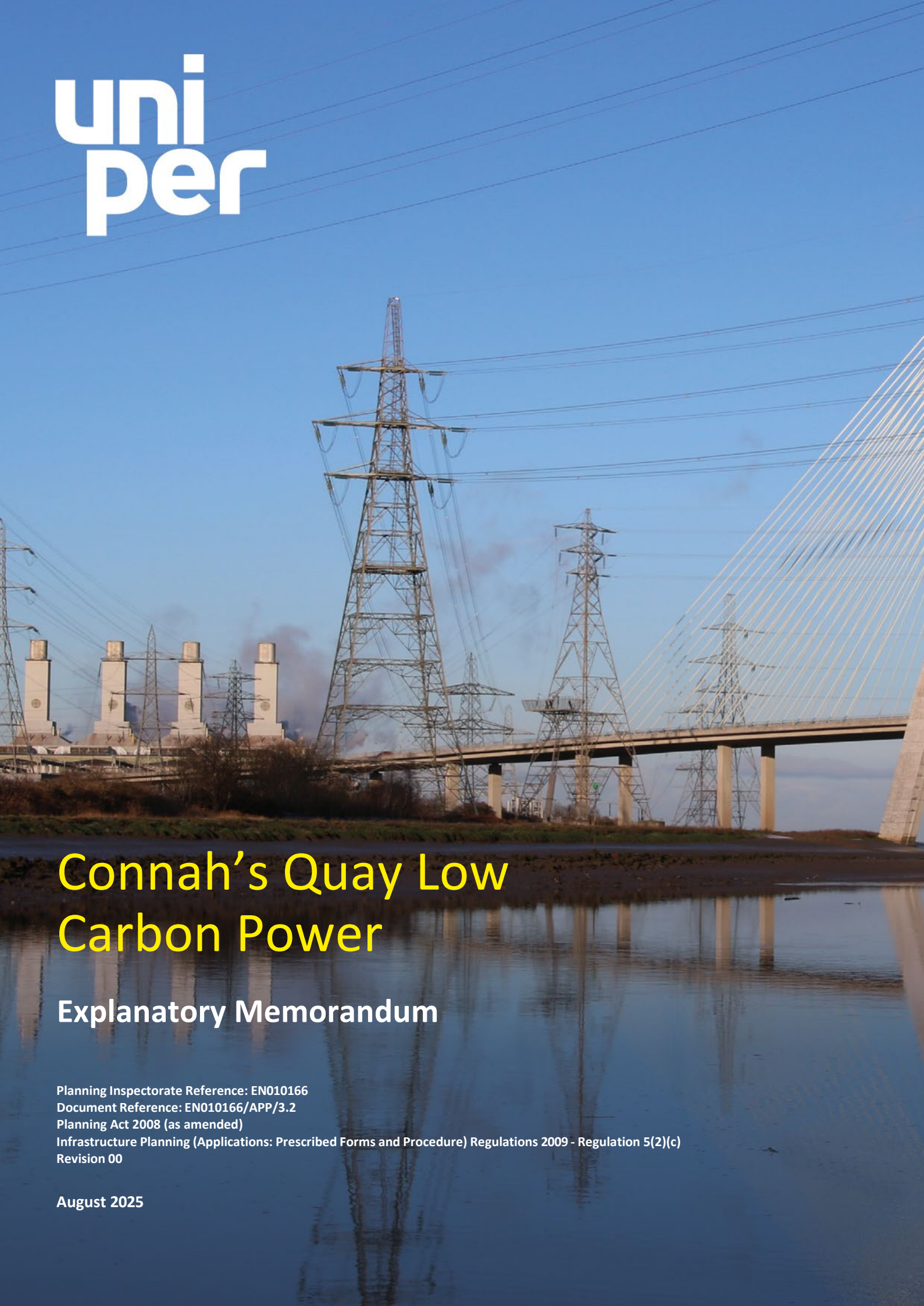

Connah's Quay Low Carbon Power

Explanatory Memorandum

Planning Inspectorate Reference: EN010166
Document Reference: EN010166/APP/3.2
Planning Act 2008 (as amended)
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(c)
Revision 00

August 2025

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1. Introduction

1.1 Purpose

1.1.1 Uniper UK Limited (the Applicant) has made an application (the Application) for a development consent order (DCO) from the Secretary of State (SoS) to authorise the Connah's Quay Low Carbon Power project (the 'Project' and also described as 'the Proposed Development' and 'authorised development' throughout) which is described at Schedule 1 (Authorised Development) to the **Draft DCO** (**EN010166/APP/3.1)**, which accompanies the Application and is entitled The Connah's Quay Low Carbon Power Order 202[*] (the Order) **(EN010166/APP/3.1)**.

1.1.2 This memorandum explains the purpose and effect of each Article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended). In particular, it sets out (where relevant):

- the source of the provision (whether it is bespoke or based on a granted DCO); and
- the reasons why the Article is relevant to the Authorised Development and considered important/essential to the delivery of the Proposed Development.
- This document should be read alongside the Order and the various documents submitted in respect of the Application.

2. Purpose of the Order

2.1 Overview

2.1.1 The Applicant is seeking a DCO for the construction, operation (including maintenance) and decommissioning of a proposed low carbon Combined Cycle Gas Turbine (CCGT) Generating Station fitted with Carbon Capture Plant (CCP) (the Connah's Quay Low Carbon Power (CQLCP) Abated Generating Station) and supporting infrastructure (collectively 'the Proposed Development').

2.1.2 The CQLCP Abated Generating Station would comprise up to two CCGT with CCP units (and supporting infrastructure) achieving a net electrical output capacity of more than 350 megawatts (MW; referred to as MWe for electrical output) and up to a likely maximum of 1,380 MWe (with CCP operational) onto the national electricity transmission network.

2.1.3 Through a carbon dioxide (CO2) pipeline, comprising existing and new elements, the Proposed Development would make use of CO2 transport and storage networks owned and operated by Liverpool Bay CCS Limited, currently under development as part of the HyNet Carbon Dioxide Pipeline project (referred to as the 'HyNet CO2 Pipeline Project'), that will transport CO2 captured from existing and new industries in North Wales and North-West England, for offshore storage. The captured CO2 will be permanently stored in depleted offshore gas reservoirs in Liverpool Bay.

2.1.4 For the purposes of the electrical connection, National Grid Electricity Transmission plc (NGET), which builds and maintains the electricity transmission networks, is responsible for the operation and maintenance of the existing 400 kV NGET Substation.

2.1.5 A description of the Proposed Development, including details of maximum parameters, is set out in **Chapter 4: The Proposed Development** of the **Environmental Statement (ES) (EN010166/APP/6.2.4)**. At this stage in the development, the design of the Proposed Development incorporates a necessary degree of flexibility to allow for ongoing design development.

2.1.6 The Proposed Development would be capable of responding quickly to increases in demand for electricity, contributing towards the UK's energy supply security, whilst capturing carbon emissions and supporting the UK's transition to a low carbon energy system.

2.1.7 As the proposed generating capacity exceeds 350 MW, the Proposed Development is classified as a Nationally Significant Infrastructure Project under sections 14(1)(a) and 15(1) and (3A) of the Planning Act 2008 (the 2008 Act). A DCO is therefore required for the Proposed Development.

2.2 The Applicant

2.2.1 The Applicant is a UK-based company, wholly owned by Uniper SE (Uniper) through Uniper Holding GmbH. Uniper is a European energy company with global reach and activities in more than 40 countries. With around 7,500 employees, the company makes an important contribution to security of supply in Europe, particularly in its core markets of Germany, the UK,

Sweden, and the Netherlands. In the UK, Uniper owns and operates a flexible generation portfolio of power stations, a fast-cycle gas storage facility and two high pressure gas pipelines, from Theddlethorpe to Killingholme and from Blyborough to Cottam.

2.2.2 Uniper is committed to investing around €8 billion (~£6.9 billion) in growth and transformation projects by the early 2030s and aims to be carbon-neutral by 2040. To achieve this, the company is transforming its power plants and facilities and investing in flexible, dispatchable power generation units. Uniper is one of Europe's largest operators of hydropower plants and is helping further expand solar and wind power, which are essential for a more sustainable and secure future. Uniper is gradually adding renewable and low-carbon gases such as biomethane to its gas portfolio and is developing a hydrogen portfolio with the aim of a long-term transition. The company plans to offset any remaining CO2 emissions by high-quality CO2-offsets.

2.3 Proposed Development Site

2.3.1 The Proposed Development Site is located approximately 0.6 kilometre (km) north-west of Connah's Quay in Flintshire, north-east Wales. It lies within the Flintshire County Council (FCC) administrative area.

2.3.2 The Order Limits encompass a total area of approximately 105 hectares (ha). Around 19 ha of land is included within the Order Limits for the receipt and delivery of abnormal indivisible loads (AILs) to the Main Development Area from local ports (the Accommodation Works), during construction. Around 85 ha of the Order Limits is focused on the Main Development Area, construction areas and connection corridors.

2.3.3 The Order Limits include the existing Connah's Quay Power Station site, owned and operated by the Applicant, and adjacent land for the purposes of facilitating connections to the Authorised Development for gas, electricity, water and other necessary infrastructure.

2.3.4 The town of Connah's Quay is located to the south-east of the existing Connah's Quay Power Station and the Main Development Area, immediately beyond the A548 and the North Wales Main Line railway. The area to the south-west of the Main Development Area is mainly used for pastoral agriculture with some arable agriculture while the area to the north-west of the Main Development Area is a nature reserve within several statutory designated sites.

2.3.5 The Order Limits include the land shown outlined in red on the **Land Plans (EN010166/APP/2.2)** within which the Proposed Development must be carried out and which may be subject to a right to override easements and other rights upon appropriation of the land for the purposes of the Proposed Development, and the extinguishment of private rights of way. The Order land is the land over which the Applicant is applying for compulsory powers, which is described in the **Book of Reference (EN010166/APP/4.1)** and shown on the **Land Plans (EN010166/APP/2.2)** and **Crown Land Plans (EN010166/APP/2.3)**.

2.3.6 Further information about the Site is provided in **ES Chapter 4: Project Description (EN010166/APP/6.2.4)**.

2.4 Development authorised by the Order

2.4.1 The Key components of the Proposed Development include:

- demolition works at the existing Connah's Quay Power Station Site, including demolition of the existing Gas Treatment Plant (GTP), Above Ground Installation (AGI), store buildings and contractors' facilities;
- a CCGT electricity generating station of more than 350 MW net electrical output with CCP and ancillary buildings and structures within the Main Development Area. The CCGT with CCP plant will comprise up to two new 'Trains' (each Train comprising one CCGT and one CCP);
- Proposed CO_2 AGI – which will be located within the Main Development Area;
- Repurposed CO_2 Connection Corridor – the export of CO_2 will utilise approximately 3 km of an existing natural gas pipeline. It includes a buffer zone of up to 24.4 m width;
- Proposed CO_2 Connection Corridor – captured CO_2 emissions from the Proposed Development will be discharged from the Repurposed CO_2 Connection Corridor, via a new proposed CO_2 pipeline that is around 422 metres in length (the Proposed CO_2 Connection) into Liverpool Bay CCS Ltd's Flint AGI (which is part of the proposed HyNet CO_2 Pipeline Project) and then into the HyNet CO_2 Pipeline;
- Water Connection Corridor – cooling water for the Proposed Development will be abstracted from and discharged to the River Dee, in-line with the current process for the existing Connah's Quay Power Station. This will require the refurbishment of the existing cooling water abstraction and discharge infrastructure;
- Electrical Connection Corridor – a new connection will be required from the CCGT plant to the Applicant's existing 400 kilovolt (kV) banking compound. The existing electrical connection from the Applicant's banking compound is expected to be used to connect the Proposed Development to the existing Connah's Quay Substation located south-east of the Main Development Area;
- a Construction Laydown and Indicative Enhancement Area;
- accesses and access works;
- Accommodation Works – routes required to facilitate the transport of AILs to the Main Development Area, including the local highway network between the Port of Mostyn and the Main Development Area, as well as works at the Connah's Quay North Jetty and local highway network between the Jetty and the Main Development Area; and
- Site Wide Works – further associated development comprising such other works or operations as may be necessary or expedient.

3. Part 1 - Preliminary

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

3.1 Article 1 (Citation and commencement)

3.1.1 This article sets out the title of the Order and the date on which it comes into force.

3.2 Article 2 (Interpretation)

3.2.1 This article sets out the defined terms and matters of general interpretation to be applied throughout the Order.

3.2.2 Definitions of note within article 2(1) are as follows:

- **"authorised development"** encompasses all works and development authorised by the Order (as described in Schedule 1 of the Order) and should be read in that context in this memorandum.
- **"commence"** incorporates the definition of a "material operation" under section 155 of the 2008 Act. This definition excludes the pre-commencement activity of "site enabling works". The effect of the definition is that the site enabling works can be carried out prior to the requirements contained in Schedule 2 to the Order being discharged. The ability to do this is of critical importance to the Applicant in the context of the envisaged construction programme. It is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective. The Applicant has carefully considered which works should be included within the "site enabling works" and based on the findings of the environmental impact assessment, the works that have been identified would not give rise to adverse environmental impacts that would need to be controlled by the requirements (unless expressly provided in specific cases). The works identified in the "site enabling works" 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. The operations listed in the definition of "site enabling works" are the same as those excluded from the definition of "commence" within The HyNet Carbon Dioxide Pipeline Order 2024 (HyNet Order)[1] and The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 (Drax Order)[2], save that temporary drainage works has also been included in this definition.
- **"ENI Works"** has been defined by reference to the specific Work No. which ENI UK Limited will be undertaking. Article 7 (Benefit of the Order) provides that ENI UK Limited is an "undertaker" for the purposes of carrying out the ENI Works.

[1] SI 2024/436.
[2] SI 2024/70.

- **"preliminary demolition"** has been expressly defined so that there is certainty that the site enabling works only include certain specified demolition works as have been assessed in the **ES (EN010166/APP/6.1-6.4)**.
- **Outline and Framework Plans** have been included and will be certified pursuant to Article 46 (Certification of plans etc.). These plans are key mechanisms by which the controls and mitigation relating to the authorised development will be secured. Requirements contained within Schedule 2 (Requirements) of the Order prescribe that the various Framework Plans, as certified, will be developed into detailed plans prior to commencement of relevant stages of the authorised development.
- **"Liverpool Bay CCS Works"** has been defined by reference to the specific Work Nos. which Liverpool Bay CCS Limited will be undertaking. Article 7 (Benefit of the Order) provides that Liverpool Bay CCS Limited is an "undertaker" for the purposes of carrying out the Liverpool Bay CCS Works.
- **"maintain"** is based on the wording used in the HyNet Order, which was in turn based on the drafting of The Southampton to London Pipeline Development Consent Order 2020 (SLP Order)[3] and includes maintenance activities required for DCOs such as the Drax Order. The list of maintenance activities is considered appropriate since it affords the flexibility required to enable the undertaker to respond to the range of maintenance activities that may need to be undertaken during the lifetime of the authorised development. The words "provided such works do not given rise to any materially new or materially different environmental effects to those identified in the environmental statement" have been included within the definition to prevent the maintaining of the authorised development in a manner or to a degree which has not been assessed under the parameters of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 or varies the authorised development. This ensures that any maintenance activities remain within the scope of the authorised development that has been assessed and considered by the Secretary of State as decision-maker.
- **"National Grid Works"** has been defined by reference to the specific Work Nos. which National Grid (National Grid Electricity Transmission plc (National Grid)) will be undertaking. Article 7 (Benefit of the Order) provides that National Grid is an "undertaker" for the purposes of carrying out the National Grid Works.
- **"Order limits"** is defined as those limits shown on the **Works Plans (EN010166/APP/2.4)**, which is the extent of the area within which the authorised development may be carried out.
- **"Order land"** is defined as meaning the land shown on the Land Plans and identified in the Book of Reference. The Order land is not limited to land which is to be acquired but also includes: (i) land owned by the undertaker or related companies; (ii) third-party land over which the undertaker is seeking to acquire rights; and (iii) land of which temporary

[3] SI 2020/1099.

possession is required for the construction, operation and maintenance of the Proposed Development.

- **"street"** is defined by reference to section 48 of the New Roads and Street Works Act 1991. This means a street constitutes the whole or any part of any of a highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. Where a street, so defined, passes over a bridge or through a tunnel, references in this Part to the street include that bridge or tunnel.

3.2.3 **"undertaker"** is defined as Uniper UK Limited or any person who has the benefit of the Order in accordance with Articles 7 (Benefit of the Order) and 8 (Consent to transfer benefit of the Order) (see below). Uniper UK Limited is the Applicant for the Proposed Development and so has the benefit of the Order generally.

3.2.4 Article 2(2) expands the definition of rights over land.

3.2.5 Articles 2(3) and 2(4) define measurements as approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the Order permits the works. Thus, this provision allows for a small tolerance, although all works will take place within the limits of deviation.

3.2.6 Article 2(5) confirms that any mention of points identified by letters or numbers in the Order should be understood as referring to the corresponding points marked with those letters or numbers on the relevant plans.

3.2.7 Article 2(6) confirms that references to works are to the works numbered in Schedule 1.

3.2.8 Article 2(7) confirms that references to any statutory body includes that body's successor in function, allowing for continuity in the event of a restructuring or renaming of statutory advisory bodies and local authorities.

3.2.9 Article 2(8) provides that the expression "includes" does not purport to limit the description to which it is attached.

3.2.10 Article 2(9) applies to all references in the Order to "materially new or materially different" environmental effects. There are provisions in the draft DCO where activities are constrained to those which do not give rise to materially new or materially different environmental effects or where variations are permissible provided they do not give rise to such effects. For example, the definition of "maintain" uses this term to constrain the scope of what maintenance can include. By including this paragraph in the Order, it is clear that that references to materially new or materially different environmental effects in comparison with those reported in the **ES (EN010166/APP/6.1-6.4)** shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the ES as a result of the authorised development. This wording is directly precedented in The A122 (Lower Thames Crossing) Development

Consent Order 2025 (LTC Order)[4] and reflects a similar practical approach as has been applied by The A19/A184 Testo's Junction Alteration (Correction) Order 2019[5].

[4] SI 2025/462.
[5] SI 2019/941.

4. Part 2 – Principal Powers

4.1 Article 3 (Development consent etc. granted by the Order)

4.1.1 Article 3 provides the principal power to construct and operate the authorised development. Schedule 1 describes the authorised development, as explained at paragraph 3.2.2 above.

4.1.2 The power granted by this article is subject to compliance with the requirements, which are contained in Schedule 2 (Requirements) and provide for controls on the authorised development. This Article is provided for under section 115(1) of the 2008 Act. This drafting has precedent in Article 3(1) of the LTC Order.

4.2 Article 4 (Operation and use of the authorised development)

4.2.1 Article 4 provides the principal power to use and operate the authorised development for the purpose for which it is designed. It also provides authorisation to use the existing pipeline in parallel to implementation of the Order. Such authorisation is provided to Liverpool Bay CCS Limited expressly because that will be the entity making use of the existing pipeline and there are no works associated with the existing pipeline and so Liverpool Bay CCs Limited do not automatically fall under the definition of "undertaker" for this part of the Project. Only Liverpool Bay CCS Limited or any successor in function or title may at any time operate, maintain and use the existing pipeline, the new pipeline and Flint AGI because they will be the entity with the transport and storage licence to operate that infrastructure.

4.2.2 The article also confirms that the existing pipeline can be used for the conveyance of CO_2.

4.2.3 Section 157(2) of the 2008 Act expressly allowed the authorisation for use of a "building" for the purpose for which it is designed. However, the authorised development includes key elements, such as the pipeline, which are not buildings and therefore the clarification provided in this article is necessary. This wording was used in The River Humber Gas Pipeline Replacement Order 2016 (River Humber Order) (Article 6)[6] and HyNet Order (Article 4).

4.3 Article 5 (Power to maintain the authorised development)

4.3.1 This article provides for the power to maintain the authorised development except to the extent any other provisions in the Order or any agreement made under the Order provide otherwise. The extent of what is included within the scope of the term "maintain" is explained at paragraph 3.2.2 above.

[6] SI 2016/853.

4.3.2 This article has been inserted for the avoidance of doubt and in accordance with section 120(3) of the 2008 Act and is also a matter specifically identified in paragraph 5 of Schedule 5 to the 2008 Act, which relates to the operation of the generating station. This article ensures that the undertaker has the benefit of the statutory authority conferred by section 158 of the 2008 Act when maintaining the development authorised by the Order.

4.3.3 Identical articles have been included in other generation DCOs, including Article 5 of the North London Heat and Power Generating Station Order 2017[7], Article 4 of the Wrexham Gas Fired Generating Station Order 2017[8] and Article 6 of the Sizewell C (Nuclear Generating Station) Order 2022 (Sizewell C Order)[9].

4.4 Article 6 (Limits of deviation)

4.4.1 Article 6 allows for both lateral and vertical limits of deviation in respect of the works.

4.4.2 The limits of deviation provided within the article provides the undertaker with a reasonable and proportionate degree of flexibility in constructing the authorised development. By building in the flexibility into the Order in this way, any deviation within the limits proposed would not give rise to any materially new or materially different environmental effects, as the ES considers the impact of the Proposed Development within the limits of deviation proposed.

4.4.3 With respect to the Liverpool Bay CCS Works which take place underground, the lateral limits of deviation which are sought under the Order balance the need for flexibility, along with the any resultant impacts caused by the authorised development. The upwards vertical limit of deviation (i.e. the minimum depth at which the pipeline may be laid) is 1.2 metres from the surface of the ground, except where ground conditions make compliance with this upward limit impracticable, in which case the upwards limit is 0.452 metre below the surface of the ground. This upwards limit is included to avoid, insofar as possible, interference with ground level activities such as agricultural operations. The downward limit for trenched construction methods is to any extent as may be found necessary or convenient.

4.4.4 For works other than the underground Liverpool Bay CCS Works, vertical deviation may be upwards to the height limit set for each specific work or area within Table 1 of the design principles document and downwards to any extent as may be found necessary or convenient.

4.4.5 This provision has precedent in the HyNet Order (Article 6).

4.5 Article 7 (benefit of the Order)

4.5.1 Article 7 provides that the Applicant has the benefit of the Order save for:

[7] SI 2017/215.
[8] SI 2017/766.
[9] SI 2022/853.

- the ENI Works (Work No. 1(h) and site wide works required in connection with Work No. 1(h)) for which ENI UK Limited also has the benefit of the Order;
- the Liverpool Bay CCS Works (Work Nos. 1(e), 7 to 9 and 10(e) and site wide works required in connection with Work Nos. 1(e), 7 to 9 and 10(e)) for which Liverpool Bay CCS Limited also has the benefit of the Order; and
- the National Grid Works (Work No. 6 and site wide works required in connection with Work No. 6) for which National Grid also has the benefit of the Order.

4.5.2 Paragraph (2) further provides that nothing in paragraph (1) should be read as meaning that other parties expressly stated to benefit from the Order should be excluded from such benefits.

4.5.3 This Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the specified parties and not any other person with an interest in the Order land (unless provided under Article 8).

4.5.4 Precedent for the use of similar provisions to paragraph (1) can be found in Article 6 of the Immingham Open Cycle Gas Turbine Order 2020[10], where powers to carry out particular works were given to National Grid, and article 8 of the Sizewell C Order, where powers to carry out particular works were given to Sizewell B, Network Rail and National Grid as well as the applicant for that Order.

4.6 Article 8 (Consent to transfer benefit of Order)

4.6.1 This Article makes provision for the benefit of the Order to be transferred. This 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 (4), the consent of the Secretary of State is needed before the undertaker can transfer or lease the benefit of the provisions of the Order except where:

- the transferee or lessee is Uniper UK Connah's Quay Low Carbon Power Limited;
- the transferee or lessee is Liverpool Bay CCS Limited;
- the transferee or lessee is ENI UK Limited;
- the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989;
- the transferee or lessee is a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986; or
- the compensation provisions for the acquisition of land or effects on land have elapsed.

[10] SI 2020/847.

4.6.2 Article 8(2) has been amended from the model provisions so that it refers to "transfer or grant", which is considered to be more accurate than "agreement".

4.6.3 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims.

4.6.4 Article 8(5) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then: a) the transferred benefit will include any rights that are conferred and any obligations that are imposed; b) the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker; c) the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.

4.6.5 Wording similar to Article 8 is precedented in other generating station DCOs, such as The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (Keadby 3 Order)[11] and the Longfield Solar Farm Order 2023 (Longfield Order)[12].

4.7 Article 9 (Disapplication, application and modification of legislative provisions and modifications to section 36 consent)

4.7.1 Article 9 disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects.

4.7.2 Paragraph (1)(a) relates to the disapplication of local legislation and cross refers to Schedule 3, where further detail of local legislation to be disapplied is provided. The Applicant has taken a proportionate approach in determining local legislation which has the potential to cause inconsistency with the Order and disapplied local legislation which would potentially apply over the Order limits to ensure that there is no potential for conflict.

4.7.3 Paragraphs (1)(b) and (c) disapply byelaws where the carrying out of the authorised development would conflict with such byelaws.

4.7.4 Paragraph (1)(d) provides for the disapplication of consents ordinarily required in respect of the Land Drainage Act 1991. Specifically, these are the requirements for consents for the construction of culverts, together with the requirements for approval under byelaws made under the Land Drainage Act

[11] SI 2022/1396.
[12] SI 2023/734.

1991. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised development can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained in relation to these activities. These provisions were included in The Hornsea Three Offshore Wind Farm Order 2020 (Hornsea Three Order)[13] and Article 8 of the HyNet Order.

4.7.5 Paragraph (1)(e) disapplies the provisions of the Neighbourhood Planning Act 2017 (2017 Act) relating to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles 36 and 37 and the wording of those provisions is well established. The 2017 Act provisions differ from those in the Order and are untested, as they are not yet in force, it is therefore necessary to disapply them in case they should come into force in the future. This disapplication was included in the HyNet Order (Article 8) and The Norfolk Vanguard Offshore Wind Farm Order 2022 (Norfolk Vanguard Order) (Article 7)[14].

4.7.6 Paragraph (2) disapplies section 141 of the Highways Act 1980. This section places restrictions on planting in or near carriageways. It has been disapplied to the extent that any tree or shrub planted has been planted with the agreement of the highway authority. It is precedented in the Sizewell C Order.

4.7.7 Paragraph (3) clarifies that, for the purposes of the CIL Regulations, any building forming part of the Authorised Development falls within the exemption under regulation 6 and will not be considered as "development" for the purposes of levying CIL. This wording can be found in the HyNet Order and SLP Order.

4.7.8 Paragraph (4) confirms that Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 has been disapplied to avoid any future planning enactments undermining the powers and rights provided to the undertaker under the Order. This provision is included in the Northampton Gateway Rail Freight Interchange Order 2019.

4.7.9 Paragraph (5) confirms that development consent granted by the Order is treated as if it were 'planning permission' so as to allow for application of the relevant exemption to apply in the the Town and Country Planning (Trees) Regulations 1999[15]. This approach has precedent in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 (Yorkshire GREEN Order)[16].

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

[13] SI 2020/1656.
[14] 2022/138.
[15] SI 1999/1892.
[16] SI 2024/393.

4.7.11 Similar amendments are made to the Hedgerows Regulations 1997 at paragraph (7) of this Article. These amendments bring the position for DCO development in line with the position under other planning permissions or deemed permissions (such as under the Transport and Works Act 1992). This is considered appropriate for a DCO project with national importance. This approach has precedent in the Great Yarmouth Third River Crossing Development Order 2020 (Yarmouth Order)[17] and the Norfolk Boreas Offshore Wind Farm Order 2021[18].

4.7.12 Paragraph (8) provides that the Order constitutes a 'reasonable excuse' for the purposes of Section 28P (offences) of the Wildlife and Countryside Act 1981 (WCA 1981)[19]. Due to the location of the Proposed Development, there is a high chance that various SSSI assents under the WCA 1981[20] will be required by the undertaker carrying out works pursuant to the Connah's Quay DCO. To avoid the potential for undue delay to the delivery of the overall Authorised Development associated with such approval processes, it is proposed that, in the same way that operations authorised by planning permission under the Town and Country Planning Act 1990 regime would form a 'reasonable excuse', so should consent granted by the Connah's Quay DCO. This would mean that the making of the DCO removes any need to obtain separate assents for works undertaken pursuant to the DCO. This approach is considered appropriate on the basis that the DCO process facilitates an equivalent process to that under section 28I of the WCA 1981. Section 150 of the 2008 Act allows that "*an order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision*". 'Prescribed consents' are then listed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015[21]. In Wales, a consent under section 28E (duties in relation to sites of special scientific interest) of the WCA 1981 is a prescribed consent. Whilst the undertaker would be disapplying the section 28H assent process, rather than the section 28E consent process, the Applicant has been engaging with Natural Resources Wales.

4.7.13 Paragraph (9) provides that any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of the Order. The Applicant considers that, in the context of the Proposed Development being of national significance, the Order should be the predominant authorising instrument for the works. This approach has precedent in the A47 Wansford to Sutton Development Consent Order 2023[22], the A57 Link Roads Development Consent Order 2022[23] and the A417 Missing Link Development Consent Order 2022[24].

4.7.14 Paragraph (10) provides for certainty with respect any potential inconsistency between the section 36 consent and the Order. It ensures that the Order takes precedence but that this will not inhibit ongoing operation of

[17] SI 2020/1075.
[18] SI 2021/1414.
[19] 1981 c. 69.
[20] As the Applicant is a statutory undertaker, the assent process under section 28H would be followed.
[21] SI 2015/426.
[22] SI 2023/218.
[23] SI 2022/1206.
[24] SI 2022/1248.

the existing power station, which benefits from the section 36 consent. This approach is precedented in The Riverside Energy Park Order 2020[25] (as amended by The Riverside Energy Park (Amendment) Order 2023[26]).

4.7.15 Paragraph (11) provides that where there is an inconsistency such that carrying out or maintaining the Authorised Development constitutes a contravention of the section 36 consent, this is deemed to be a reasonable excuse for the purposes of section 36(6) of the Electricity Act 1989. This avoids any inadvertent criminal liability being incurred by the undertaker as a result of any such inconsistency.

4.8 Article 10 (Planning permission)

4.8.1 This Article clarifies the relationship between the application of planning permissions granted under the 1990 Act (or permitted development rights deemed to be granted under it) and the development powers granted by the Order. It also clarifies the relationship between the application of planning permissions granted under the Town and Country Planning Act 1990 ('1990 Act') (or permitted development rights deemed to be granted under it) and the development powers granted by the Order. It addresses any potential uncertainty that may result from the Supreme Court's decision in Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented (or continue to be implemented) depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.

4.8.2 Paragraph (1) provides for the event that any conditions of any planning permission that are incompatible with the requirements of the Order or the authorised development. The drafting ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act which are inconsistent with the works and exercise of powers under the Order and is precedented in the LTC Order.

4.8.3 Paragraph (2) requires the undertaker to notify the relevant planning authority and use reasonable endeavours to notify the current beneficiary of the affected planning permission when the undertaker identifies an incompatibility between a condition of a planning permission and the Order.

4.8.4 Paragraph (3) permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This is so that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. Such drafting is precedented in Article 56 of the LTC Order.

4.8.5 Paragraph (4) provides that the works authorised by the Order (authorised development) may be carried out or may continue to be carried out

[25] SI 2020/419.
[26] SI 2023/165.

notwithstanding the initiation of any development pursuant to a planning permission granted or deemed to be granted pursuant to the 1990 Act which may be physically incompatible with the authorised development. Paragraph (5) confirms that development under a planning permission is not to prevent activity authorised under the Order. This drafting is precedented in Article 56 of the LTC Order.

4.8.6 Paragraph (5) makes clear that nothing in the Order restricts the future grant of planning permissions under the 1990 Act for works within the Order limits, or exercise of permitted development rights. This provision is necessary to ensure that the undertaker, as a licence holder under the Electricity Act 1989[27], can continue, in particular, to rely on its extant permitted development rights to facilitate the on-going operation and/or decommissioning of the existing power station and to allow for minor works to be separately consented without needing to rely on an amendment to the Order which would be disproportionate and impractical in the circumstances. This paragraph, whilst bespoke, is precedented to a degree by Article 6(2) of the A66 Northern Trans-Pennine Development Consent Order 2024[28] and Article 37 of the M20 Junction 10a Development Consent Order 2017[29].

4.9 Article 11 (Defence to proceedings in respect of statutory nuisance)

4.9.1 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under section 82(1) of the Environmental Protection Act 1990[30] in relation to certain nuisances set out in paragraph 79(1) of that Act.

4.9.2 A broad defence to civil and criminal proceedings for nuisance is provided by section 158 of the 2008 Act. However, the view taken under the NSIP regime is that section 158 does not extend to the rare situation by which if, somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under section 82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of section 158.

4.9.3 As section 158 does not distinguish between different types of nuisance, the logical position is that this article should apply to all categories of nuisance. However, as a matter of practice other Projects have been more discriminating and have asked whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The undertaker has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the Proposed Development, as set out in the **Statutory Nuisance Statement (EN010166/APP/7.1)** accompanying the application. This ensures that this article is focused only on those

[27] 1989 c. 29.
[28] SI 2024/360.
[29] SI 2017/1202.
[30] 1990 c. 43.

nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of section 158.

4.9.4 The defence is available if the nuisance relates to:

- the use of premises by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the Proposed Development and is attributable to the carrying out of the Proposed Development in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or
- the construction, maintenance or use of the Proposed Development and cannot reasonably be avoided.

4.9.5 This article is based on article 7 of the model provisions. The references to section 65 of the Control of Pollution Act 1974 are omitted because that section has been repealed. This Article has precedent in the HyNet Order (Article 9).

5. Part 3 – Powers in respect of Streets

5.1 Article 12 (Street works)

5.1.1 This Article provides that the undertaker may undertake works in, on or under the streets identified in Schedule 4 and which are within the Order limits, for the purposes of the Authorised Development. The consent of the street authority is not required for these works.

5.1.2 Paragraph (1) provides an indicative, but non-exhaustive, list of the street works that may be carried out by the undertaker.

5.1.3 Paragraph (2) clarifies that the authority given by this article is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act, which means that the Order replaces the need to apply for a street works licence under that Act.

5.1.4 Paragraph (3) allows the undertaker temporarily to close, alter or divert any street or private means of access. It also allows the undertaker for any reasonable time to divert the traffic and prevent all persons from passing along the street. In the event that pedestrian access is prevented, paragraph (5) requires the undertaker to provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street if there would otherwise be no such access.

5.1.5 Paragraph (4) allows the undertaker to use any street or private means of access that has been temporarily closed, altered or diverted as a temporary working site. This is considered appropriate and necessary to facilitate construction of the authorised development and allow the undertaker to avoid having to acquire additional interests to accommodate additional construction lay-down or compound areas.

5.1.6 Paragraph (5) ensures that reasonable provision for pedestrian access going to or from premises abutting a street affected by the temporary closure, alteration or diversion be afforded by the undertaker.

5.1.7 This is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in Paragraph 17 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the closure or diversion of highways, which in this context would include any 'street' as defined in Article 1 of the Order.

5.1.8 Precedent for paragraphs (3) to (5) can be found in the National Grid (Hinkley Point C Connection Project) Order 2016 (Hinkley Point C Connection Order)[31], Article 17 of the Hinkley Point C (Nuclear Generating Station) Order 2013[32] and Article 19 of the Sizewell C Order.

[31] SI 2016/49.
[32] SI 2013/648.

5.1.9 Paragraph (6) provides for the undertaker to undertake works in, on or under any other street (not identified within Schedule 3) with the consent of the street authority (as confirmed in paragraph (7)).

5.1.10 Paragraph (8) confirms that where a street authority fails to respond to an application for consent within 42 days of the application being received, it is deemed to have given that consent. This provision is considered necessary to enable the undertaker to exercise its powers and undertake works in an efficient and expeditious manner and to give full effect to the power to carry out the Authorised Development, as provided for under section 120(5) of the 2008 Act.

5.1.11 Paragraph (9) clarifies that, in this article, "apparatus" has the same meaning as in Part 3 of the 1991 Act. However, for the purposes of the Order this has been expanded to include aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets which are necessary for the safe operation of the authorised development.

5.1.12 Similar wording to this article can be found within the HyNet Order (Article 10).

5.2 Article 13 (Power to alter layout, etc. of streets)

5.2.1 Paragraph (1) permits the undertaker to alter the layout of the streets listed Part 2 of Schedule 3 (streets subject to street works) to the Order, in connection with the carrying out or maintenance of the Authorised Development. The article also provides a power to carry out works in any of these streets.

5.2.2 Paragraph (2) provides broader powers available for those streets not listed in Schedule 3, subject to the consent of the street authority under paragraph (4). This enables the undertaker to acquire the necessary flexibility to alter streets which, at the date on which the Order is made, are not listed within Schedule 3. Paragraph (2) also sets out a broad range of works that the undertaker may undertake on any street, including altering the level or increasing the width of any street, making and maintaining passing places, altering existing facilities in streets and providing facilities for the management and protection of pedestrians (for example, pedestrian crossings). The range of activities provided for in paragraph (2) can be found in other DCOs for example SLP Order and River Humber Order.

5.2.3 Paragraph (3) ensures that any street temporarily altered must be restored to the reasonable satisfaction of the street authority.

5.2.4 Paragraph (5) provides that where consent for the exercise of powers under paragraph (2) (as required by paragraph (4)) is not provided within 42 days of receipt, the undertaker is to be treated as having been granted deemed consent. Precedent for this article can be found in the HyNet Order.

5.3 Article 14 (Application of the 1991 Act)

5.3.1 This Article provides for the application of the 1991 Act. Although not included in the Model Provisions, this wording can be found in other DCOs such as the Hornsea Three Order and SLP Order.

5.3.2 Paragraph (4) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. In many cases, the exercise of the disapplied powers would be inappropriate to a project authorised by a DCO. For example, one of the powers is to direct undertakers to locate their works in a different street than that proposed (section 56A). Where works are being carried out under permitted development rights that is not commonly problematic, however works under the Order are constrained by the Order limits and ES assessment, and no consent would be in place to move the works outside of that envelope. It is therefore appropriate to be clear within the Order that this power cannot be applied in this case.

5.3.3 The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order and the specific provisions in the Order which regulate the carrying out of the Authorised Development.

5.4 Article 15 (Stopping up of streets, public rights of way and rights of navigation)

5.4.1 This Article provides for the temporary and permanent stopping up of streets, public rights of way and rights of navigation for the purposes of carrying out or maintaining the authorised development. The powers under this Article are required to safely carry out works to construct and maintain parts of the authorised development.

5.4.2 Similar wording has been used in other made Orders, including Article 11 of The Immingham Open Cycle Gas Turbine Order 2020, Article 12 of The Drax Power (Generating Stations) Order 2019[33] and Article 11 of The Wrexham Gas Fired Generating Station Order 2017[34].

5.4.3 The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets (set out in Schedule 4 of the Order and the **Access, Streets, Rights of Way and Rights of Navigation Plans (EN010166/APP/2.6)**). Route codes for footpaths and bridleways are shown where available on the **Access, Streets, Rights of Way and Rights of Navigation Plans (EN010166/APP/2.6)**. Specific points are marked by unique letter markers (cross-referenced in the Order) which provides certainty as to the parts of the streets or public rights of way which may be stopped up.

5.4.4 There are consultation requirements before stopping up powers specified within Schedule 5 can be exercised and consent of the street authority is required for any exercise of these powers not specified within Schedule 5. Compensation is provided for in respect of the loss or suspension of any private rights of way.

5.4.5 Sub-paragraph (9) confers a power on the undertaker, where the use of a street, public right of way, right of navigation or area of access land has been

[33] SI 2019/1315.
[34] SI 2017/766.

stopped up under the power in Article 15, to use such street, public right of way, right of navigation or area of access land as a working site.

5.5 Article 16 (Temporary restriction of use of streets)

5.5.1 This article allows for the temporary alteration, diversion or restriction of streets for the purposes of authorised development, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). Where possible and safe, closures for access junction works will be partial only and not close the full width of the carriageway.

5.5.2 Paragraph (2) confers a power on the undertaker where a street has been temporarily stopped up under this article to use it as a temporary working site. It is not anticipated that any street would be used as a working site except when undertaking works affecting the carriageway itself.

5.5.3 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article. The undertaker is not aware of any private rights of way in streets however this article is retained as precautionary in the case that unidentified, extant title rights to take access exist along the same lines as the current public highway.

5.5.4 Paragraph (7) states that where the street authority fails to notify the undertaker of its decision in respect of an application for consent within 42 days of the application being received is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As a nationally significant infrastructure project, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent.

5.5.5 This provision has been included in numerous previous orders including the Norfolk Vanguard Order and Hornsea Three Order.

5.6 Article 17 (Access to works)

5.6.1 This article provides a general power to form and layout means of access within or adjacent to the Order limits, with the consent of the street authority, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at later stage in the implementation of the Authorised Development.

5.6.2 Paragraph (4) confirms that, where a street authority receives an application for consent under paragraph (2), it is deemed to have granted its consent to that application if it fails to notify the undertaker of its decision by the end of the period of 42 days beginning with the date on which the application was made. As elsewhere, it is considered necessary to remove the possibility for delay and provide certainty that the Authorised Development can be delivered by the Undertaker in a timely manner.

5.6.3 This article can also be found in the HyNet Order and constitutes an adapted model provision.

5.7 Article 18 (Agreements with street authorities)

5.7.1 This article provides that the undertaker and street authorities may enter into agreements relating to various works on streets. The article provides a list which reflects the model provisions, save that sub-paragraph (1)(b) has been added to clarify that, as well as providing for the construction of streets (including any structures carrying those streets) an agreement may relate to strengthening, improving, repairing or reconstructing streets (or structures). This provision has precedent in the HyNet Order and South Humber Bank Energy Centre Order 2021[35].

5.7.2 The power to enter into agreements with street authorities is necessary as section 278 of the Highways Act 1980 (agreements as to the execution of works) does not relate to the powers under this Order.

5.8 Article 19 (Use of private roads)

5.8.1 This Article authorises the temporary use of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction, maintenance, operation or decommissioning of the Authorised Development, without the need for the undertaker to acquire a permanent right of way over that land. Paragraph (2) clarifies that the undertaker will be liable for any loss or damage a person may suffer by reason of the exercise of this power.

5.8.2 This article does not create a right of the undertaker to exclude other users.

5.8.3 This article has been based on Article 13 of the SLP Order.

5.9 Article 20 (Traffic regulation)

5.9.1 This Article provides the undertaker with powers to place temporarily traffic signs and signals in the extents of the roads specified in Schedule 8 (traffic regulation measures). This Schedule identifies the relevant roads and specifies the extents of the roads that will be subject to temporary traffic signal and banksman control areas. These specific measures are required to safely regulate traffic during the construction or decommissioning of the Proposed Development.

5.9.2 Paragraph (2) includes a general power that would authorise other temporary traffic regulation measures. The inclusion of this power is justified as it allows a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Proposed Development. The general power is appropriately regulated as it may only be exercised with the consent of the traffic authority concerned. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of or decommissioning of the authorised development for the undertaker to put in place some temporary restrictions on road usage. For these reasons it is similarly considered necessary to include this article in this Order.

[35] SI 2021/1259.

5.9.3 The powers under this Article are provided for in section 120(5)(a) of the 2008 Act. For example, similar provision is contained within the Network Rail (Norton Bridge Area Improvements) Order 2014[36], the Hinkley Point C Connection Order and more recently in the Yarmouth Order and Longfield Order.

[36] SI 2014/909.

6. Part 4 – Supplemental Powers

6.1 Article 21 (Discharge of water)

6.1.1 This Article establishes statutory authority for the undertaker to discharge water into any watercourse, public sewer or drain in connection with the carrying out or maintenance of the authorised development. The undertaker must first obtain the consent of the owner of said watercourse, public drain or sewer, and that consent may be given with reasonable conditions, but cannot be unreasonably withheld.

6.1.2 The Article does not authorise any damage to the bed or bank of any water course of any watercourse forming part of a main river without the prior written consent of Natural Resources Wales.

6.1.3 Paragraph (6) requires the undertaker to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter is suspension.

6.1.4 This article is based on the model provisions and can be found in other DCOs including Article 18 of the SLP Order and Article 15 of the Norfolk Vanguard Order.

6.2 Article 22 (Maintenance of drainage works)

6.2.1 This Article exists to clarify that the realignment of any drainage works or other works that are carried out as part of the Authorised Development do not affect any existing allocation of responsibility for the maintenance of those drains, unless the re-allocation of that responsibility to the undertaker is agreed with the pre-existing responsible party.

6.2.2 The provision is not included in the model provisions, but can be found in Article 5 of SLP Order, which in turn found precedent in the A14 Cambridge to Huntingdon Improvement Order 2016[37] and Article 5 of The A19/A184 Testo's Junction Alteration Development Consent Order 2018[38].

6.3 Article 23 (Authority to survey and investigate the land)

6.3.1 This article is based on the model provisions and confers on the undertaker a power to enter land for the purposes of surveying or investigating it, making trial holes, carrying out environmental or archaeological investigations and to place and leave apparatus on the land subject to giving the owner of the land at least 14 days' notice.

6.3.2 The power in the model provision is extended to include the ability to take, and process, sample of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording is not contained in the model provision but reflects wording of section 53(3A) of the 2008 Act.

[37] SI 2016/547.
[38] SI 2018/994.

6.3.3 Trial holes cannot be made on public highway without the consent of the highway authority or on a private street without the consent of a street authority, not to be unreasonably withheld or delayed.

6.3.4 Paragraph (7) clarifies that compensation will be available for those owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article.

6.4 Article 24 (Protective work to buildings)

6.4.1 This is a standard article, the drafting of which has been based on the model provisions and is included in DCOs such as the SLP Order (article 19) and HyNet Order. The purpose of this article is to allow the undertaker to undertake protective works to buildings such as underpinning, as may be required, and to set out the procedure that will apply in those circumstances.

6.4.2 Paragraph (7) clarifies that compensation will be available to the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of this article.

7. Part 5 – Powers Of Acquisition and Possession of Land

7.1 Article 25 (Compulsory acquisition of land)

7.1.1 This Article provides the undertaker with the powers to compulsorily acquire any land within the Order land where that land is either required for construction, operation, maintenance and decommissioning of the authorised development, or is required to facilitate or is incidental to those activities. This power is necessary to ensure that the undertaker can have exclusive possession and control of land that is required for the authorised development.

7.1.2 This Article is subject to Article 26 (time limit for exercise of authority to acquire land compulsorily), Article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and Article 36 (temporary use of land for carrying out the authorised development).

7.1.3 The powers under this Article are provided for under sections 120(3) and (4) and section 122 of the 2008 Act, together with Paragraph 1 of Schedule 5 to the 2008 Act, as they relate to the compulsory acquisition of land. Precedent for this Article can be found in Article 24 of the Hinkley Point C (Nuclear Generating Station) Order 2013 and Article 28 of the Sizewell C Order.

7.2 Article 26 (Time limit for exercise of authority to acquire land compulsorily)

7.2.1 This article reflects article 10 of the model provisions and grants the undertaker 5 years to issues notices to treat, or to execute a general vesting declaration to acquire the land that is subject to the power of compulsory purchase. The article also grants the undertaker 5 years to exercise powers of temporary possession of land.

7.3 Article 27 (Compulsory acquisition of rights and restrictive covenants)

7.3.1 This article permits the undertaker to acquire such rights over land, or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land). These rights can be acquired by creating new rights, or acquiring pre-existing rights.

7.3.2 Paragraph (2) provides that for land described in Schedule 9, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as set out in that Schedule.

7.3.3 Paragraph (3) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.

7.3.4 Paragraph (4) applies Schedule 10, which imposes modifications to the compulsory purchase and compensation provisions under general

legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).

7.3.5 The flexibility awarded by this article allows the undertaker to reduce the amount of freehold that that is acquired, where new, permanent rights can be relied on instead. The flexibility is also appropriate to allow for continued negotiations with owners of the Order land. The provision broadly follows the model provisions and is a provision that is usual in Transport and Works Act Orders. An example can be found in article 20 of the Norfolk Vanguard Order.

7.3.6 This article is based on article 21 of the Model Provisions. It differs from the Model Provisions in the following respects:

- Paragraph (1) allows the undertaker to acquire existing rights and create new rights over any of the Order land. Although the undertaker has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in Schedule 9, this provision ensures that the undertaker retains the flexibility to acquire or create rights over land where that land might otherwise have to be acquired outright.
- Paragraph (2) is included to clarify that the land identified in Schedule 9 may only be subject to the acquisition or creation of rights or imposition of restrictive covenants, and may not be subject to outright acquisition.
- Paragraph (3) refers to Schedule 2A of the Compulsory Purchase Act 1965, as modified by Schedule 10, rather than section 8 of the Compulsory Purchase Act 1965. The effect is to limit the possible exceptions to this article to cases where part only of a house, building, factory, park or garden belonging to a house is being acquired.
- Paragraph (4) confirms that Schedule 10 has effect for the purpose of modifying compensation provisions to ensure that they apply to the compulsory acquisition or creation of rights, or imposition of restrictive covenants, under this article.

7.4 Article 28 (Statutory authority to override easements and other rights)

7.4.1 This article confirms that the undertaker has the authority to carry out the authorised development and to do anything else authorised by the Order, and this authority permits the undertaker to 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 of land arising by virtue of contract.

7.4.2 Whilst not a model provision, this article has been used in Article 25 of the River Humber Order and in the HyNet Order.

7.5 Article 29 (Compulsory acquisition of land: minerals)

7.5.1 This article incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines and minerals. The effect of this provision is that the undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions.

7.5.2 Part 3 of the Acquisition of Land Act 1981 sets out a process relating to the working of any mines or minerals underneath the authorised development. It provides that where an owner seeks to work its mine, it must give notice of its intention to the undertaker who must then decide whether or not the works will damage the authorised development. If the undertaker determines that it will cause damage, Article 29 provides it with the power to prohibit the owner from commencing such works, provided that it compensates the owner for its loss.

7.5.3 The ability to restrict third parties from working mines and minerals below the authorised development is appropriate as such activities have the potential to impact adversely on the authorised development (for example, by undermining ground stability) as well as the undertaker's ability to carry out authorised development pursuant to Article 3 (Development consent etc. granted by Order).

7.5.4 This restriction is provided for under sections 120(3) and (4) together with paragraph 4 of Schedule 5 of the 2008 Act, which relates to the carrying out specified mining operations within a specified area.

7.5.5 This article is based on the model provisions, and has been approved in Article 22 of the SLP Order.

7.6 Article 30 (Private rights)

7.6.1 This article applies to all land subject to compulsory acquisition under article 25 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights and restrictive covenants). It provides that where land is compulsorily acquired, existing private rights or restrictive covenants are suspended and unenforceable. In the case where any continuance of such private right would be inconsistent with the acquisition of the land, or creation of new rights of restrictive covenants, that pre-existing right shall be extinguished.

7.6.2 Paragraph (2) provides that rights over the Order land that is already owned by the undertaker are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.

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

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

7.6.5 This article is based on article 22 of the Model Provisions. It differs from the Model Provisions in the following respects:

- It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land including easements.
- Paragraph (1) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.
- Paragraph (2) is amended to refer to "all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants", rather than "the limits of land which may be acquired shown on the land plan", and to clarify the circumstances in which other rights in land owned by the undertaker will be extinguished.
- Paragraph (3) is included to clarify the position where the undertaker takes temporary possession of land.

7.6.6 This article has precedent in Article 21 of Norfolk Vanguard Order and Article 21 of Hornsea Three Order.

7.7 Article 31 (Application of the 1981 Act)

7.7.1 This article applies (with minor modifications to ensure consistency between the terms of the Order and the 1981 Act) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order so that the undertaker has the option to acquire land via the vesting declarations procedure.

7.7.2 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.

7.7.3 The modifications to the 1981 Act contained in this article can be summarised as follows:

- Paragraph (3) modifies section 1(2) so that section 1 applies to the undertaker.
- Paragraph (4) substitutes section 4(1) with drafting that allows for the vesting of land in the undertaker themselves or a statutory undertaker or local authority, as appropriate.
- Paragraph (5) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
- Paragraph (6) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 26.
- Paragraph (7) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in

respect of development consent orders. The cross-reference to section 5A is also modified, to reflect that the time limit is set out in article 26.

- Paragraph (8) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders.
- Paragraph (9) modifies section 7(1)(a) in respect of constructive notice to treat under the Acquisition of Land Act 1981.
- Paragraphs (10) to (12) make modifications to accommodate the ability for land to be directly vested in statutory undertakers and local authorities. Such drafting removes the need for the undertaker to acquire the land and then transfer to the relevant statutory undertaker or local authority for them to carry out works to, and ongoing maintenance of, their apparatus.
- Paragraph (13) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure.
- Paragraph (14) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 33, on the basis that both section 125 and article 33 modify the provisions of the 1965 Act.

7.7.4 This article is based on article 23 of the Model Provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the Model Provisions came into force, the wording of this article departs significantly from the Model Provisions. The drafting of this article follows article 22 of the Hornsea Three Order, with modifications to provide for the ability to directly vest land with statutory undertakers and the local authority in line with the LTC Order.

7.8 Article 32 (Modification of the 2017 Regulations)

7.8.1 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (Wales) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of the undertaker, who would otherwise be the acquiring authority in respect of those interests and rights.

7.8.2 This drafting is precedented in the LTC Order.

7.9 Article 33 (Acquisition of subsoil or airspace only)

7.9.1 Acquisition of subsoil or airspace only authorises the undertaker to acquire the subsoil in or airspace over any Order land without acquiring the whole of that land. In certain cases, it may be necessary only to acquire a stratum of

land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the land.

7.9.2 This article also authorises the undertaker to acquire interests in or rights over airspace a certain height above ground.

7.9.3 The article allows the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners. This is in the public interest. This article was included in the model provisions. An example can be found at Norfolk Vanguard Order.

7.10 Article 34 (Modification of Part 1 of the 1965 Act)

7.10.1 The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965, as applied by section 125 of the 2008 Act. This article appears in many DCOs, an example of which is article 26 SLP Order.

7.11 Article 35 (Rights under or over streets)

7.11.1 The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

7.11.2 The authorised development requires the crossing of streets and creation of new accesses onto existing streets in several places. This article allows those works to be undertaken without interfering with the ownership of land under and above streets which is often separately held from the highway authority interest in the street itself.

7.11.3 This article was included in the Model Provisions as Article 2 and an example can be found as Article 29 in the SLP Order.

7.12 Article 36 (Temporary use of land for carrying out the authorised development)

7.12.1 The purpose of this article is to allow the land set out in Schedule 10 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised development but which is not required permanently. This article also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.

7.12.2 The article is based on article 28 of the model provisions, with a number of changes:

- First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph

(1)(a)(iii)) has been added. This allows the undertaker to occupy land without having to acquire it immediately.

- Secondly, paragraph (1)(e) has been added so that permanent works specified in column (2) of Schedule 11 may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the authorised development (e.g. landscaping or ecological mitigation works)
- Paragraphs (f), (g) and (h) have been added following the precedent in the Hornsea Three Order. These paragraphs allow for the carrying out of works under temporary possession powers before permanent rights are acquired. They therefore allow faster delivery and for the minimum level of permanent acquisition minimising the impact on landowners.

7.12.3 The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The undertaker is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered to be reasonable given the status of the authorised development as a nationally significant infrastructure project.

7.12.4 If the powers conferred by this article were not included then the undertaker would be forced to seek permanent rights over, or the permanent acquisition of, all of the land required for the authorised development, which would be disproportionate for those plots which have been identified as being suitable for temporary occupation and use.

7.12.5 Examples of this article's use can be found in article 26 Norfolk Vanguard Order, and Article 26 Hornsea Three Order.

7.13 Article 37 (Temporary use of land for maintaining the authorised development)

7.13.1 This article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development.

7.13.2 Paragraph (1)(b) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before the undertaker gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.

7.13.3 This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2)).

7.13.4 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.

7.13.5 Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.

7.13.6 This article was included in the model provisions as Article 29, in Hornsea Three Order as Article 27 and Norfolk Vanguard Order as Article 27.

7.14 Article 38 (Statutory undertakers)

7.14.1 This Article allows the undertaker to acquire land or rights in land owned by statutory undertakers (such as telecommunications and electricity suppliers) or to interfere with their apparatus by removing or repositioning the apparatus within the Order land.

7.14.2 The general powers in this Article are subject to Schedule 13 (protective provisions) of the Order which sets out controls and processes around the interference, removal, relocation and/or alteration of a statutory undertaker's apparatus. This power, working alongside the controls and processes set out in Schedule 13 (protective provisions), is considered to be necessary and proportionate to deliver the Proposed Development expediently without prejudicing the interests of any affected statutory undertakers.

7.14.3 The scope of the undertaker's powers under this Article includes the ability to create and acquire new rights and impose restrictive covenants over the statutory undertaker's land, and extinguish or suspend the rights to alter, renew, or relocate any apparatus (rather than just remove or reposition these). These powers are consistent with the undertaker's ability to acquire existing rights, and create and acquire new rights, and impose restrictive covenants under Article 27 (compulsory acquisition of rights and restrictive covenants).

7.14.4 Similar provision can be found in other made DCOs including Article 42 of the Sizewell C Order and Article 34 of the SLP Order.

7.15 Article 39 (Recovery of costs of new connections)

7.15.1 This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.

7.15.2 This article was included in the model provisions as Article 33.

7.16 Article 40 (Use of subsoil and airspace within the Order limits)

7.16.1 This article allows the undertaker to enter on, appropriate and use as much of the subsoil of or airspace over any land within the Order limits as is required for the authorised development or any other ancillary purpose. This right is necessary as landowners also own the subsoil below and airspace above their land. Including this power in the Order avoids the need to obtain a licence in the event that the undertaker occupies subsoil below or airspace above the Order limits that it does not own, or have an interest in.

7.16.2 Paragraph (2) clarifies that in exercising its rights under the Article, the undertaker will not be required to acquire any part of the land or any easement of right in the land. Under Paragraph (4), compensation is payable to any persons affected by the undertaker exercising its powers under this Article.

7.16.3 Article 39 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 2 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the creation of new rights over land. This article follows Article 25 of the North London Heat and Power Generating Station Order 2017[39] and Article 48 of the Sizewell C Order.

[39] SI 2017/215.

8. Part 6 – Miscellaneous and General

8.1 Article 41 (Application of landlord and tenant law)

8.1.1 This article provides that any agreement for the transfer of the benefit of the Order overrides 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 it.

8.1.2 This article follows Article 35 of the model provisions.

8.2 Article 42 (Felling or lopping of trees and removal of hedgerows)

8.2.1 This article is based on a model provision and is included in numerous made DCOs. It provides that the undertaker may fell or lop or cut back the roots of any tree or shrub near any part of the authorised development to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or constituting a danger for persons using the authorised development. The Article also allows the undertaker to remove those hedgerows specified in Schedule 12 (removal of hedgerows) along with the specific purpose of each removal.

8.2.2 Paragraphs (6) to (9) provide that the undertaker may fell or lop or cut back the roots of any tree which is subject to a Tree Preservation Order ('TPO') to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development. Compensation is provided for any loss or damage is caused. The effect of these paragraphs is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. This approach to TPOs has precedent in the Cleve Hill Solar Park Order 2020[40] and the Longfield Order.

8.3 Article 43 (Crown rights)

8.3.1 This article is not a model provision, but it reflects the terms of section 135 of the 2008 Act and is also used in many made orders, including the East Anglia Three Offshore Wind Farm Order 2017[41] and Hornsea Three Order.

8.4 Article 44 (Protective provisions)

8.4.1 This article gives effect to Schedule 13, which contains provisions protecting the interests of third parties. It was not included in the model provisions but is a standard article in development consent orders that include protective provisions.

[40] SI 2020/547.
[41] SI 2017/826.

8.5 Article 45 (Operational land for the purposes of the 1990 Act)

8.5.1 The effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. Although section 264 of the 1990 Act is entitled "cases in which land is to be treated as not being operational land", subsections (3) and (4) set out cases in which land is to be treated as operational land.

8.5.2 This article was included in the model provisions as article 35. This article is necessary to ensure that development is correctly classified under the Town and Country Planning Act 1990 and benefits from the appropriate permitted development rights.

8.6 Article 46 (Certification of plans, etc.)

8.6.1 This article provides for various application plans and documents listed to be certified by the Secretary of State as true copies of those documents following the making of the Order. This is based on article 41 of the model provisions. However, due to the volume of documents being certified, these have been included in Schedule 14.

8.7 Article 47 (Service of notices)

8.7.1 This article governs the service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient (paragraph (1)(c)) and deals with the situation of service on an unknown landowner (paragraph (4)).

8.7.2 This article was not included in the model provisions but is a sensible addition that has been included in previous orders including Article 44 of Hornsea Three Order.

8.8 Article 48 (No double recovery)

8.8.1 This article 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.

8.8.2 This article was not provided for in the Model Provisions but has been included in granted orders, such as Article 40 of the Port of Tilbury (Expansion) Order 2019[42]. This article simply reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss.

8.9 Article 49 (Arbitration)

8.9.1 This article governs any disagreement about any provision of the Order. Unless otherwise provided for (for example, the Upper Tribunal (Lands Chamber) has jurisdiction), the matter is to be settled by arbitration. If the

[42] SI 2019/359.

parties cannot agree on who the arbitrator should be then this will be decided by the Secretary of State. The arbitration rules set out in Schedule 15 apply.

8.9.2 Section 49(2) provides that no decision of the Secretary of State is subject to arbitration.

8.9.3 This article was included in the model provisions as Article 42 but has been modified as is precedented in previous orders such as the HyNet Order (article 47).

8.10 Article 50 (Temporary interference with River Dee and Public rights of navigation)

8.10.1 This article provides for temporary suspension of the public right of navigation over the River Dee to allow delivery of AILs. The power is exercisable subject to protective provisions included for the benefit of the relevant navigation authority (the Dee Conservancy) in Schedule 13 of the Order. In addition, the power must be exercised in a way which minimises the extent of the river affected by the closure and also that any period of closure is minimised.

8.10.2 This power is necessary because during the construction process there will be a need to temporarily moor vessels along parts of the River Dee at Connah's Quay North Jetty to unload AILs. The unloading of AILs from these vessels will possibly interfere with other vessels navigating the river.

8.10.3 Compensation is payable for any person who suffers loss as a result of the suspension of any private right of navigation under this Article.

8.10.4 Precedent for this article can be found in Article 16 of the Keadby 3 Order.

8.11 Article 51 (Removal of human remains)

8.11.1 This article disapplies section 25 of the Burial Act 1857 and replaces it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. Article 50 is based upon Article 17 of the model provisions and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development. This has been included as the undertaker has not been able conclusively to rule out the presence of human remains within the Order Limits.

8.11.2 This article departs from the model provision in that paragraph (11) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and where no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008 and the A303 (Amesbury to Berwick Down) Order 2020.

8.11.3 Paragraph (16) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950. The drafting in Paragraphs (15) and (16) has precedent in the Little Crow Solar Park Order 2022.

8.11.4 Taken together, the effect of Article 51 is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single Article in the Order. It is required by the undertaker to ensure that archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this nationally significant infrastructure project. Precedent for the Article is provided by Article 20 of the River Humber Order.

8.12 Article 52 (Guarantees in respect of payment of compensation)

8.12.1 This article provides that the undertaker must not exercise certain powers relating to the compulsory acquisition of land and interests in the land without having first put in place either a guarantee or an alternative form of security, the form and amount of which must be approved by the Secretary of State. Precedent for this provision is found in numerous made DCOs, including the Keadby 3 Order (Article 45).

8.13 Article 53 (Procedure in relation to certain approvals etc.)

8.13.1 This article provides for procedures in relation to consents and approvals required pursuant to the Order. Part 2 of Requirement 2 (applications made under requirements) contains the process for discharge. Precedent for this provision is found in numerous made DCOs, including the Keadby 3 Order (Article 43).

9. Schedules

9.1 Schedule 1 – Authorised development

9.1.1 Schedule 1 describes the authorised development, which is described in detail in **Environmental Statement Chapter 4: Project Description (EN010166/APP/6.2.4)**.

9.1.2 The numbered works should be read alongside the **Works Plans (EN010166/APP/2.4)**. All of the authorised development falls within the definition of a "generating station" for the purpose of sections 14 and 15 of the 2008 Act, or may be lawfully authorised as part of the DCO on the basis that it meets the definition of "associated development" under the 2008 Act and related Guidance. Following the approach taken in the Drax Order and Sizewell C Order, the Applicant has not sought to specify which elements are considered to be part of the "generating station" and which to be "associated development". It is considered that because it is clear that all elements of the proposals put forward are necessary for the construction and operation of a power station it is not material whether they are considered to be part of the generating station or associated development.

9.1.3 Schedule 1 also includes a provision which sets out a number of minor works that are common to a number of work packages, at paragraph 14 under the heading "Site Wide Works". These include works such as landscaping and drainage, establishment of construction compounds, vegetation clearance and utilities installation.

9.2 Schedule 2 – Requirements

9.2.1 Section 120(1) of the 2008 Act provides that a DCO may impose requirements in connection with the development for which consent is granted. Schedule 2 sets out the requirements which are proposed to control the construction, operation, maintenance and decommissioning of the authorised development. The requirements closely relate to the mitigation set out in the **Environmental Statement (EN010166/APP/6.1-6.4)** and ensure that the mitigation relied upon for the conclusions of the environmental impact assessment is secured. The Applicant considers that each of the requirements is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects, such that each should be included in the Order.

9.2.2 Many of the requirements require submission of details for approval by the local planning authority. Those requirements are drafted with a view to enabling the undertaker to obtain approval for part of the authorised development and not require it to discharge the requirement for the whole of the authorised development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker and provides an appropriate balance between development not starting until details are approved and allowing other parts of the authorised development (where details are already approved) to be constructed.

9.2.3 **Part 1** of Schedule 2 sets out the following requirements:

- **Requirement 1** (Interpretation) defines a number of terms which are only used in the requirements and are accordingly not defined in article 2.
- **Requirement 2** (Time limits) specifies that the time limit for commencing the authorised development as being 5 years from the date on which the Order comes into force. This is the usual time limit provided for in numerous development consent orders and is necessary due to potential uncertainties regarding the timing of government funding decisions outside of the control of the undertaker. Paragraph (2) provides for an extension for the implementation of the Order in the event that a decision by the Secretary of State to grant development consent is subject to a challenge. This wording resembles sections 91(3A) and (3B) of the 1990 Act, so seeks to achieve the same aim as a helpful element of the town and country planning and compulsory purchase regime into the NSIP regime. The effect of these provisions is that if there is a legal challenge to the Order, the time limit within which the authorised development must be commenced (requirement 2) are extended by an equivalent period (or one year if shorter) to account for the delay resulting from the legal challenge. In light of the importance of ensuring that requirements of implementation do not lapse this drafting is considered necessary to include within the Order. This approach is precedented in the Yorkshire GREEN Order.
- **Requirement 3** (Detailed design) requires that specific details of design be submitted to and approved by the relevant planning authority prior to commencement the related stage of work. Such details must be in general accordance with the **Design Principles Document (EN010166/APP/7.8)**, **Lighting Strategy (EN010166/APP/7.22)** and **Parameter Plans (EN010166/APP/2.5)**. This Requirement is based on a model provision and is precedented in DCOs such as the Drax Order.
- **Requirement 4** (Construction environmental management plan) is a modification of requirement 17 of the model provisions. It provides that construction works shall be carried out in general accordance with a construction environmental management plan, an outline of which is submitted with the application named the **Framework Construction Environment Management Plan (CEMP) (EN010166/APP/6.5)**. As well as needing to be in general accordance with the **Framework CEMP (EN010166/APP/6.5)**, and the **Lighting Strategy (EN010166/APP/7.22)** the final CEMP required by Requirement 4 also needs to incorporate a number of other environmental plans, which need to be in general accordance with the outlines certified under the Order. As well as requiring all post-commencement works be undertaken in general accordance with the final approved CEMP, the requirement provides certain site-enabling works to be carried out in general accordance with the **Framework CEMP (EN010166/APP/6.5)** and the **Lighting Strategy (EN010166/APP/7.22)**. Similar wording to Requirement 4 can be found in requirement 6 of the HyNet Order, requirement 20 of the Norfolk Vanguard Order, and requirement 17 of the Keadby 3 Order.
- **Requirement 5** (Construction traffic management plan) is not in the model provisions; however, similar wording can be found in requirement 7 HyNet Order and requirement 6 of the Hornsea Three Order. The requirement provides that the authorised development must not

commence until a construction traffic management plan (CTMP) has been submitted to and approved in writing by the relevant highway authority. The CTMP must include a construction worker travel plan (CWTP). The CTMP must be in general accordance with the **Framework CTMP (EN010166/APP/6.6)** and the CWTP must be in general accordance with the **Framework CWTP (EN010166/APP/6.7)**.

- **Requirement 6** (Surface water drainage) provides that no stage of Work No. 1 may become operational until a surface water drainage strategy, which accords with the **Outline Surface Water Drainage Strategy (EN010166/APP/6.4)**, for that stage has been approved by the relevant planning authority. There is precedent for this requirement within the Keadby 3 Order.
- **Requirement 7** (Construction surface and foul water drainage) is based on a model provision but focusses on surface and foul water drainage only. Sub-paragraph (1) provides that no stage of the authorised development may commence until details of the temporary surface and foul water drainage systems for that stage, in accordance with the Framework CEMP, and a management and maintenance plan, have been submitted to and approved by the relevant planning authority, in consultation with Natural Resources Wales. The systems must be constructed in accordance with the approved details. Sub-paragraph (4) requires equivalent details for the permanent systems. Sub-paragraph (5) requires that the systems are implemented as approved and maintained throughout the operation of the authorised development.
- **Requirement 8** (Flood risk mitigation) is not a model provision. Sub-paragraph (1) provides that no stage of the authorised development may commence until a scheme for the mitigation of flood risk and the creation of a development platform for Work No. 1 has been submitted to and approved by the relevant planning authority. Sub-paragraph (2) requires that the authorised development is not commissioned until a scheme for the mitigation of flood risk during the operational stage including the raising of specified critical operational infrastructure assets, has, for that stage, been submitted to and approved by the relevant planning authority in consultation with Natural Resources Wales. Sub-paragraphs (3) and (4) required adherence to the approved plans.
- **Requirement 9** (Archaeology) is a modification of requirement 16 of the model provisions and ensures that the Authorised Development is constructed in general accordance with the **Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation (EN010166/APP/6.8)**. No stage of construction with the potential to affect buried archaeological assets must commence until a written scheme of investigation for areas of archaeological interest within that stage has been submitted to and approved by the relevant planning authority. Such scheme must be in general accordance with the **Overarching Written Scheme of Investigation for Terrestrial and Marine Heritage Mitigation (EN010166/APP/6.8)** and approval will be provided following consultation with the Royal Commission on the Ancient and Historical Monuments of Wales and Heneb. Any archaeological works carried out under the scheme must be carried out by a suitably qualified and registered person or body. This requirement has precedent in the HyNet Order.

- **Requirement 10** (Landscape and ecological management plan) is a modification of requirement 17 of the model provisions and can be found in other DCOs such as requirement 12 SLP Order, and requirement 9 Richborough Connection Project 2017. It also contains elements from requirement 6 of the Keadby 3 Order. This requirement provides that no stage of the authorised development that includes landscape and ecological management measures, must commence until a Landscape and Ecological Management Plan (LEMP), for that stage, in general accordance with the **Outline LEMP (EN010166/APP/6.9)**, has been submitted to and approved by the relevant planning authority.
- **Requirement 11** (Curlew mitigation and monitoring plan) requires a curlew mitigation and monitoring plan to be submitted to and approved by the local planning authority, in consultation with Natural Resources Wales, before any stage of Work No. 1 commences. The trigger for this requirement also includes site clearance works to ensure that there is no potential for this element of site enabling works to take place before the plan is approved. The curlew mitigation and monitoring plan must be in general accordance with the **Curlew Mitigation Strategy (EN010166/APP/6.13)** and contain details of the aims and objectives of the plan; the location, features, landscaping and planting for the mitigation; water management measures' monitoring and management measures; and an implementation timetable which ensures that the replacement curlew habitat will be available before any curlew habitat on functionally linked land is removed. This requirement is bespoke to ensure that the specific works required on functionally linked land are appropriately mitigated.
- **Requirement 12** (Control of noise – operation) is based on a model provision. It requires that no part of Work No. 1 may be brought into commercial use until a scheme for the management and monitoring of noise during operation has been submitted to and approved by the planning authority. Such scheme must comply with the limits on noise from the operation of the authorised development contained within the **Design Principles Document (EN010166/APP/7.8)**.
- **Requirement 13** (Operational and maintenance environmental management plan) provides that the operational and maintenance environmental management plans must be submitted for the post-construction phase. Such plan(s) must be in general accordance with the **Operation and Maintenance Mitigation Register (EN010166/APP/6.4)** and developed having regard to the approved LEMP(s) and the **Lighting Strategy (EN010166/APP/7.22)**.
- **Requirement 14** (Aviation warning lighting) provides that no part of Work No. 1(a) or (b) may commence until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that part has been submitted to the relevant planning authority for approval. It requires the planning authority to consult with the Civil Aviation Authority and Airbus on the submitted details before giving such approval. The details submitted must also be in general accordance with the **Lighting Strategy (EN010166/APP/7.22)**. This requirement drafting is precedented in the Keadby 3 Order.

- **Requirement 15** (Air safety) requires details of the heights of structures and temporary cranes and other information required by the Civil Aviation Authority and Airbus to be submitted to and approved by the planning authority before commencement of Work No. 1(a) or (b). The details submitted must also be in general accordance with the **Framework CEMP (EN010166/APP/6.5)**. This requirement drafting is precedented in the Keadby 3 Order.
- **Requirement 16** (Greenhouse gas reduction strategy) requires that Work No. 1 be carried out and maintained in accordance with the objectives of the **Greenhouse Gas Reduction Strategy (EN010166/APP/6.4)**. This requirement drafting is bespoke to mitigate specific effects of the Proposed Development.
- **Requirement 17** (Decommissioning environmental management plan) is not a model provision. It requires the undertaker to submit a decommissioning environmental management plan to the relevant planning authorities within 12 months of it deciding to decommission the authorised development. The relevant planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented and maintained as approved.
- **Requirement 18** (Net benefit for biodiversity) secures that no stage of the authorised development may commence until a scheme securing the provision of net benefit for biodiversity has been submitted to and approved by the local planning authority. The scheme must be in general accordance with the **Outline LEMP (EN010166/APP/6.9)** and **Off-Site Net Benefit for Biodiversity and Green Infrastructure Strategy (EN010166/APP/6.14)**. The authorised development must then be carried out in general accordance with the approved scheme. This requirement is bespoke and ensures that the authorised development complies with Planning Policy Wales[43].
- **Requirement 19** (Abnormal indivisible loads) provides that the transport of AILs in connection with the construction of the authorised development must not commence until a detailed AIL risk assessment and method statement have been prepared by the undertaker. The transport of AILs must then be carried out in accordance with these details. If it is determined that Connah's Quay North is to be used as a landside delivery point for the transport of AILs, this must not commence until an updated navigational risk assessment has been prepared, in consultation with the Dee Conservancy (as the statutory conservancy and navigation authority for the river Dee). This updated navigational risk assessment must be in general accordance with the **Navigational Risk Assessment (EN010166/APP/6.15)**, unless otherwise agreed with the Dee Conservancy. This requirement is bespoke to mitigate specific effects of the Proposed Development.
- **Requirements 20-22** (Administrative) concern the administration of discharges of requirements, providing that these must be in writing (20), may be amended (21) and that any work commenced on those

[43] Planning Policy Wales (2024), Welsh Government, https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf (accessed 13 June 2025).

discharges before the order comes into force will be valid steps for compliance with the Order (22).

9.2.4 **Part 2** provides a clear procedure for the discharge of requirements. It sets out how approvals are to be given, treatment of amendments, clear time limits for decisions to be made and makes provision for circumstances where the discharging authority requires further information to be provided in relation to an application for the discharge of a requirement. The timeframes provided for reflect the status of the authorised development as an NSIP.

9.2.5 Part 2 reflects the processes that have been established in a number of other DCOs including the HyNet Order, River Humber Order, Norfolk Vanguard Order and Hornsea Three Order.

9.3 Schedule 3 – Legislation to be disapplied

9.3.1 Schedule 3 sets out the legislative provisions that will not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the authorised development. This Schedule relates to Article 9 (Disapplication, application and modification of legislative provisions and modifications to section 36 consent). Please see paragraph 4.7.2 above for further details.

9.4 Schedule 4 – Streets subject to street works and alteration of layout

9.4.1 This Schedule lists the streets subject to street works and alteration of layout. Street works are required to facilitate AIL deliveries. Much of the work required will be undertaken in highway verges but occupation of some areas of carriageways may be required to create new accesses, modify street furniture or provide safe working areas.

9.5 Schedule 5 – Streets, public rights of way and rights of navigation to be restricted and stopped up

9.5.1 Part 1 of this Schedule lists the public rights of way, such as footpaths and bridleways, to be temporarily stopped up. It also details public rights of navigation to be temporarily stopped up in the river Dee. Where a right of way is to be temporarily stopped up, a diversion will be provided within the Order Limits will be provided wherever practical.

9.5.2 Part 2 lists the streets, public rights of way and rights of navigation to be temporarily altered or managed.

9.5.3 Part 3 lists the public rights of way to be permanently stopped up.

9.6 Schedule 6 – Streets to be temporarily closed or restricted

9.6.1 This Schedule lists the streets which will be temporarily closed or restricted during construction.

9.7 Schedule 7 – New means of access

9.7.1 This Schedule lists the new private means of access which will be created as part of the authorised development.

9.8 Schedule 8 – Traffic regulation measures

9.8.1 This Schedule contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 20 (Traffic regulation).

9.9 Schedule 9 – Land in which only new rights etc., may be acquired

9.9.1 This Schedule lists the plots within which the undertaker may only acquire rights and cannot acquire ownership. The rights which the undertaker may acquire are set out in Column (3). Restrictive covenants are also to be imposed to protect the pipeline, to ensure that planting or habitat works carried out by the undertaker can be retained and maintained for the required period and to prevent future construction on land required for drainage.

9.10 Schedule 10 – Modification of compensation and compulsory purchase enactments for creation of new rights

9.10.1 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 to provide for the acquisition of rights and imposition of restrictive covenants as well as acquisition of ownership of the land.

9.11 Schedule 11 – Land of which only temporary possession may be taken

9.11.1 This Schedule lists the plot of which the undertaker may only take temporary possession and cannot acquire rights or ownership of the land.

9.12 Schedule 12 – Removal of hedgerows

9.12.1 This schedule sets out the hedgerows which may be interfered with or removed under the Order.

9.13 Schedule 13 – Protective Provisions

9.13.1 This Schedule sets out a number of protections for various bodies to ensure that the powers sought in the Order are exercised appropriately.

9.13.2 **Part 1** provides for protections which apply to the following statutory undertakers:

- any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

- a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;
- a water undertaker within the meaning of the Water Industry Act 1991; and
- a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991.

9.13.3 This drafting has been shared with the following undertakers who have either affirmatively confirmed that they are content with the drafting or have not responded to the Applicant to state that they object to the drafting or requested any amendment to this drafting:

- Deeside Power (UK) Limited;
- Dwr Cymru Cyfyngedig (Welsh Water);
- EirGrid Interconnector Designated Activity Company;
- Gwynt Y Mor Offshore Windfarm Limited;
- Rhyl Flats Wind Farm Limited;
- RWE Renewables UK Swindon Limited; and
- Wales & West Utilities Limited.

9.13.4 **Part 2** provides for protections which apply to telecommunications providers. A copy of these provisions has been provided to telecommunications providers identified as having interests within the Order limits. This drafting has been shared with the following undertakers who have acknowledged receipt but not yet requested any amendment to this drafting:

- British Telecommunications Public Limited Company;
- Openreach Limited;
- Vodafone Limited; and
- Zayo Group UK Limited.

9.13.5 **Part 3** provides for protections which apply to railway assets. The Applicant is engaging with Network Rail Infrastructure Limited to ensure that the drafting of Part 3 is agreed.

9.13.6 **Part 4** provides for protections which apply to the Dee Conservancy. These provisions have been agreed with the Harbour Master for the Dee Conservancy.

9.13.7 **Part 5** provides for protections which apply to National Grid. The Applicant is engaging with National Grid to ensure that the drafting of Part 5 is agreed.

9.13.8 **Part 6** provides for protections which apply to GTC Infrastructure Limited. These provisions have been agreed with GTC Infrastructure Limited.

9.13.9 **Part 7** provides for protections which apply to Scottish Power (SP Manweb). These provisions have been agreed with Scottish Power.[44]

9.13.10 **Part 8** provides protections which apply to Liverpool Bay CCS Limited. The Applicant is engaging with Liverpool Bay CCS Limited to ensure that the drafting of Part 8 is agreed. Whilst Liverpool Bay CCS Limited do not currently have any assets or land interests within the Order limits, protections have been included in Schedule 13 due to the overlap with the HyNet Order.

9.13.11 **Part 9** provides protections which apply to ENI UK Limited. The Applicant is engaging with ENI UK Limited to ensure that drafting of Part 9 is agreed.

9.13.12 **Part 10** provides protections which apply to National Gas Transmission plc. The Applicant is engaging with National Gas Transmission plc to ensure that drafting of Part 10 is agreed.

9.14 Schedule 14 – Documents and plans to be certified

9.14.1 This Schedule contains a list of the documents and plans that must be certified pursuant to Article 46 (certification of plans, etc).

9.15 Schedule 15 – Arbitration rules

9.15.1 This Schedule relates to Article 49 (arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Further, the objective is to achieve determination within 4 months from the date the arbitrator is first appointed to ensure that any disputes are resolved quickly. In the context of the urgent need for new electricity generating capacity, identified in the Overarching National Policy Statement for Energy (EN-1) (designated January 2024), it is considered desirable that any disputes are resolved promptly to enable delivery of the authorised development in as timely a way as possible. Arbitration rules of this nature have precedent in the HyNet Order.

9.15.2 Schedule 15 refers to the person who commenced the arbitration as the 'claimant' and the other party as the 'respondent'.

9.15.3 The timetable for the process is as follows:

- Within 15 days of the Arbitrator being appointed the claimant shall serve on the respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
- Within 15 days of receipt of the claimant's statement of claim and supporting evidence the respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the claimant's documentation.
- Within 5 days of receipt of the respondent's documentation the claimant may make a statement of reply.

[44] Please note that the **Draft Statement of Common Ground between the Applicant and Scottish Power (EN010166/APP/8.8)** was finalised prior to agreement being reached on the protective provisions but the next iteration published during examination will reflect the agreed position.

9.15.4 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.