.7.2 The power to acquire land or rights over land compulsorily or by agreement, is included in the draft Order in accordance with section 120(3) of the 2008 Act, and is required delivery of the Development, or to facilitate, or is incidental to the Development under section 122 of the 2008 Act. A justification for these powers is set out in the Statement of Reasons (**EN010162/APP/4.1**) that accompanies the Application.
- 2.7.3 The draft Order also seeks to apply and modify statutory provisions relating to the compulsory acquisition of land. It is for this reason that under section 117 and 120(5) of the 2008 Act the Order must be

³ ‘Planning Act 2008: Consent of a Development Consent Order required for Nationally Significant Infrastructure Projects’ published 30 April 2024 by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities

⁴ ‘Planning Act 2008: Guidance on associated development for applications for major infrastructure projects’ published April 2013 by the Department for Communities and Local Government

made by way of a statutory instrument. The draft Order is therefore in that form.

- 2.7.4 Other ancillary powers provided in the draft Order include for the temporary and permanent stopping up of lengths of existing highway and private means of access required in relation to the Authorised Development, the imposition of traffic regulation measures (including the application of speed limits), the creation of new points of access to works, and the application and disapplication of legislation.

3. PROVISIONS OF THE ORDER

3.1 Introduction

- 3.1.1 The purpose and effect of the provisions of the draft Order (**EN01062/APP/3.3**) are now explained in sequence. The Order consists of 51 operative provisions (each referred to as 'articles') and 14 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate.
- 3.1.2 Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) has been repealed, the draft Order is based on the model provisions as well as other development consent orders that have been made to date. The draft Order has been influenced by recent development consent orders including: The West Burton Solar Project Order 2025, Sunnica Energy Farm Order 2024, The Cottam Solar Project Order 2024, The Mallard Pass Solar Farm Order 2024, The East Yorkshire Solar Farm Order 2025, The Rampion 2 Offshore Wind Farm Order 2025, Longfield Solar Farm Order 2023, and the Little Crow Solar Park Order 2022.
- 3.1.3 Several made DCOs contain articles which incorporate a provision by which the Applicant must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld. A longstop default provision is also included to the effect that, if the relevant third party fails to respond, the consent, agreement or approval shall be deemed to have been given.
- 3.1.4 The Applicant considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the Authorised Development can be delivered in a timely fashion. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the Order having been rigorously examined, the delivery of the Authorised Development should not be held up unreasonably, if it has been approved by the Secretary of State.

- 3.1.5 The draft Order includes, therefore, at article 45 (Procedure in relation to certain approvals etc.) a deemed consenting regime to apply whereby if a consent etc., is required and no such consent etc. is provided within 10 weeks of receiving an application for consent or approval, the consenting authority is deemed to have granted consent. This does not apply to the discharge of the requirements, set out in Schedule 2 to the Order, which are separately subject to the discharge requirements in Schedule 14 (procedure for discharge of requirements) to the Order.

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

- 3.2.1 Articles 1 (Citation and commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect. This article did not appear in the model provisions but it is a standard article that is included in all development consent orders.
- 3.2.2 Article 2 (Interpretation) provides for the interpretation of the rest of the Order, including the Schedules. It is a standard article and was included in the model provisions as article 1.
- 3.2.3 Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule.
- 3.2.4 Article 2 makes alterations to the former model provisions to accommodate departures from provisions elsewhere in the Order, and to add required definitions, including:
- 3.2.4.1 definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 11 to the Order;
- 3.2.4.2 the definition of "authorised development" means "the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of "development") of the 2008 Act authorised by this Order". The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order; instead the concept of associated development is included in the definition of "authorised development", as described in detail in Schedule 1, as it is considered that this drafting is more effective (and is common practice).
- 3.2.4.3 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 preliminary works prior to the submission of relevant details for approval under the requirements contained in Schedule

2 to the Order so that certain works can be carried out without "commencing" the Authorised Development. The works identified include pre-commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. This is to allow a small element of necessary flexibility in how the Authorised Development can be constructed.

- 3.2.4.4 a definition of "maintain" has been added to make clear what activities are authorised under article 5 (power to maintain the authorised development) during the operation of the Authorised Development. The definition does not permit the whole of the Authorised Development to be removed, replaced or reconstructed. The definition has been drafted to reflect directly the nature and context of the Authorised Development, which will need to be properly maintained, managed, and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and the 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 and controls and advances in technology. The approach taken has precedent in The West Burton Solar Project Order 2025, The East Yorkshire Solar Farm Order 2025, The Longfield Solar Farm Order 2023, The Gate Burton Energy Park Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.2.4.5 the definition of "Order land" means the land shown on the Land Plans which is within the limits of land to be acquired or used and described in the Book of Reference. This land is coloured pink (land to be permanently acquired) or blue (land in which the undertaker can create and acquire new rights and impose restrictive covenants) on the Land Plans. In addition, the Land Plans show land within the Order Limits for which the powers to compulsory acquire land or to use land temporarily are not sought in the Order (coloured yellow). The powers to interfere with private rights (article 25) or override easements (article 28) still apply to the land coloured yellow. There is precedent for this approach in the Rampion 2 Offshore Wind Farm Order 2025 and the Cambridge Waste Water Treatment

Plant Relocation Order 2025. The Land Plans also provide clarity as to land that is excluded from both the Order Limits (see below) and Order Land (coloured grey);

- 3.2.4.6 the definition of "Order limits" means the limits shown on the Land Plans and Works Plans (edged red) within which the Authorised Development may be carried out and land acquired or used;
- 3.2.4.7 the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing a network or service to members of the public and, insofar as they may have assets or apparatus within the Order Limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is precedent for this approach, for instance the Riverside Energy Park Order 2020; and
- 3.2.4.8 the "undertaker" is defined as Elements Green Trent Ltd who has the benefit of the provisions of the Order, subject to the provisions of article 6 (see section 3.2.17 below).
- 3.2.5 Paragraph (2) of article 2 has been included to reflect that "rights over land and watercourses" include references to do or restrain or to place and maintain anything in, on or under land or watercourse, 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 or watercourses which interfere with the interests or rights of another.
- 3.2.6 Paragraphs (3) to (8) of article 2 have been added to provide clarity that references in the Order to 'the purposes of the authorised development' includes its construction, maintenance, operation and decommissioning; that all distances, directions and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; how references to rights over land should be construed; and that all areas described in the Book of Reference are approximate.
- 3.2.7 **Article 3 (Development consent etc. granted by the Order)** grants development consent for the Authorised Development. Schedule 1 describes the Authorised Development in detail (as set out above).

- 3.2.8 This is based on article 2 of the model provisions and the approach of splitting the Authorised Development between different work numbers enables the draft Order to refer to different parts of the Authorised Development by citing the relevant work number.
- 3.2.9 Paragraph (2) of article 3 requires that the works authorised by the Order are situated in the areas shown on the Works Plans. This is in order to provide certainty as to what has been consented by the Order, in respect of which areas of land.
- 3.2.10 The purpose of article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the Authorised Development, reducing the risk that the Authorised Development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the Authorised Development within the set limits.
- 3.2.11 Flexibility is appropriate in the Order as it serves to precisely define the Authorised Development by reference Schedule 1, while preserving a sensible amount of flexibility in the implementation of the Authorised Development to allow for variances in ground conditions and choice of appropriate equipment and technology to the extent shown on the Works Plans. The Environmental Statement accompanying the application for development consent (**EN010162/APP/6.2**) has assessed the Authorised Development within the full envelope provided by the Works Plans, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the Environmental Statement.
- 3.2.12 The drafting of Article 3 adopted by the Applicant is in keeping with recently made energy DCOs including The West Burton Solar Project Order 2025, The Cottam Solar Project Order 2024 and The Mallard Pass Solar Farm Order 2024.
- 3.2.13 **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 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station once constructed.
- 3.2.14 The drafting of Article 4 adopted by the Applicant is in keeping with recently made solar DCOs including The Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Cottam Solar Project Order 2024 and The Mallard Pass Solar Farm Order 2024.

- 3.2.15 **Article 5 (Power to maintain the authorised development)** sets out the scope within which the undertaker may maintain the development and is required so that the undertaker has power to maintain the Authorised Development. Powers of maintenance are subject to the other provisions of the Order.
- 3.2.16 Article 5 was included in the model provisions as article 3 and can be found as Article 5 in The Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Cottam Solar Project Order 2024 and The Mallard Pass Solar Farm Order 2024.
- 3.2.17 **Article 6 (benefit of the Order)** this provision overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the Order to the Applicant rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if the provisions of section 156(1) of the 2008 Act were left remain unmodified. This is subject to sub-paragraph (2), which provides that both the Applicant and NGET are given the benefit of the Order in relation to Work No. 6, given that Work No. 6 includes works to NGET assets situated upon NGET land.
- 3.2.18 The drafting is in keeping with recently made energy DCOs including, for example, article 31 of Sunnica Energy Farm DCO 2024, article 34 of The West Burton Solar Project Order 2025, article 34 of The Mallard Pass Solar Farm Order 2024 and article 34 of The Cottam Solar Project Order 2024.
- 3.2.19 **Article 7 (Consent to transfer the benefit of Order)** is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the Undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:
- 3.2.19.1 the transferee or lessee is the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act;
 - 3.2.19.2 the transferee or lessee is a holding company or subsidiary of the undertaker; or
 - 3.2.19.3 the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

- 3.2.20 Article 7(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 3.2.21 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The provision that the undertaker is able to transfer the Order to a holding company or subsidiary is to allow commercial flexibility for the undertaker in the event that it would be preferable that a connected corporate entity takes the benefit of all or part of the Order. Article 7(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 7(5) to (7) provide further detail on the notification that is to be given.
- 3.2.22 Article 7(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- 3.2.22.1 the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - 3.2.22.2 the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
 - 3.2.22.3 the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 3.2.23 Article 7 is substantially as found in Article 35 of The East Yorkshire Solar Farm Order 2025 and The West Burton Solar Project Order 2025 and Article 33 of The Longfield Solar Farm Order 2023.
- 3.2.24 **Article 8 (Application and modification of statutory provisions)** disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals, or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Article 6, as drafted, is present in some form in Article 6 of the Longfield Solar Farm Order 2023, The East Yorkshire

Solar Farm Order 2025 and The West Burton Solar Project Order 2025 and The Little Crow Solar Park Order 2022.

- 3.2.25 Article 8 provides for the disapplication of the following specified provisions:
- 3.2.25.1 section 23 of the Land Drainage Act 1991, which prohibits e.g. the obstruction and other works in watercourses without the consent of the relevant lead local flood authority;
 - 3.2.25.2 section 32 of the Land Drainage Act 1991 relating to variation of awards affecting or relating to the drainage of land;
 - 3.2.25.3 the provisions of any byelaws made under section 66 (power to make byelaws) of the Land Drainage Act 1991 and under paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the appropriate agency) to the Water Resources Act 1991; and
 - 3.2.25.4 the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land.
- 3.2.26 These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991 through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 11 to the Order). Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Authorised Development.
- 3.2.27 Article 8 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 planning permission is not deemed, but instead is not required, Development pursuant to a DCO does not benefit from these provisions, meaning that NSIP development is left in a worse position than 'normal' planning development, which is not considered appropriate. With the controls set out in the Requirements, the local planning authorities will still be able to consider the impacts of the Authorised Development, and the provisions of article 6 mean that separate consents are not required to be obtained. This approach

has precedent in The East Yorkshire Solar Farm Order 2025, The West Burton Solar Project Order 2025 and The Mallard Pass Solar Farm Order 2024. Article 8(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.

- 3.2.28 **Article 9 (Defence to proceedings in respect of statutory nuisance)** provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance or decommissioning of the Authorised Development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the Authorised Development. This article, excluding paragraph (2) has precedent in recent DCOs, for example article 7 of the Cottam Solar Project Order 2024, the Gate Burton Energy Park Order 2024 and the Mallard Pass Solar Farm DCO 2024.

3.3 **Part 3 (Streets)**

- 3.3.1 **Article 10 (Street works)** allows the undertaker to carry out certain works to a street for the purposes of the Authorised Development. It is necessary because implementation of the Authorised Development will require works to be undertaken to streets. Schedule 3 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of 1991 Act. Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 11 (Application of the 1991 Act). Article 10 is based on article 8 of the model provision. It also takes account of and modifies the traffic permit scheme brought into effect by Nottinghamshire County Council under Part 3 of the Traffic Management Act 2004, to confirm the basis on which an application for a permit will be determined. The wording of these provisions reflects that included in the draft DCO for the Tillbridge Solar Project, partially located in Nottinghamshire, the application for which is currently at Recommendation stage.
- 3.3.2 Article 10 is substantially as found at Article 8 of the Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Sunnica Energy Farm Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.3.3 **Article 11 (Power to alter layout, etc., of streets)** allows the undertaker to alter the layout of or carry out any works in a street. Schedule 4 then sets out the alterations to streets identified as required to enable the Authorised Development. 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.

- 3.3.4 Article 11 is substantially as found in Article 9 of the Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Sunnica Energy Farm Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.3.5 **Article 12 (Construction and maintenance of altered streets)** provides that the permanent alterations to the streets listed in Part 1 of Schedule 4 must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the street authority (paragraph (1)). Temporary alterations to the streets listed in Part 2 of Schedule 4 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained during the period required by and at the expense of the undertaker (paragraph (2)). Paragraph (3) provides that any restoration works carried out pursuant to Article 12(3) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.
- 3.3.6 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 that responsibility. 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.
- 3.3.7 Article 12 is substantially as found in Article 10 of the Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Sunnica Energy Farm Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.3.8 **Article 13 (Temporary prohibition, restriction and diversion of use of streets and public rights of way)** provides for the temporary closure or restrictions of streets and public rights of way specified in Parts 1 and 2 of Schedule 5 for the purposes of constructing or maintaining the Authorised Development. It is required because, in particular, the undertaker will need to temporarily close or divert certain public rights of way in order to construct and maintain the Authorised Development.

- 3.3.9 Article 13 also permits the undertaker, for any reasonable time necessary for the purposes of the Authorised Development, to divert the traffic or a class of traffic from the street or public right of way, authorise the use of motor vehicles on public rights of way where such right currently does not exist and prevent all persons from passing along the street or public right of way. This is subject to paragraph (4), which requires the Applicant to obtain the consent of the street authority before temporarily closing, prohibiting the use of, restricting the use of, authorising the use of, altering or diverting any street or public right of way not specified in Schedule 5. For those streets and public rights of way specified in Schedule 5, the Applicant must consult the street authority for a period of not less than 28 days.
- 3.3.10 Article 13(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated.
- 3.3.11 Article 13 is substantially as found in Article 11 of the Longfield Solar Farm Order 2023, The West Burton Solar Project Order 2025, The Sunnica Energy Farm Order 2024, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.3.12 **Article 14 (Permanent closure of public rights of way)** allows the undertaker to permanently close public rights of way as set out in Schedule 5. Article 14(2) provides that this closure cannot occur unless a substitute public right of way has been completed to the satisfaction of the street authority, or a temporary alternative route is first provided and maintained until the permanent substitute public right of way is provided, again to the satisfaction of the street authority.
- 3.3.13 Paragraphs (4) and (5) make provision that would require the undertaker, following the opening for public use of new or altered public rights of way to notify the surveying authority of the “as built” alignments of those public rights of way, together with a statement of modifications to the definitive map and statement. This notification is deemed to be a legal event order modifying the definitive map and statement accordingly. The purpose of this provision is to facilitate the prompt updating of the definitive map and statement by avoiding imposing a requirement on the surveying authorities to make legal event orders to modify the definitive map and statement as a consequence of the Project. This approach reflects the position where local highway authorities making Highways Act 1980 orders may combine those with a legal event order under the Wildlife and Countryside Act 1981 (see the Public Rights of Way (Combined Orders) (England) Regulations 2008).
- 3.3.14 This wording is updated from the model provisions, with similar wording employed on several made Orders in respect of public right

of way closures, including The Drax Power (Generating Stations) Order 2019, A66 Northern Trans-Pennine Development Consent Order 2024, and Sizewell C (Nuclear Generating Station) Order 2022.

- 3.3.15 **Article 15 (Use of private roads for construction)** authorises the passage by the undertaker, in common with other permitted users, over those private roads within the Order limits by persons or vehicles for the purposes of, or in connection with, the construction of the Authorised Development. This article is necessary because the undertaker will need to use private roads inside the Order Limits for the construction operation maintenance and decommissioning of the Authorised Development.
- 3.3.16 Paragraph (2) provides that the undertaker will compensate any person who has suffered loss or damage as a result of the exercise of this power. Paragraph (3) clarifies that any dispute as to a person's entitlement to compensation, or as to the amount of compensation, is to be determined under Part 1 of the Land Compensation Act 1961.
- 3.3.17 **Article 16 (Access to works)** is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the Authorised Development, as set out in Schedule 6 to the Order. This article is necessary because the undertaker will need to create, or improve existing, means of access for the purposes of the construction operation maintenance and decommissioning of the Authorised Development. For clarity, Schedule 6] is split into Part 1 (permanent means of access to works) 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 within the Order Limits reasonably required for the Authorised Development with the approval of the highway authority.
- 3.3.18 Article 16 is as found in Article 13 of The West Burton Solar Project Order 2025, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.
- 3.3.19 **Article 17 (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 10 (street works), 11 (power to alter layout, etc., of streets) and 12 (construction and maintenance of altered streets) of the Order and the adoption of works.
- 3.3.20 Article 17 is substantially as found in Article 14 of The West Burton Solar Project Order 2025, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.

- 3.3.21 **Article 18 (Traffic regulation measures)** Paragraph (1) includes a power that would authorise temporary traffic regulation measures, for the purposes of the construction, operation maintenance and decommissioning of the Authorised Development on roads specified in Schedule 7. Paragraph (2) includes a general power, following consultation with the chief officer of police and subject to obtaining the written consent of the traffic authority, to make temporary provision for traffic regulation the purposes of the Authorised Development, as if made under the 1984 Act.
- 3.3.22 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 Authorised Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in orders granting permission for NSIPs where it is necessary in the interests of public safety during construction of the Authorised Development for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act.
- 3.3.23 Article 18 is substantially as found at Article 15 of The West Burton Solar Project Order 2025, The Mallard Pass Solar Farm Order 2024 and The Cottam Solar Project Order 2024.

3.4 **Part 4 (Supplemental Powers)**

- 3.4.1 **Article 19 (Discharge of water)** is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction, maintenance or decommissioning 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. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to a drainage authority, these provisions are disapplied as sufficiently detailed provision will be made by the relevant protective provisions (see Part 6 of Schedule 13 (protective provisions)).
- 3.4.2 Article 19 is substantially as found in Article 15 of the Longfield Solar Farm Order 2023, Article 9 of the Little Crow Solar Park Order 2022, Article 14 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 14 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 21 of the A417 Missing Link Development Consent Order 2022.

- 3.4.3 **Article 20 (Protective work to buildings)** is a model provision which is included in most made DCOs to date. Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Land, subject to a number of conditions including the service of 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 3.4.4 Protective works can also be undertaken after the carrying out of the works forming part of the Authorised Development for a period of 5 years from the date of completion of the part of the Authorised Development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. This Article is required because there are buildings within, and in close proximity to, the Order Land that might feasibly require surveys and protective works as a result of the Authorised Development.
- 3.4.5 The Article also includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).
- 3.4.6 Article 20 is as found in Article 16 of the Longfield Solar Farm Order 2023 and as substantially found in Article 16 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 22 of the A417 Missing Link Development Consent Order 2022.
- 3.4.7 **Article 21 (Authority to survey and investigate the land)** is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the Authorised Development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the Authorised Development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.
- 3.4.8 The model provision has been modified so that no trial holes or boreholes are to be made:

- 3.4.8.1 in land located within the highway boundary without the consent of the highway authority; or
- 3.4.8.2 in a private street without the consent of the street authority.
- 3.4.9 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.
- 3.4.10 Article 21 is substantially as found in Article 17 of the Longfield Solar Farm Order 2023, Article 10 of the Little Crow Solar Park Order 2022, Article 15 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 23 of the A417 Missing Link Development Consent Order 2022.

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

- 3.5.1 **Article 22 (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 accompanying the application. The Article is based on article 18 of the Model Provisions.
- 3.5.2 Article 22(2) makes clear that the powers in this Article are subject to the powers and restrictions in Article 23 (Time limit for exercise of authority to acquire land compulsorily or to take land temporarily), paragraph (2) of Article 24 (compulsory acquisition of rights and imposition of restrictive covenants), Article 27 (acquisition of subsoil or airspace only); Article 31 (temporary use of land for constructing the authorised development), Article 33 (statutory undertakers) and article 50 (Crown rights).
- 3.5.3 Article 22 is as broadly in accordance with Article 20 of The Cottam Solar Project Order 2024, Article 19 of The West Burton Solar Project Order 2025 and Article 19 of The Mallard Pass Solar Farm Order 2024.
- 3.5.4 Article 22(3) makes clear that the power to compulsorily acquire land conferred under Article 22(1) does not apply the land coloured yellow on the Land Plans. This provision is broadly in accordance with Article 22(3) of the Rampion 2 Offshore Wind Farm Order 2025 and Article 26(3) of the Cambridge Waste Water Treatment Plant Relocation Order 2025

- 3.5.5 **Article 23 (Time limit for exercise of authority to acquire land compulsorily)** is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the Authorised Development set out in Schedule 1 to the Order and has precedent in the majority of made DCOs to date.
- 3.5.6 Article 23 is as found in Article 19 of the Longfield Solar Farm Order 2023, Article 20 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 19 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 26 of the A417 Missing Link Development Consent Order 2022.
- 3.5.7 Article 23(3) makes amendments consequential on the Levelling Up and Regeneration Act 2023 and can be found in Article 27(3) of the Cambridge Waste Water Treatment Plant Relocation Order 2025.
- 3.5.8 **Article 24 (Compulsory acquisition of rights and imposition of restrictive covenants)** enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 22 (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.
- 3.5.9 The Article provides that, in respect of the Order Land set out in Schedule 8 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct, operate maintain and decommission the Authorised Development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the Authorised Development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 8 allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the Authorised Development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 3.5.10 Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenant for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the powers to the relevant statutory undertaker.

- 3.5.11 Article 24 is as substantially found in Article 20 of the Longfield Solar Farm Order 2023, Article 21 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 20 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 27 of the A417 Missing Link Development Consent Order 2022.
- 3.5.12 **Article 25 (Private rights over land)** is a model provision that: (i) extinguishes private rights and restrictions over land insofar as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 22 (Compulsory acquisition of land); (ii) extinguishes private rights and restrictions over land cease to have effect insofar as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 24 (Compulsory acquisition of rights and restrictive covenants); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Authorised Development.
- 3.5.13 Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.
- 3.5.14 Article 25 is as substantially found in Article 21 of the Longfield Solar Farm Order 2023, Article 22 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 22 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 29 of the A417 Missing Link Development Consent Order 2022.
- 3.5.15 **Article 26 (Application of the 1981 Act)** is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 3.5.16 This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 and the Levelling Up and Regeneration Act

2023 which has precedent in Article 33 of the recent Cambridge Waste Water Treatment Plant Relocation Order 2025.

- 3.5.17 **Article 27 (Acquisition of subsoil or airspace only)** allows the Applicant to acquire land below and airspace above the surface rather than having to acquire all of the land.
- 3.5.18 The purpose of this article is to give the Applicant the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation. This too is a standard provision used in many DCOs (see for example article 21 of The Cleve Hill Solar Park Order 2020, article 23 of The Longfield Solar Farm Order 2023, article 23 of The Gate Burton Energy Park Order 2024, article 25 of The Mallard Pass Solar Farm Order 2024 and article 25 of The Cottam Solar Project Order 2024).
- 3.5.19 **Article 28 (Power to override easements and other rights)** provides that in carrying out or using the Authorised Development and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the Authorised Development.
- 3.5.20 Article 28 is as found in Article 24 of the Longfield Solar Farm Order 2023 and as substantially found in Article 19 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.5.21 **Article 29 (Modification of Part 1 of the Compulsory Purchase Act 1965)** modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and the Levelling Up and Regeneration Act 2023 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition authorised under the Order.
- 3.5.22 Article 29 is as substantially found in Article 34 of the Cambridge Waste Water Treatment Plant Relocation Order 2025.
- 3.5.23 **Article 30 (Rights under or over streets)** is a model provision which has been included in the majority of made DCOs to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the Authorised Development.

- 3.5.24 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.
- 3.5.25 Article 30 is as found in Article 26 of the Longfield Solar Farm Order 2023, Article 26 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 26 of The Awel y Môr Offshore Wind Farm Order 2023 and Article 32 of the A417 Missing Link Development Consent Order 2022.
- 3.5.26 **Article 31 (Temporary use of land for constructing the authorised development)** allows the land subject to compulsory acquisition powers to be temporarily used for the carrying out of the Authorised Development. The Article requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works. The Article has been modified to reflect the fact that the Order does not contain any land which is proposed to be used solely for temporary purposes.
- 3.5.27 Paragraph (6) requires that the undertaker must not remain in possession of land under this article for longer than reasonably necessary and in any event the period of temporary possession is also subject to a one year limit beginning with the date of the date of commissioning of the part of the Authorised Development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- 3.5.28 Article 31 is broadly found in Article 27 of the Longfield Solar Farm Order 2023, Article 27 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 34 of the A417 Missing Link Development Consent Order 2022.
- 3.5.29 **Article 32 (Temporary use of land for maintaining the authorised development)** provides for the temporary use of land for maintenance of the Authorised Development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 3.5.30 The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of first export as opposed to the date on which the project is opened for use as this is more appropriate for this type of development.

- 3.5.31 Article 32 is as substantially found in Article 28 of the Longfield Solar Farm Order 2023, Article 28 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 28 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 35 of the A417 Missing Link Development Consent Order 2022.
- 3.5.32 **Article 33 (Statutory undertakers)** provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see article 43 below) included at Schedule 13 of the Order. This power is required over the whole of the Order Land.
- 3.5.33 Article 33 is as substantially found in Article 29 of the Longfield Solar Farm Order 2023, Article 29 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 29 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 36 of the A417 Missing Link Development Consent Order 2022.
- 3.5.34 **Article 34 (Apparatus and rights of statutory undertakers in stopped up streets)** governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 13.
- 3.5.35 Article 34 is as found in Article 30 of the Longfield Solar Farm Order 2023 and Article 30 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.5.36 **Article 35 (Recovery of costs of new connections)** provides that persons who have to create a new connection following the exercise of powers under Article 35 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the Authorised Development.
- 3.5.37 Article 35 is as found in Article 31 of the Longfield Solar Farm Order 2023, Article 31 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 30 of the Awel y Môr Offshore Wind Farm Order 2023 and Article 38 of the A417 Missing Link Development Consent Order 2022.
- 3.5.38 **Article 36 (Compulsory acquisition of land – incorporation of the mineral code)** incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981. This means that where the Applicant acquires land under the powers of the Order, it will not acquire any

mineral deposits present in the land (other than those necessarily extracted or used in constructing the Authorised Development) unless they are expressly included in the conveyance. Such an article is included in the Model Provisions (article 19) and is necessary to exempt mines and mineral interests from compulsory acquisition under the Order.

- 3.5.39 This is another standard provision with broad precedent such as article 21 of The Mallard Pass Solar Farm Order 2024 and article 47 of The Cottam Solar Project Order 2024.

3.6 **Part 6 (Miscellaneous and General)**

- 3.6.1 **Article 37 (Application of landlord and tenant law)** is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the Authorised Development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the Authorised Development.
- 3.6.2 Article 37 is as found in Article 34 of the Longfield Solar Farm Order 2023, in Article 19 of The Little Crow Solar Park Order 2022, Article 37 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 32 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.6.3 **Article 38 (Operational land for purposes of the 1990 Act)** is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the Authorised Development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational land have effect as they would do if planning permission had been granted for the Authorised Development.
- 3.6.4 Article 38 is as found in in Article 35 of the Longfield Solar Farm Order 2023, Article 38 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, Article 13 of The Little Crow Solar Park Order 2022 and Article 39 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.6.5 **Article 39 (Felling or lopping of trees and removal of hedgerows)** is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the Authorised Development to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the Authorised Development; constituting a danger for persons using the

Authorised Development or obstructing or interfering with the passage of construction vehicles. Provisions relating to compensation are set out in paragraphs (2) and (3) and these are identical to the model provisions. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited. Paragraphs (4) and (5) provide the additional power for the Undertaker to remove hedgerows or part of them within the Order Limits that may be required for the purposes of carrying out the Authorised Development. Schedule 10 lists those hedgerows within the meaning of the Hedgerow Regulations 1997 which are to be removed.

- 3.6.6 Paragraph (7) clarifies for the purpose of this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997 and includes “important hedgerows”.
- 3.6.7 Article 39 is substantially as found in Article 36 of the Longfield Solar Farm Order 2023, in Article 16 of The Little Crow Solar Park Order 2022, Article 33 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 33 of the Awel y Môr Offshore Wind Farm Order 2023.
- 3.6.8 **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 Order coming into effect and either within or overhanging the Order Limits.
- 3.6.9 The Applicant is not aware of any TPO within the Order limits but this power is necessary to interact with any future TPO granted within the Order limits.
- 3.6.10 Article 40 is substantially as found in Article 37 of the Longfield Solar Farm Order 2023 and Article 39 of The West Burton Solar Project Order 2025.
- 3.6.11 **Article 41 (Certification of plans, etc.)** is a model provision which provides for the undertaker to submit various documents referred to in the Order to the Secretary of State so that they can be certified as being true copies. The Article provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.

- 3.6.12 **Article 42 (Arbitration)** is an arbitration provision and it is a departure from the former model provision. Article 42, and that in the associated Schedule 12 (Arbitration rules), is as found in Article 36 of the Longfield Solar Farm Order 2023 and in Article 17 of The Little Crow Solar Park Order 2022. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 3.6.13 The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- 3.6.14 It applies Schedule 12 to the Order, which sets out further detail of the arbitration process.
- 3.6.15 In addition, Article 42(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 3.6.16 **Article 43 (Protective Provisions)** provides for Schedule 13, which protects the interests of certain statutory undertakers, to have effect. This is a model provision.
- 3.6.17 **Article 44 (Service of notices)** governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. This article was not included in the model provisions but it is based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006. This is now a common article in development consent orders.
- 3.6.18 Article 44 is as found in Article 15 of the Little Crow Solar Park Order 2022, Article 42 of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and Article 41 of the Awel y Môr Offshore Wind Farm Order 2023. Article 34 is as substantially found in Article 41 of the Longfield Solar Farm Order 2023.
- 3.6.19 **Article 45 (Procedure in relation to certain approvals etc.)** provides procedures in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within eight weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these

provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold consent where an application has been submitted by the undertaker pursuant to this Article.

- 3.6.20 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 14 (Procedure for discharge of requirements) (see below).
- 3.6.21 This Article has precedent in the Immingham Open Cycle Gas Turbine Order 2020, the Longfield Solar Farm Order 2023, the Mallard Pass Solar Farm Order 2024, the Gate Burton Energy Park Order 2024 and the Cottam Solar Project Order 2024 and is considered appropriate and justified in order to ensure that the Authorised Development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.
- 3.6.22 **Article 46 (Guarantees in respect of payment of compensation)** restricts the undertaker from exercising the powers conferred under articles 22, 24, 25, 27, 28, 30, 31, 32 and 33 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the Rampion 2 Offshore Wind Farm Order 2025, the Mallard Pass Solar Farm Order 2024, the Gate Burton Energy Park Order 2024, and the Cottam Solar Project Order 2024.
- 3.6.23 **Article 47 (No double recovery)** provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 3.6.24 The article follows the well-established principle of equivalence in compulsory purchase compensation, namely that a claimant is to be compensated for no more and no less than their loss.
- 3.6.25 This article has precedent in the National Grid (Richborough Connection Project) Development Consent Order 2017 (article 47), the North London Heat and Power Generating Station Order 2017 (article 35), the M25 Junction 28 Development Consent Order 2022 (article 49), the Sizewell C (Nuclear Generating Station) Order 2022 (article 46), the Boston Alternative Energy Facility Order 2023 (article

51) The Gate Burton Energy Park Order 2024 (article 39), and The Cottam Solar Project Order 2024 (article 41).

- 3.6.26 **Article 48 (Disregard of certain improvements, etc.)** provides for the Lands Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.
- 3.6.27 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37), the River Humber Gas Pipeline Replacement Order 2016 (article 29) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 38), and orders under the Transport and Works Act 1992 such as the London Underground (Northern Line Extension) Order 2014 (article 32) and the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (article 35).
- 3.6.28 The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and neither the 2008 Act, nor standard Order provisions, apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.
- 3.6.29 **Article 49 (Set-off for enhancement in value of retained land)** provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the Authorised Development.
- 3.6.30 This article complies with section 126(2) of the PA 2008 as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the A47 Wansford Order, the A428 Black Cat to Caxton Gibbet Development Consent Order 2022.
- 3.6.31 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by

virtue of section 120(3)) to the PA 2008 allow the application in a DCO of statutory provisions which relate to the payment of compensation.

- 3.6.32 **Article 50 (Crown rights)** includes provisions safeguarding the rights of the Crown in relation to any Crown land within the Order land. This Article is not a model provision but has precedent in numerous DCOs including in Article 41 of The Hornsea Three Offshore Wind Farm Order 2020. Article 18 (Compulsory acquisition of land) and Article 20 (Compulsory acquisition of rights) include express provision confirming that the powers contained therein are subject to Article 45. notwithstanding not that no such Crown land has been identified, the Article is retained with the intention that it protects the Crown in respect of any land and interests that it may acquire within the Order Land.
- 3.6.33 **Article 51 (Inconsistent planning permission)** is based on the drafting of article 56 from Lower Thames Crossing, which was granted consent in March 2025. Article 51 is included to address the legal uncertainty that can arise where multiple consents granted under different statutory regimes apply to the same land. In particular, this Article safeguards against enforcement risks and potential barriers to implementation caused by inconsistencies between planning permissions granted under the TCPA and the development authorised by the Order.
- 3.6.34 Paragraph (1) permits certain development authorised by a planning permission granted under the TCPA that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. These provisions have been preceded in numerous highway DCOs including article 7 of the M20 Junction 10a Development Order 2017, article 7 of the A30 Chiverton to Carland Cross Development Order 2020 and article 6 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023 and most recently in article 56 of the A122 (Lower Thames Crossing) Development Consent Order 2025.
- 3.6.35 Paragraphs (2) and (3) ensure that development in respect of a planning permission granted under the TCPA does not prevent the development in respect of the Order from proceeding, and vice versa. This ensures that both consents can lawfully exist within the Order limits, so far as possible.
- 3.6.36 Paragraph (2) addresses the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority*⁵. That judgment relates to planning permissions granted under the TCPA. It held that,

unless there is an express provision otherwise, where an existing planning permission has been implemented, a second permission which overlaps physically with that existing permission cannot be lawfully implemented if a physical incompatibility has been created by the implementation of the existing permission, which would prevent the later permission from being constructed. This scenario (commonly referred to as “overlapping consents”) creates a risk that multiple permissions relating to the same land cannot be lawfully implemented.

- 3.6.37 Paragraph (2) seeks to mitigate this risk by ensuring that enforcement action is not taken in respect of planning permissions granted under the TCPA, or conditions attached to them, where they are inconsistent with the works and exercise of powers under the Order. This provision ensures that such permissions or conditions do not give rise to enforcement action, notwithstanding the fact that a condition may no longer be capable of being complied with as a result of the Authorised Development. The provision is based on the drafting in the article 56 of the Lower Thames Crossing. It is considered this is necessary to confirm that developments are not prevented but can exist as “overlapping consents” without falling foul of *Hillside*.
- 3.6.38 Paragraph (3) deals with the converse situation and confirms that development under a planning permission is not to prevent activity authorised under the Order.
- 3.6.39 Maintaining these provisions in the Order are vital to address matters which relate to the long-term interaction between existing and future planning permissions and the Order (such as the BESS Consent). In the absence of this provision, there is potential for an amendment to the Order to be required. It would be wholly disproportionate and inappropriate to have to seek an amendment to the Order in those circumstances.

4. SCHEDULES

4.1 Schedule 1 (Authorised Development)

- 4.1.1 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 (although as set out above some of the Works include elements of other Works descriptions). This split of the Authorised Development between different work numbers is designed to enable the Order to refer to different parts of the Authorised Development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.

- 4.1.2 The works set out in Schedule 1 to the Order are described in detail in Chapter 5 of the Environmental Statement (**EN010162/APP/6.2**).
- 4.1.3 The mechanics of the drafting in Schedule 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement (**EN010162/APP/6.2**). This is achieved through the following mechanisms in the Order:
- 4.1.3.1 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, 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 (**EN010162/APP/6.2**).
- 4.1.3.2 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 Planning Authority to the layout, scale, ground levels, external appearance, hard surfacing materials, access and refuse or other storage units, signs and lighting.
- 4.1.3.3 Paragraph (2) of the detailed design requirement requires that the details submitted must accord with the concept design parameters and principles (**EN010162/APP/7.14**), the landscape and ecology management plan (to be submitted to and approved by the Planning Authority pursuant to Requirement 8) and the flood risk assessment (**EN010162/APP/6.4.9.1**) (which concept design parameters and principles, flood risk assessment and the outline landscape and ecological management plan (**EN010162/APP/6.4.5.1**) with which the final version must accord) are certified documents pursuant to article 41 (certification of plans and documents) and Schedule 10 (documents and plans to be certified)). The concept design parameters and principles (**EN010162/APP/7.14**) contain the maximum parameters for the Authorised Development and design principles and are the same as those used for the assessment of effects in the Environmental Statement (**EN010162/APP/6.2**). These parameters and principles are based on the application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the Environmental Statement (**EN010162/APP/6.2**), recognising that the final massings may differ from (but will never be larger than) these maxima.

- 4.1.4 The combined effect of, and relationship between, these provisions means that the final built form of the Authorised Development will not give rise to environmental effects beyond those which have been assessed in the EIA.

4.2 **Schedule 2 (Requirements)**

- 4.2.1 This Schedule sets out the requirements that apply to the construction, operation, maintenance, and decommissioning of the Authorised Development under the draft Order. The requirements generally follow the former model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the EIA and any discussions with the Planning Authority or other relevant statutory consultee. The requirements have a similar purpose to planning conditions.
- 4.2.2 The requirements closely relate to the mitigation set out in the Environmental Statement and a number of them specifically refer to the Environmental Statement and other application documents (in particular, 'outline' or 'framework' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 4.2.3 Many of the requirements require submission of details for approval by the Planning Authority or the County Authority ("the Relevant Authority"). In some instances the Relevant Authority is under a duty to consult with a third party or parties in relation to the document submitted to them. This is a departure from the model provisions. Where consultation is required under the Order it is the Relevant 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 Authority to consult a third party, that third party has been named within the relevant requirement.
- 4.2.4 Some of the requirements are drafted with a view to distinguishing between the different specific work numbers, or more generally different parts or phases of the Authorised Development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker which allows it to (potentially) discharge a requirement in respect of a part or phase of the Authorised Development and construct that element, while continuing to submit details to discharge the requirement in relation to other parts or phases. This provides an appropriate balance between development not starting until details are approved, and allowing other parts or phases of the Authorised Development (where details are already approved) to be constructed.
- 4.2.5 In the Applicant'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 (**EN010162/APP/6.2**); enforceable and precise in their language; and reasonable in all other respects.

- 4.2.6 In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan.
- 4.2.7 **Requirement 1 – Interpretation:** This provides certain definitions that apply to this Schedule only, rather than the Order as a whole.
- 4.2.8 **Requirement 2 – Commencement of the authorised development:** This requirement provides that the Authorised Development must not commence later than 5 years from the date of the Order coming into force.
- 4.2.9 **Requirement 3 – Phasing of the authorised development and date of final commissioning:** This requirement provides that no part of the Authorised Development may commence until a written scheme setting out the phases of construction of the Authorised Development has been submitted to and approved by the Planning Authority. The scheme must be implemented as approved. The undertaker must also give notice to the Planning Authority within 15 working days of the date of final commissioning of each phase of Work No. 1 that final commissioning for the relevant phases has taken place.
- 4.2.10 **Requirement 4 – Requirement for written approval:** This requirement provides that where any approval, agreement or confirmation is required under the requirements, then such approval, agreement or confirmation must be provided in writing.
- 4.2.11 **Requirement 5 – Approved details and amendments to them:** This requirement provides that where any plans, details or schemes have been approved by the Planning Authority or County Authority (or authorities), the undertaker may submit for approval any amendments to those plans, details or schemes and, if approved by the Planning Authority or County Authority (as applicable), those plans, details or schemes are to be taken to include the amendments approved by the Planning Authority or County Authority (as applicable). 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 (**EN010162/APP/6.2**).
- 4.2.12 **Requirement 6 – Detailed design approval:** This requirement stipulates the details that must be submitted to and approved by the Planning Authority before any phase of the Authorised Development can commence. The details submitted must accord with the concept design parameters and principles (**EN010162/APP/7.14**). The

Authorised Development must be carried out in accordance with the approved details. This is required so that the detailed design accords with the information submitted with the application for development consent.

- 4.2.13 **Requirement 7 – Fire safety management:** This requirement states that no part of Work No. 5 comprising any part of a BESS may commence until a fire safety management plan (“FSMP”) has been submitted to and approved by the County Authority. The FSMP must be substantially in accordance with the outline fire safety management plan (**EN010162/APP/6.4.5.4**). The County Authority must consult with Nottinghamshire Fire and Rescue Service and the Environment Agency before approving the FSMP. The approved FSMP must be implemented as approved and maintained throughout the construction and operation of the Authorised Development.
- 4.2.14 **Requirement 8 – Landscape and ecological management plan:** The requirement stipulates that no phase of the Authorised Development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology management plan (which is substantially in accordance with the outline landscape and ecological management plan (**EN010162/APP/6.4.5.1**)) has been submitted to and approved by the Planning Authority for approval. The landscape and ecological management plan must include details of how the plan will secure a minimum of 60% biodiversity net gain in area-based habitat units, a minimum of 26% biodiversity net gain for hedgerow units and a minimum of 11% biodiversity net gain in watercourse units for all of the Authorised Development during its operation. The landscape and ecological management plan must be implemented as approved and maintained throughout the construction and operation of the Authorised Development.
- 4.2.15 **Requirement 9 – Fencing and other means of enclosure:** As part of the detailed design approval required by Requirement 6, the undertaker is required to obtain the written approval from the Planning Authority (in consultation with the Environment Agency) for any proposed temporary or permanent fences, walls or other means of enclosure, including those set out in the outline construction environmental management plan (**EN010162/APP/6.4.5.3**), for each phase prior to commencement of the phase in question of the Authorised Development. Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the Authorised Development. Any temporary fencing must be removed on completion of the phase of construction of the Authorised Development for which it was used. Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase must be completed and properly maintained for the operational lifetime of the part of the Authorised Development enclosed by the permanent fencing, walls or other means of enclosure.

- 4.2.16 **Requirement 10 – Surface and foul water drainage:** This requirement provides that no phase of the Authorised Development may commence until details of the surface water drainage scheme (including the results of the infiltration testing) and (if any) foul water drainage system (including means of pollution control) for that phase have been submitted to and approved by the Planning Authority, in consultation with the County Authority, the relevant internal drainage board, the Environment Agency and Severn Trent Water (in respect of its sewerage undertaker functions). Any approved strategy must be implemented as approved and maintained throughout the construction and operation of the Authorised Development.
- 4.2.17 **Requirement 11 – Archaeology:** This requirement provides that no phase of the Authorised Development may commence until an archaeological mitigation strategy for the relevant phase has been submitted to an approved by the County Authority, which must be in accordance with the outline archaeological mitigation strategy (**EN010162/APP/6.4.11.8**). The detailed archaeological mitigation strategy for each phase must be implemented as approved.
- 4.2.18 **Requirement 12 – Construction environmental management plan:** This requirement provides that no phase of the Authorised Development may commence until a construction environmental management plan for the relevant phase has been submitted to an approved by the Planning Authority (in consultation with the Environment Agency), which must be substantially in accordance with the outline construction environmental management plan (**EN010162/APP/6.4.5.3**). All construction works associated with the Authorised Development must be carried out in accordance with the approved construction environmental management plan. All permitted preliminary works (as defined in article 2 of the Order) must be carried out in accordance with the outline construction environmental management plan.
- 4.2.19 **Requirement 13 – Operational environmental management plan:** This requirement provides that prior to the date of final commissioning for any phase of the Authorised Development an operational environmental management plan (which must substantially accord with the outline operational environmental management plan (**EN010162/APP/6.4.5.5**)) must be submitted to and approved by the Planning Authority (in consultation with the Environment Agency). Operation of the Authorised Development must be carried out in accordance with the approved operational environmental management plan.
- 4.2.20 **Requirement 14 – Construction traffic management plan:** Under this requirement, no phase of the Authorised Development may commence until a construction traffic management plan for that phase has been submitted to and approved by the County Authority (in consultation with National Highways), which must be substantially in accordance with the outline construction traffic management plan

(**EN010162/APP/6.4.5.2**). The construction traffic management plan must be implemented as approved and maintained until the date of final commissioning.

- 4.2.21 **Requirement 15 – Operational noise:** This requirement stipulates that no part of work numbers 1, 4, 5A, 5B, 6 or 7 (being the work numbers which may generate noise) may commence until an operational noise assessment containing details of how the design of the Authorised Development has incorporated mitigation to ensure the operational noise rating limits as set out in the Environmental Statement (**EN010162/APP/6.2**) are to be complied for the relevant work number with has been submitted to and approved by the Planning Authority.
- 4.2.22 **Requirement 16 – Ground conditions:** This requirement provides that no phase of the Authorised Development may commence until a written strategy in relation to the identification and remediation of any risks associated with contamination for that phase detailed in any desk top study and/or preliminary risk assessment and which has been identified as more than a low level of risk has been submitted to and approved by the Planning Authority (in consultation with the Environment Agency). If, during the carrying out of the Authorised Development, contamination not previously identified is found to be present no further development (unless otherwise agreed in writing with the Planning Authority) may be carried out on the areas on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the planning authority (in consultation with the Environment Agency). The Authorised Development must be carried out in accordance with the approved written strategy and, if applicable, the approved remediation strategy.
- 4.2.23 **Requirement 17 – Skills, supply chain and employment:** This requirement provides that no phase of the Authorised Development may commence until a skills, supply chain and employment plan (“SSCEP”) in relation to that phase (which must be substantially in accordance with the outline skills, supply chain and employment plan (**EN010162/APP/6.4.13.2**)) has been submitted to and approved by the planning authority. The SSCEP must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the Authorised Development, and the means for publicising such opportunities. The approved SSCEP must be implemented as approved.
- 4.2.24 **Requirement 18 – Recreation enhancements:** Under this requirement, No phase of the Authorised Development may commence until a recreational routes management plan (“RRMP”) in relation to that phase has been submitted to and approved by the County Authority (which must be in substantial accordance with the outline recreational routes management plan

(**EN010162/APP/6.4.18.1**)). The RRMP must be implemented as approved. Where a phase of the authorised development includes a permissive route, the permissive route must be provided and open to the public prior to the date of final commissioning in respect of that phase.

4.2.25 **Requirement 19 – Decommissioning and restoration:** This requirement provides that not less than 6 months before the 40th anniversary of the earlier of the date:

4.2.25.1 on which the final phase of the authorised development;
or

4.2.25.2 3 years following the date on which the first phase of the authorised development

first exports electricity on a commercial basis (as notified to the planning authority pursuant to requirement 3(2)), a decommissioning and restoration plan must be submitted to the Planning Authority for its approval, in consultation with the County Authority and the Environment Agency.

The decommissioning and site restoration plan must be in accordance with the outline decommissioning and restoration plan (**EN010162/APP/6.4.5.6**) and must be implemented as approved. Within 28 days of ceasing operations at any phase of the Authorised Development, the undertaker must notify the Planning Authority in writing of the date it ceased operations for that phase.

4.2.26 **Requirement 20 – Soil Management:** This requirement provides that no phase of the Authorised Development may commence until a soil management plan in relation to that phase has been submitted to and approved by the Planning Authority (in consultation with Natural England), which must be substantially in accordance with the outline soil management plan (**EN010162/APP/6.4.17.2**). The approved soil management plan must be implemented as approved.

4.2.27 **Requirement 21 – Community liaison:** This requirement provides that no phase of the authorised development may commence until a community liaison management plan has been submitted to and approved by the Planning Authority. The community liaison management plan is to include: contact details for the primary personnel; a communication strategy; and details of the frequency and method of communicating updates. The approved community liaison management plan must be implemented as approved.

4.2.28 **Requirement 22 – Glint and glare:** This requirement provides that no phase of the Authorised Development may commence until a glint and glare assessment, containing details of how the design of the Authorised Development has incorporated mitigation to ensure the glint and glare levels are below the assessment criteria as set out in

the glint and glare assessment contained in the environmental statement for that phase has been submitted to and approved by the Planning Authority. The design as described in the glint and glare assessment must be implemented as approved.

- 4.2.29 **Requirement 23 – Long-term flood risk mitigation:** This requirement provides that no if any part of Work No. 1 is still in operation on 1 January 2069, the undertaker must submit an updated flood risk assessment to the Planning Authority (following consultation with the Environment Agency). The updated assessment must, unless otherwise agreed with the Planning Authority and the Environment Agency, include details of any necessary mitigation or compensation measures, the timetable for implementation, and the maintenance and monitoring requirements for that mitigation or compensation. The undertaker must implement the measures approved in accordance with the approved implementation timetable no later than 31 December 2069 or such other time period as is agreed with the Planning Authority in consultation with the Environment Agency.

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

- 4.3.1 This Schedule sets out the streets that are to be subject to street works. The Schedule relates to Article 10 (Street works).

4.4 **Schedule 4 (Alteration of streets)**

- 4.4.1 This Schedule sets out the streets that are to be permanently altered (Part 1) and temporarily altered (Part 2) by reference to the streets and access plans (**EN010162/APP/2.8**). This Schedule relates to Articles 11 (Power to alter layout, etc., of streets) and 12 (Construction and maintenance of altered streets) and sets out where the streets are publicly or privately maintained.

4.5 **Schedule 5 (Streets and public rights of way)**

- 4.5.1 This Schedule sets out the temporary prohibition or restriction of the use of streets (Part 1), the temporary prohibition or restriction of public rights of way with diversion (Part 2) and the public rights of way to be permanently closed and diverted (Part 3). It references the traffic regulation measures plan (**EN010162/APP/2.13**) and the public rights of way and permissive routes plan (**EN010162/APP/2.4**). This Schedule relates to Article 13 (Temporary prohibition, restriction and diversion of use of streets and public rights of way) and Article 14 (Permanent closure of public rights of way).

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

- 4.6.1 This Schedule sets out the permanent accesses to the Authorised Development. It references the streets and access plans

(**EN010162/APP/2.8**). The Schedule relates to Article 16 (Access to works).

4.7 **Schedule 7 (Traffic regulation measures)**

4.7.1 This Schedule contains details of the roads that are subject to temporary traffic regulation measures pursuant to Article 18, and contains details of the nature of the measures for each affected street by reference to the traffic regulation measures plan (**EN010162/APP/2.13**). Part 1 specifies the roads that are subject to temporary speed limits and Part 2 specifies the locations of temporary traffic signs and signal controls.

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

4.8.1 This Schedule sets out the areas of land over which only new rights may be acquired or restrictive covenants imposed by the undertaker and the nature of the rights that may be acquired and the of the restrictive covenants that may be imposed. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans (**EN010162/APP/2.2**) and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed by reference to the defined terms set out in the Schedule. The Schedule relates to Article 24 (Compulsory acquisition of rights and imposition of restrictive covenants).

4.9 **Schedule 9 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)**

4.9.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. 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 24 (Compulsory acquisition of rights and imposition of restrictive covenants).

4.10 **Schedule 10 (Removal of hedgerows)**

4.10.1 This Schedule sets out the lengths of hedgerows (Part 1) and potentially important hedgerows (Part 2) which may be interfered with or removed under the Order. The Schedule relates to Article 39 (Felling or lopping of trees or removal of hedgerows) and refers to the hedgerows plan (**EN010162/APP/2.14**).

4.11 **Schedule 11 (Documents and plans to be certified)**

4.11.1 This Schedule lists those documents referred to in the DCO as requiring certification by the Secretary of State. This relates to Article 41 (Certification of plans and documents, etc.).

4.12 **Schedule 12 (Arbitration rules)**

- 4.12.1 This Schedule relates to Article 42 (Arbitration). The intention is to achieve a fair, impartial, and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, it is considered desirable that any disputes are resolved promptly to enable delivery of the Authorised Development in as timely a way as possible.
- 4.12.2 Schedule 12 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 4.12.3 The timetable for the process is as follows:
- 4.12.3.1 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.
 - 4.12.3.2 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.
 - 4.12.3.3 Within 7 days of receipt of the Respondent's documentation the Claimant may make a statement of reply.
- 4.12.4 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.

4.13 **Schedule 13 (Protective provisions)**

- 4.13.1 This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the Authorised Development. This schedule relates to Article 43 (protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2). Part 3 contains protective provisions for Network Rail, Part 4 for the Environment Agency, Part 5 for National Highways and Part 6 for the Internal Drainage Board. Part 7 contains protective provisions for Cadent Gas Limited, as gas

undertaker. Part 8 contains protective provisions for National Grid Electricity Transmission plc, as electricity undertaker.

4.14 **Schedule 14 (Procedure for discharge)**

- 4.14.1 This Schedule provides a bespoke procedure for dealing with an application made to the relevant authority (as defined in the Schedule) for any consent, agreement or approval required or contemplated by the provisions of the Order. It sets out time periods within which decisions must be made and provides for deemed approval of the applications in certain circumstances.
- 4.14.2 Paragraph 4 makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Paragraph 5 provides for the payment by the undertaker of fees to the relevant authority for the processing of an application for consent, agreement or approval in respect of a requirement only. The fee schedule included in paragraph 5 represents the Applicant's reasonable offer to fund the relevant authority for discharging the relevant requirements in Schedule 2 of the Order. The fees are set out in categories to reflect the level of resource that will be required for dealing with an application under the different requirements in Schedule 2. This is broadly based on the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, (as amended by the 2017 Regulations) (the "Fee Regulations") with amendments made to reflect the nature and scale of the Authorised Development. Subparagraph 5(2) provides that where an application is not decided within the specified period the amount paid under sub-paragraph 5(1) shall be refunded to the undertaker, which is based on the principle established in Regulation 16(2) of the Fee Regulations.
- 4.14.3 Schedules similar to Schedule 14 have been used in various made orders and can be seen in similar form therein (see, for example, The Sunnica Energy Farm Order 2024, The Longfield Solar Farm Order 2023, The Hornsea Four Offshore Wind Farm Order 2023, The Mallard Pass Solar Farm Order 2024, The Gate Burton Energy Park Order 2024 and The Cottam Solar Farm Order 2024). The bespoke process is required in order to ensure that applications under the Order are dealt with efficiently so that the Authorised Development is not held up, and to provide greater certainty with regard to the time periods involved in discharging requirements. Deemed consent of applications is required for the same reason and ensures that the projects required to meet a national need will not be held up by the discharge of requirements. The Schedule relates to Article 46 (Procedure in relation to certain approvals etc.). The Applicant notes that there is no precedent for fees to be paid to the discharging authorities in the two other made solar DCOs, but notwithstanding this it has proposed a fair and reasonable fee schedule to assist the relevant authorities with the discharge of requirements.