

# South Humber Bank Energy Centre Project

Planning Inspectorate Reference: EN010107

South Marsh Road, Stallingborough, DN41 8BZ

The South Humber Bank Energy Centre Order

**Document Reference: 2.2 Explanatory Memorandum**

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



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## DOCUMENT HISTORY

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## GLOSSARY

<b>Abbreviation</b>	<b>Description</b>
CCGT	Combined Cycle Gas Turbine.
DCO	Development Consent Order: provides a consent for building and operating a NSIP.
EfW	Energy from Waste: the combustion of waste material to provide electricity and/ or heat.
EIA	Environmental Impact Assessment.
EP Waste Management Ltd	The Applicant.
EPUKI	EP UK Investments Ltd, the Applicant's parent company.
ES	Environmental Statement.
MW	Megawatt: the measure of power produced.
NELC	North East Lincolnshire Council.
NSIP	Nationally Significant Infrastructure Project: for which a DCO is required.
PA 2008	Planning Act 2008.
Q2	Quarter 2
SHBEC	South Humber Bank Energy Centre.
SHBPS	South Humber Bank Power Station.
SoCC	Statement of Community Consultation: sets out how a developer will consult the local community about a proposed NSIP.
SoS	Secretary of State.

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## **1.0 INTRODUCTION**

### **1.1 Overview**

- 1.1.1 This 'Explanatory Memorandum' document (Document Ref. 2.2) has been prepared on behalf of EP Waste Management Limited ('EPWM' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 EPWM is seeking development consent for the construction, operation and maintenance of an energy from waste ('EfW') power station with a gross electrical output of up to 95 megawatts (MW) including an electrical connection, a new site access, and other associated development (together 'the Proposed Development') on land at South Humber Bank Power Station ('SHBPS'), South Marsh Road, near Stallingborough in North East Lincolnshire ('the Site').
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(2) of the PA 2008.
- 1.1.4 The DCO, if made by the SoS, would be known as the 'South Humber Bank Energy Centre Order' ('the Order').
- 1.1.5 Full planning permission ('the Planning Permission') was granted by North East Lincolnshire Council ('NELC') for an EfW power station with a gross electrical output of up to 49.9 MW and associated development ('the Consented Development') on land at SHBPS ('the Consented Development Site') under the Town and Country Planning Act 1990 on 12 April 2019. Since the Planning Permission was granted, the Applicant has assessed potential opportunities to improve the efficiency of the EfW power station, notably in relation to its electrical output. As a consequence, the Proposed Development would have a higher electrical output (up to 95 MW) than the Consented Development, although it would have the same maximum building dimensions and fuel throughput (up to 753,500 tonnes per annum (tpa)).

### **1.2 The Applicant**

- 1.2.1 The Applicant is a subsidiary of EP UK Investments Limited ('EPUKI'). EPUKI owns and operates a number of other power stations in the UK. These include SHBPS and Langage (Devon) Combined Cycle Gas Turbine ('CCGT') power stations, Lynemouth (Northumberland) biomass-fired power station, and power generation assets in Northern Ireland. EPUKI also owns sites with consent for new power stations in Norfolk (King's Lynn 'B' CCGT) and North Yorkshire (Eggborough CCGT).
- 1.2.2 EPUKI is a subsidiary of Energetický A Průmyslový Holding ('EPH'). EPH owns and operates energy generation assets in the Czech Republic, Slovak Republic, Germany, Italy, Hungary, Poland, Ireland, and the United Kingdom.

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### 1.3 The Proposed Development Site

- 1.3.1 The Proposed Development Site (the 'Site' or the 'Order limits') is located within the boundary of the SHBPS site, east of the existing SHBPS, along with part of the carriageway within South Marsh Road. The principal access to the site is off South Marsh Road.
- 1.3.2 The Site is located on the South Humber Bank between the towns of Immingham and Grimsby; both over 3 km from the Site. The surrounding area is characterised by industrial uses dispersed between areas of agricultural land with the nearest main settlements being the villages of Stallingborough, Healing and Great Coates. The Site lies within the parish of Stallingborough although Stallingborough village lies over 2 km away.
- 1.3.3 The Site lies within the administrative area of NELC, a unitary authority. The Site is owned by EP SHB Limited, a subsidiary of EPUKI, and is therefore under the control of the Applicant, with the exception of the highway land on South Marsh Road required for the new Site access.
- 1.3.4 The existing SHBPS was constructed in two phases between 1997 and 1999 and consists of two CCGT units fired by natural gas, with a combined gross electrical capacity of approximately 1,400 MW. It is operated by EP SHB Limited.
- 1.3.5 The Site is around 23 hectares ('ha') in area and is generally flat, and typically stands at around 2.0 m Above Ordnance Datum (mAOD).
- 1.3.6 The land surrounding the Site immediately to the south, west and north-west is in agricultural use with a large polymer manufacturing site, Synthomer, and a waste management facility, NEWLINCS, both located to the north of the Site and also accessed from South Marsh Road. The estuary of the River Humber lies around 175 m to the east of the Site.
- 1.3.7 Access to the South Humber Bank is via the A180 trunk road and the A1173. The Barton railway line runs north-west to south-east between Barton-on-Humber and Cleethorpes circa 2.5 km to the south-west of the Site and a freight railway line runs north-west to south-east circa 300 m (at the closest point) to the Site.
- 1.3.8 A more detailed description of the Site is provided at Chapter 3: Description of the Proposed Development Site in the Environmental Statement ('ES') Volume I (Document Ref. 6.2).

### 1.4 The Proposed Development

- 1.4.1 The main components of the Proposed Development are summarised below:
- Work No. 1— an electricity generating station located on land at SHBPS, fuelled by refuse derived fuel ('RDF') with a gross electrical output of up to 95 MW at ISO conditions;
  - Work No. 1A— two emissions stacks and associated emissions monitoring systems;
  - Work No. 1B— administration block, including control room, workshops, stores and welfare facilities;

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- Work No. 2— comprising electrical, gas, water, telecommunication, steam and other utility connections for the generating station (Work No. 1);
  - Work No. 3— landscaping and biodiversity works;
  - Work No. 4— a new site access on to South Marsh Road and works to an existing access on to South Marsh Road; and
  - Work No. 5— temporary construction and laydown areas.

1.4.2 Various types of ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 of the DCO. A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the Draft DCO and Chapter 4: The Proposed Development in the ES Volume I (Document Ref. 6.2) and the areas within which each of the main components of the Proposed Development are to be built is shown by the coloured and hatched areas on the Works Plans (Document Ref. 4.3).

## 1.5 Relationship with the Consented Development

1.5.1 The Proposed Development comprises the works contained in the Consented Development, along with additional works not forming part of the Consented Development ('the Additional Works'). The Additional Works are set out below along with an explanation of their purpose.

- a larger air-cooled condenser (ACC), with an additional row of fans and heat exchangers – this will allow a higher mass flow of steam to be sent to the steam turbine whilst maintaining the exhaust pressure and thereby increasing the amount of power generated;
- a greater installed cooling capacity for the generator – additional heat exchangers will be installed to the closed-circuit cooling water system to allow the generator to operate at an increased load and generate more power;
- an increased transformer capacity – depending on the adopted grid connection arrangement the capacity will be increased through an additional generator transformer operating in parallel with the Consented Development's proposed generator transformer or a single larger generator transformer. Both arrangements would allow generation up to 95 MW; and
- ancillary works – the above works will require additional ancillary works and operations, such as new cabling or pipes, and commissioning to ensure that the apparatus has been correctly installed and will operate safely and as intended.

1.5.2 The likely construction scenario is for work on the Consented Development (pursuant to the Planning Permission) to commence in Quarter 2 ('Q2') of 2020 and to continue for around three years. Following grant of a DCO for the Proposed Development (approximately halfway through the three-year construction programme), the Applicant would initiate powers to continue development under the Order instead of the Planning Permission. The Order

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includes appropriate powers and notification requirements for the 'switchover' between consents, to provide clarity for the relevant planning authority regarding the development authorised and the applicable conditions, requirements, and other obligations. Once the Order has been implemented the additional works would be constructed and the Proposed Development would be built out in full. The Proposed Development would commence operation in 2023.

- 1.5.3 Alternative construction scenarios, involving construction entirely pursuant to the Order, are also possible. Accordingly, three representative scenarios are described within Chapter 5: Construction Programme and Management in the ES Volume I (Document Ref 6.2) and assessed in the Environmental Impact Assessment ('EIA').

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## 2.0 THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

### 2.1 Purpose

2.1.1 This Explanatory Memorandum is prepared to explain the purpose and effect of each article of, and the Schedules to, the Draft Development Consent Order (Document Ref. 2.1, referred to in this document as 'the Order'), as required by Regulation 5(2)(c) of the APFP Regulations.

2.1.2 It also identifies and explains departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed, the Applicant considers it is still relevant to explain variations made in the Order compared to the model provisions.

### 2.2 Structure

2.2.1 The Order includes a number of provisions to enable the construction, maintenance and operation of the Proposed Development. These are briefly described below and then considered in more detail in the following sections:-

- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order. Article 3 sets out the position on electronic communications for the purposes of the Order;
- Part 2: Article 4 provides development consent for the Proposed Development. Article 5 provides for how the Order and the Planning Permission interact. Articles 6 and 7 allow the Proposed Development to be maintained and operated. Articles 8 and 9 set out who has the benefit of the powers of the Order and how those powers can be transferred;
- Part 3: Articles 10 to 14 provide for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets, and to be able to divert and temporarily stop up public rights of way;
- Part 4: Articles 15 and 16 set out two supplemental powers relating to discharge of water, and authority to survey land;
- Part 5: Article 17 provides powers in relation to trees which need to be removed or lopped in relation to the Proposed Development;
- Part 6: Articles 18 to 28 include various general provisions in relation to the Order:-
  - Article 18 provides protection for statutory undertakers through the protective provisions (set out in Schedule 8);
  - Articles 19 to 28 include provisions relating to: apparatus and rights of statutory undertakers; recovery of costs of new connections; application of landlord and tenant law; operational land; defence to proceedings in respect of statutory nuisance; certification of plans; service of notices; procedure in relation to certain approvals;



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requirements and appeals; and the arbitration procedure in the event of a dispute.

- 2.2.2 Schedules: there are eight Schedules to the Order, providing for the description of the Proposed Development (Schedule 1); the requirements (a form of control akin to planning conditions) applying to it (Schedule 2); deemed approval of matters referred to in requirements (where the corresponding condition under the Planning Permission has been satisfied) (Schedule 3); matters in relation to streets and access (Schedules 4 to 7); and provisions protecting statutory undertakers and their apparatus (Schedule 8).

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### **3.0 PURPOSE OF THE ORDER**

#### **3.1 Nationally Significant Infrastructure Project**

- 3.1.1 As the Proposed Development is an onshore generating station with a capacity of over 50 MW, in England, and which does not generate electricity from wind, it is a 'nationally significant infrastructure project' ('NSIP') under sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act in order to construct and operate the Proposed Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the 2008 Act).
- 3.1.2 The Applicant is therefore making the application to the SoS for a development consent order for the construction, operation and maintenance of an energy from waste power station with a gross electrical output of up to 95 MW ('Proposed Development', and referred to in the Order as 'the authorised development').
- 3.1.3 The Order refers to the person authorised to exercise the powers in the Order as 'the undertaker', and defines the undertaker as EP Waste Management Limited.
- 3.1.4 Whilst there are three possible construction scenarios for the Proposed Development, the Order is not predicated on a particular construction scenario and is drafted so as to be compatible with any of the three construction scenarios.

#### **3.2 Matters for which development consent is sought**

- 3.2.1 The matters for which development consent is sought are set out in Schedule 1 to the Order and are summarised in paragraph 5.1.2 below.
- 3.2.2 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The Secretary of State must therefore be satisfied that all the elements included within the 'authorised development' are either part of the NSIP or are associated development, in order to include them in the Order pursuant to section 115 of the 2008 Act.
- 3.2.3 The generating station and related development within Work No. 1 constitute "development for which development consent is required" (as a NSIP, as set out above), and the Order also includes other development which is Associated Development (i.e. not an integral part of the NSIP itself) which are included at Work Nos. 2 to 5 (inclusive). EPWM has considered these Work Nos. against the policy and criteria in DCLG 'Guidance on associated development applications for major infrastructure projects' (April 2013) - it is clear that all of these Work Nos. come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115.
- 3.2.4 In particular, Work Nos. 2 to 5 are all:
- directly associated with the NSIP, as they are all required for the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);

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- subordinate to the NSIP – none of them are an aim in themselves (paragraph 5(ii));
  - proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and
  - of a nature which is typically brought forward alongside a generating station (paragraph 6);
  - specifically listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention (of relevance to Work Nos. 2 to 5):
    - "Formation of new or improved... access" and "Highway and rail route / junction improvements" (Work No. 4);
    - "Temporary haul roads... and lay down areas" (Work No. 5);
    - "Electricity networks", "Water/wastewater networks", "Fuel and pipeline networks" and "Telecommunications networks" (Work No. 2);
    - "Development undertaken for the purpose of addressing impacts" and "Hard and soft landscaping" (Work No. 3 specifically, and relevant elements of all Work Nos.);
    - "Working sites, site offices and laydown areas" (Work No. 5 specifically and relevant elements of all Work Nos.); and
    - "Overhead / underground lines", "Substations", "Gas pipelines and pressure reduction stations" (Work No. 2).

3.2.5 A more detailed description of the various elements of the Proposed Development is provided in Chapter 4 of the Environmental Statement (Document Ref. 6.2).

### **3.3 DCO Additional Works**

3.3.1 As noted above, the Order seeks consent for a generating station of up to 95MW. Details of the additional works are set out at paragraph 1.5.1 of this Explanatory Memorandum.

### **3.4 The Order limits and the Applicant's control of the land**

3.4.1 The Order secures that the Proposed Development may only be carried out within the Order limits (see further on article 4, in Section 4.0 below). Figure 4.3 to the Environmental Statement (Document Ref. 6.3.7) shows a comparison of the Consented Development and the Proposed Development. The Order limits correspond with the red line boundary of the Planning Permission for the Consented Development save for a few areas. The differences are as follows:

- Additional highway works area – in the context of the Consented Development, the highway works are being progressed under a highways agreement and were not included within the scope of the Planning Permission. The area of highway works is included in the Order limits, so that the highway works are authorised under and benefit from the powers in the Order. An area to the north east of the Planning Permission boundary (over a ditch along a road) was also removed from the Order

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limits as it is not required for the Proposed Development, no works are proposed there;

- Two areas within SHBPS have been excluded from the Order limits, as no powers are required over these areas, and which were previously included within the Planning Permission red line boundary. The areas are a National Grid Gas above ground installation (AGI) and a National Grid Electricity Transmission sub-station. Both are marked on the Work Plans (Document Ref. 4.3). Any works within these areas (to connect the Proposed Development to the gas or electricity networks) would be carried out by the relevant operator, pursuant to their powers; and
- The western boundary of the Order limits (along Hobson Way) has been moved very slightly 'in' (i.e. to the east) to avoid it crossing a gas pipeline operated by Cadent Gas Limited. No works are required under the Planning Permission in the small area which has been removed.

3.4.2 The Order does not include provision for any powers of compulsory acquisition or to take temporary possession of land, as these are not required to construct or operate the Proposed Development. All of the land included within the Order limits is in one of the following two categories:

- Freehold owned by EP (SHB) Limited – this is the case for all the land required for Work Nos. 1, 3 and 5, and some of the land required for Work Nos. 2 (utilities connections) and 4 (highway access). To the extent that there are leases or rights benefiting third parties (set out in the Book of Reference, Document Ref. 3.1), these either do not impact on the Proposed Development or are in favour of statutory undertakers and dealt with pursuant to Article 19 (see further below). EP (SHB) Limited is a sister company of the Applicant. EP (SHB) Limited and the Applicant are both ultimately owned by EP UK Investments Limited, and at the appropriate time EP (SHB) Limited will transfer the relevant land (or grant a lease of it) to the Applicant; and
- Public highway - part of the land required for Work Nos. 2 and 4 is public highway and is included within the Order limits to allow works to be carried out to the highway and to permit utility connections. These works do not change the nature of the land or use, which will remain as public highway, altered as permitted pursuant to the terms of the Order (see 4.3 below).

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## **4.0 PROVISIONS OF THE ORDER**

4.1.1 The Order consists of 29 operative provisions, each referred to as articles, and eight Schedules. The articles are considered below in numerical order (split between the 'Parts' of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

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

4.2.1 Articles 1 (Citation and commencement), 2 (Interpretation) and 3 (Electronic Communications) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

4.2.2 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:-

- Definitions of documents submitted as part of the Application and which are referred to in the Order (such as the Environmental Statement (Document Ref. 6.1-6.4) and various plans and strategies) have been added;
- A definition of "limits of deviation" has been added and operates by reference to the Works Plans. These are the areas within which the authorised development can be constructed, see further below in relation to article 4;
- A definition of "maintain" has been added to make clear what is authorised under article 6 (see below), and in particular that it does not permit the undertaker to depart from the description of the authorised development in Schedule 1 nor to carry out maintenance operations which would cause different environmental effects to those identified in the ES;
- A definition of "SHBEC planning permission" is added, by reference to the details of the Planning Permission, and incorporating future variations and amendments;
- The definition of "street works" has been amended to refer to the works listed in the street works article (article 10(1)) so as to ensure consistency between the powers in the article and the definition itself; and
- The "undertaker" is defined as EP Waste Management Limited, who has the benefit of the provisions of the Order, subject to the provisions of articles 8 and 9 (see below).

4.2.3 Sub-paragraphs (2) to (5) of article 2 have been added to provide clarity in relation to (respectively) that all distances, directions and lengths are approximate (including areas described in the Book of Reference, Document Reference No. 3.1), other than the parameters described in requirement 3 of the Order; references to points on plans; references to numbered works are to the works as described in Schedule 1 and shown on the Works Plans; and how the word "includes" is to be construed.

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- 4.2.4 Article 4 (Development consent etc granted by the Order) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans to delineate the area within which each 'work' can be constructed, maintained and operated (see article 4(2)). The areas within which each work can be constructed are therefore shown on the Works Plans. The works set out in Schedule 1 are listed at paragraph 5.1.2 below.
- 4.2.5 Sub-paragraph (2) requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans. This is in order to provide certainty as to what has been consented by the Order, in respect of which land areas. Article 4, Schedules 1 and 2 operate together to provide the parameters which the undertaker must construct (etc.) the generating station. This is explained in greater detail in the section describing Schedule 1 beginning at paragraph 5.1 of this document.
- 4.2.6 Article 5 (Effect of the Order on the SHBEC planning permission) sets out the way in which the Order will interact with the Planning Permission. It provides that the undertaker cannot implement the DCO until it has served notice on the relevant planning authority – see Article 5(1).
- 4.2.7 Paragraph 2 then provides that when EPWM serves notice pursuant to article 5 there are three consequences. The first is that there can be no further development pursuant to the Planning Permission. The second and third are that the conditions on the Planning Permission are no longer enforceable, and the requirements apply instead. From that point on EPWM will be implementing the DCO and the requirements (in Schedule 2) therefore appropriately govern the works, rather than the conditions attached to the Planning Permission. Compliance with the requirements is secured by article 4(1): "Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent..." (emphasis added).
- 4.2.8 The article 5 notice therefore provides the mechanism to switch between the Planning Permission and the DCO, and ensures that the relevant planning authority (who has responsibility for enforcement of both the Planning Permission and the DCO) has clarity as to the point at which there is a switch between the conditions and the requirements.
- 4.2.9 Article 5(8) ensures that the undertaker's notice is recorded on the planning register, a public record, to ensure that there is transparency in respect of the switchover.
- 4.2.10 In terms of the lawful basis for including Article 5, it provides (in reliance on section 120(5)(a) of the 2008 Act which sets out what may be included in an order granting development consent) for the disapplication and modification of certain requirements which would otherwise apply under public legislation. Section 120(5)(a) provides that an order granting development consent may
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apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

4.2.11 Section 120(5) of the 2008 Act provides that a development consent order may:

*"apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;*

*make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;*

*include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order; and*

*include incidental, consequential, supplementary, transitional or transitory provisions and savings."*

4.2.12 The term 'statutory provision' is defined in section 120(6) of the 2008 Act as meaning "a provision of an Act or of an instrument made under an Act."

4.2.13 Section 120(5) is therefore wide enough to modify conditions contained on a consent granted under a planning permission granted under the Town and Country Planning Act 1990, as is being sought under Article 5. This is because the Planning Permission is an instrument made under section 72 of the Town and Country Planning Act 1990. Its provisions (i.e. conditions) are therefore 'statutory provisions' for the purposes of section 120(5)(a) and can be modified or excluded.

4.2.14 If the Secretary of State considers it more appropriate, the amendments can be promoted under section 120(5)(b) of the 2008 Act or, in the alternative, section 120(5)(c) could be exercised by the Secretary of State, which provides that the Order may "include any provision that appears to the Secretary of State to be necessary or expedient...".

4.2.15 In order to utilise section 120(5)(b) and section 120(5)(c) of the 2008 Act, the Secretary of State must be satisfied that the amendment is necessary or expedient. The undertaker considers that article 5 is necessary to ensure conditions in the Planning Permission no longer apply and that the whole development is regulated by the DCO going forwards.

4.2.16 The legal effect of article 5(2) is that the planning permission continues to exist but it has no enforceable conditions. The fact that it continues to exist is not a concern, since article 5(2)(a) secures that no further development can take place pursuant to it. It therefore in effect becomes part of the planning history for the Site, not a 'live' consent. As noted above the DCO and requirements apply instead immediately on the undertaker giving notice under Article 5, so the Proposed Development will always be subject to appropriate controls, enforceable by the local planning authority.

4.2.17 Paragraphs (3) and (4) of article 5 provide savings for other powers and activity under the DCO (i.e. other than implementing works), and ensure that it is clear that these other activities can take place before or after the Article 5 notice.

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- 4.2.18 Paragraph (5) provides a mechanism for approvals pursuant to conditions on the Planning Permission to be 'pulled across' as deemed approvals pursuant to the requirements. This is achieved by the wording of paragraph (5) and the table of 'matching' conditions and requirements in Schedule 3. This approach is only adopted to the extent that there is a match between the corresponding condition and requirement, and the latter have been drafted so that they match the conditions on the Planning Permission as far as possible. In some instances the wording has been updated so that it is appropriate language within a statutory instrument, but not so as to change the meaning or operation of the relevant matter. Some conditions are split between different requirements, for clarity, and this is reflected in the deemed approval approach in Schedule 3.
- 4.2.19 The deemed approval mechanism in Article 5(5) takes account of these matters. For instance condition 7 has been split between three requirements, and this is shown in Schedule 3 to the DCO. The latter lists that condition three times in the left hand column, and in each case specifies that the deemed approval applies "So far as relating to [*specified topic*]", with the corresponding requirement on that topic then listed in the right hand column. This ensures that Article 5(5) only operates to deem approval of the relevant requirement to the appropriate extent.
- 4.2.20 The deemed approval does not apply to the Additional Works. As those are not within the scope of the Planning Permission, it would not be possible for details of them to be approved pursuant to the conditions attached to it. Approval of details of those elements will therefore have to be sought by EPWM after the DCO has been granted, pursuant to the requirements.
- 4.2.21 The Applicant has reviewed the draft requirements and has established, taking into account the scope and location of the Additional Works, that the only additional approvals definitely required pursuant to requirements will be pursuant to 5 and 6 (both relating to appearance and design matters). Article 5 does not remove or avoid the need to make applications for approval of those details, since any discharge under the conditions can only relate to the Consented Development as noted above.
- 4.2.22 If, after the DCO switchover, the Applicant does need to diverge from the details approved pursuant to planning conditions then it would need to make an application to the local authority for those new details, pursuant to the relevant requirement. That is the same as what a developer may do under a planning permission (in effect re-discharging the relevant item, with the new details).
- 4.2.23 There is also a further provision (at Article 5(2)(iii)) which provides that where an application to discharge a condition under the Planning Permission is outstanding at the date of the Article 5 notice, it will from the date of the undertaker's notice be treated as an application to discharge the corresponding requirement (the list of conditions and their corresponding requirements being set out at Schedule 3).
- 4.2.24 Article 5(6) requires the undertaker to provide a 'requirements discharge schedule' with the Article 5 notice – this provides a record of the position at the date of the notice. Article 5(7) requires the relevant planning authority to confirm whether it is in agreement with the details set out in the requirements discharge
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schedule, and if it is not then to explain what it disagrees with. This is another mechanism to ensure there is transparency in and regulatory oversight of the switchover process.

- 4.2.25 The Applicant has discussed the terms of Article 5 with North East Lincolnshire Council who has confirmed that it is content with the principles of the approach, and who provided various comments on the drafting, all of which have been taken into account.
- 4.2.26 Article 6 (Maintenance of authorised development) provides for the maintenance of the authorised development. Article 6 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order and the requirements (see below), and that it may only take place within the Order limits.
- 4.2.27 Article 7 (Operation of authorised development) permits the operation and use of the EfW comprised in the authorised development and is included under s.140 of the 2008 Act. Article 7(2) specifically preserves the need for EPWM to obtain any other operational consent that may be needed for the generating station, in addition to the Order.
- 4.2.28 Article 8(1) (Benefit of Order) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. The undertaker is defined in article 2 as EP Waste Management Limited, as promoter of the authorised development, and anyone to whom the benefit of the Order is transferred under articles 8 or 9. Overriding section 156(1) is common in DCOs that have been made, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and Thorpe Marsh Gas Pipeline Order 2016. Article 8(2) provides, without prejudice to Article 8(1), that for aspects of Work No. 2 the benefit of the Order is for the undertaker and appropriate statutory undertakers, as they may be best placed to carry out all or part of those works. This approach has precedent in orders such as the Progress Power (Gas Fired Power Station) Order 2015 and the Eggborough Gas Fired Generating Station Order 2018.
- 4.2.29 Article 9 (Consent to transfer benefit of the Order) makes provision for the transfer of the benefit of the Order. The consent of the Secretary of State is needed before the undertaker can transfer or lease the benefit, except where the transferee or lessee is: (i) the holder of an electricity generating licence; (ii) the relevant statutory undertaker or licence holder in relation to utility or other infrastructure connection works; or (iii) a highway authority responsible for the highways within the Order limits where the transfer relates to highway works.
- 4.2.30 The justification for these provisions is that in such cases, the transferee or lessee will be of a similar regulatory standing to EPWM or is of a regulatory standing which makes a transfer of the relevant part of the Proposed Development appropriate. The carve outs has precedent in orders such as the Progress Power (Gas Fired Power Station) Order 2015 and Eggborough Gas Fired Generating Station Order 2018.

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### 4.3 Part 3 (Streets)

- 4.3.1 Articles 10 (Street works) and 11 (Power to alter layout, etc., of streets) allow the undertaker to alter the layout of a street in order to construct the new accesses authorised under article 12 or to carry out street works in accordance with the statutory rights under the New Roads and Street Works Act 1991. Schedule 4 sets out the streets that are subject to street works, and the nature of those works. Schedule 5 sets out the alterations to streets to allow for the creation of new accesses (either temporary or permanent). Article 11 is a model provision intended to permit the carrying out of street works for the purposes of the authorised development.
- 4.3.2 Article 12 (Construction and maintenance of new or altered means of access) provides that new or altered means of access are to be constructed to a particular standard and maintained at the expense of the undertaker for a year. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Access and Rights of Way Plan (Application Document Ref. 4.4) and described in Part 1 of Schedule 6) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private roads or accesses which the undertaker is altering or creating and as also set out in the ARoW Plan(s) and Part 2 of Schedule 6) will then be maintained by the street authority. Paragraphs (3) and (4) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This article (and the incorporation of the defences in particular) is similar to article 19 in the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 4.3.3 Article 13 (Temporary stopping up of streets and public rights of way) provides for the temporary stopping up of streets and public rights of way for the purposes of carrying out the authorised development.
- 4.3.4 In respect of the streets and public rights of way, 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 7). There are consultation requirements before this power can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Article 13(6) confers a power on the undertaker, where the use of a street has been temporarily stopped up under the power in article 13, to use such a street as a temporary working site.
- 4.3.5 Article 14 (Agreements with street authorities) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street, and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets. Such a provision was included in various DCOs including the National Grid (King's Lynn B Power Station Connection) Order 2013 and the Progress Power (Gas Fired Power Station) Order 2015.

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#### **4.4 Part 4 (Supplemental Powers)**

- 4.4.1 Article 15 (Discharge of water) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference in the model provisions to s.85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016.
- 4.4.2 Article 16 (Authority to survey and investigate the land) is a model provision which allows the undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.

#### **4.5 Part 5 (Operations)**

- 4.5.1 Article 17 (Felling or lopping of trees) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. It is a model provision. The addition of sub-paragraph (4) has been included to ensure that if any tree which is to be felled or lopped is located within the extent of a publicly maintainable highway then the undertaker cannot fell or lop that tree without the consent of the highway authority. Sub-paragraph (5) requires 14 days' notice to be given to any owner or occupier before entering on any land (save in the case of emergency).

#### **4.6 Part 6 (Miscellaneous and General)**

- 4.6.1 Article 18 (Protective provisions) provides for Schedule 8, which protects the interests of certain statutory undertakers, to have effect.
- 4.6.2 Article 19 (Statutory undertakers) provides for a power to move the apparatus of statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used) rather than just extinguishment. This article is subject to the protective provisions included at Schedule 8 of the Order.
- 4.6.3 Article 20 (Apparatus and rights of statutory undertakers in stopped up streets) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are temporarily altered or diverted or where use is temporarily prohibited or restricted under Articles 12 or 13, including provision as to the relocation of apparatus. It is a model provision amended to reflect the Order which does not authorise any permanent stopping-up. Paragraph (2) onwards has been deleted to avoid any duplication with the protective provisions contained in Schedule 8 of the Order.

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- 4.6.4 Article 21(Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under article 20 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.
- 4.6.5 Article 22 (Application of landlord and tenant law) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.
- 4.6.6 Article 23 (Operational land for purposes of the 1990 Act) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 4.6.7 Article 24 (Defence to proceedings in respect of statutory nuisance) provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990, if the nuisance is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 24 is a model provision.
- 4.6.8 Article 25 (Certification of plans etc) is a model provision which provides for the submission of the various documents referred to in the Order (such as the Book of Reference, plans and ES) to the Secretary of State so that they can be certified as being true copies.
- 4.6.9 Article 26 (Service of notices) deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
- 4.6.10 Article 27 (Procedure in relation to certain approvals etc) provides procedures in relation to consents and approvals required pursuant to the Order. Article 27(1) and (2) apply to all consents or approvals (other than requirements), such as those that may be sought from a street authority (such as pursuant to articles 11(4) or 13(4)(b)). Article 27 does not however apply to approvals pursuant to the requirements (in Schedule 2), to which article 28 applies. Article 27 has precedent in various Orders, including article 38 of the Millbrook Gas Fired Generating Station Order 2019, and is considered appropriate and justified in order to ensure that the Proposed Development can proceed in a reasonable timescale, and so that there is a consistent approach to consents etc that must be sought by the undertaker pursuant to the Order.
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- 4.6.11 Article 28 (Requirements, appeals etc) provides that requirements are to be treated as planning conditions for certain specified purposes, including applications to discharge them and appeals. This is achieved by deeming that the requirements are conditions within the specified provisions of the 1990 Act, being sections 72 and 78. This provides for a formal process for dealing with the requirements, and has been adopted on previous DCOs such as the East Anglia ONE Offshore Wind Farm Order 2014.
- 4.6.12 Article 29 (Arbitration) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.

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## 5.0 SCHEDULES

### 5.1 Schedule 1

5.1.1 Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different elements of the Project. This split of the Project between different work numbers enables the Order to refer to different parts of the Project by citing the relevant work number. The split also enables the Order and Works Plans to delineate the area within which each 'work' can be constructed, maintained and operated (see article 4). The areas within which each work can be constructed are therefore shown on the Works Plans.

5.1.2 The works set out in Schedule 1 to the Order are summarised in paragraph 1.4.1 above, and paragraphs 3.1 and 3.2 explain why the Secretary of State is able to grant development consent for all of the development included.

### 5.2 Schedules 2-14

5.2.1 Schedule 2 (Requirements) sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order.

5.2.2 They closely follow the conditions attached to the Planning Permission – this is appropriate and important, both as the environmental parameters of the authorised development are no greater than those relevant to the Planning Permission, and to ensure that there is consistency between the controls which apply to the Planning Permission and the Order. This consistency has been discussed with the local planning authority who confirmed they also consider it to be important.

5.2.3 Where appropriate the conditions have been split into separate requirements, and the language has been updated to adopt that required in a statutory instrument.

5.2.4 Certain requirements include the wording "unless otherwise agreed with the relevant planning authority". This wording mirrors that used in the conditions under the Planning Permission, and is also appropriately controlled for the following reasons. Article 28 is broadly drafted such that the statutory provisions cited (in the Town and Country Planning Act 1990) would apply to all consents, agreements and approvals sought, and that would therefore include any approval sought under the 'unless otherwise agreed' wording. The wording does not therefore circumvent the appropriate statutory routes for approvals. In addition requirement 34 ensures that any such agreements by the relevant planning authority are constrained by the terms of the Environmental Statement (Document Refs. 6.1 to 6.4).

5.2.5 The following is a summary of the requirements, also noting (where relevant) which condition each requirement is equivalent to.

- *Requirement 1: Interpretation* – this provides definitions for certain terms used in the requirements.
- *Requirement 2: Commencement of the authorised development* – this requirement is based upon the model provisions and requires that the

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authorised development can only be commenced within 5 years of the date of the Order coming into force.

- *Requirement 3: Approved details and amendments to them* – this requires that all details submitted to the planning authority for approval must be in accordance with the parameters in the ES. It expressly states that "approved details" includes any amendments which may be subsequently approved by the planning authority.
- *Requirement 4: Requirement for written approval* – this confirms that where under any of the requirements the approval of the relevant planning is required, it must be given in writing.
- *Requirement 5: Detailed design (position and scale)* – this requires the details of the final position, finished floor levels, elevations and floor plans of permanent structures within Work No. 1 to be submitted to and approved by the planning authority before commencement of the authorised development comprised in Work No. 1. It requires those details to be in accordance with the illustrative elevations, indicative sections and indicative floor plans. This requirement is equivalent to condition 4 of the Planning Permission.
- *Requirement 6: Detailed design (appearance)* – this requires the specified design details of Work No. 1 to be submitted to and approved by the planning authority before commencement of the relevant part of Work No. 1. This requirement is equivalent to condition 5 of the Planning Permission.
- *Requirement 7: Retained trees* – this provides that all trees located within Work No. 3 must be retained throughout operation of the authorised development, and for their replacement where necessary. Sub-paragraph (2) sets out that any trees within Work No. 3 which are removed, die or become seriously damaged/diseased during construction or operation must be replaced. This requirement is equivalent to condition 6 of the Planning Permission.
- *Requirement 8: Means of enclosure and hard landscaping* – this provides that no part of the authorised development may commence until details and position of all means of enclosure, circulation areas, hardstandings and other hard landscaping have for that part been submitted to and approved by the planning authority. The details submitted must include details of specified boundary fences along the southern and eastern boundaries of the Site, required to mitigate potential effects on the birds that use the adjacent fields. This requirement is equivalent to that element of condition 7 of the Planning Permission relating to enclosure and hard landscaping.
- *Requirement 9: Lighting scheme* – this provides that no part of the authorised development may come into operation until a scheme for all permanent external lighting has been submitted to and approved by the relevant planning authority. The scheme submitted must be in accordance with the indicative lighting strategy, include measures to minimise/mitigate

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artificial light emissions and must be implemented as approved throughout the operation of the authorised development. This requirement is equivalent to that element of condition 7 of the Planning Permission relating to lighting.

- *Requirement 10: Soft landscaping* – this provides that no part of the authorised development may commence until a scheme for the soft landscaping and planting for that part has been submitted to and approved by the relevant planning authority. The scheme must include the details set out at sub-paragraph (2) and must be implemented within 12 months of the coming into operation of the authorised development. The scheme must be maintained as approved during the operation of the authorised development. This requirement deals with that element of condition 7 of the Planning Permission relating to soft landscaping.
- *Requirement 11: Biodiversity protection* – this sets out that a Biodiversity Protection Plan must be implemented during construction of the authorised development. No less than 24 months from the commencement of construction of the new access on South Marsh Road, a report verifying the implementation of the Biodiversity Protection Plan must be submitted to and approved by the relevant planning authority. This requirement is equivalent to that element of condition 8 of the Planning Permission relating to biodiversity protection.
- *Requirement 12: Biodiversity mitigation and enhancement* – this sets out that no less than 12 months from submission of the report verifying the implementation of the Biodiversity Protection Plan, a Biodiversity Mitigation and Enhancement Plan must be submitted to and approved by the relevant planning authority. The details must be in accordance with the principles in the Indicative Biodiversity Mitigation and Enhancement Plan. The plan must be implemented prior to the authorised development coming into operation and maintained throughout operation. This requirement is equivalent to that element of condition 8 of the Planning Permission relating to biodiversity mitigation and enhancement.
- *Requirement 13: Surface water drainage* – this provides that no part of the authorised development may commence until details of the permanent surface water drainage systems including a future maintenance plan, have been submitted to and approved by the planning authority. The details must be in accordance with the principles set out in outline drainage strategy appended to the ES. The scheme must be implemented in accordance with the approved details prior to the development coming into operation and maintained throughout the operation of the authorised development. This requirement is equivalent to condition 9 of the Planning Permission so far as it relates to surface water drainage.
- *Requirement 14: Foul water drainage* – this requirement provides that no part of the authorised development may commence until details of the permanent foul water drainage systems including a future maintenance plan, have been submitted to and approved by the planning authority. The details must be in accordance with the principles set out in the outline



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drainage strategy appended to the ES. The scheme must be implemented in accordance with the approved details prior to the development coming into operation and maintained throughout the operation of the development. This requirement is equivalent to condition 9 of the Planning Permission so far as it relates to foul water drainage.

- *Requirement 15: Construction and environmental management plan* – this requires a Construction and Environmental Management Plan, in accordance with the ES and Biodiversity Protection Plan and providing all of the details set out in sub-paragraph (2), to be submitted to and approved by the planning authority before commencement of the authorised development. All construction works must be in accordance with the approved Construction and Environmental Management Plan. This requirement is equivalent to condition 10 of the Planning Permission so far as it relates to the construction and environmental management plan.
- *Requirement 16: Construction traffic management and travel planning* – this provides that no part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority. The submitted plan must be in accordance with the framework construction traffic management plan included in the ES, and must include details of specified routes, and a construction worker travel plan. The plan must be implemented as approved. This requirement is equivalent to condition 10 of the Planning Permission so far as it relates to construction traffic management and travel planning.
- *Requirement 17: Piling* – this requires that no part of Work No. 1 may commence until a written specification of the type of piling to be used has been submitted to and approved by the planning authority. It requires that the written specification includes a scheme to mitigate noise with regard to ecological receptors (in accordance with the Biodiversity Strategy and a scheme to mitigate the effects of piling with regard to groundwater resources (in accordance with the investigation undertaken and strategy submitted pursuant to requirement 19). This requirement is equivalent to condition 11 of the Planning Permission.
- *Requirement 18: Temporary halting of development on finding unexpected contamination* – this provides that if at any point during construction contamination is found that is not expected, development must be halted on the part of the site affected by the unexpected contamination to the extent specified by the relevant planning authority in writing, until requirement 21 has been complied with. This requirement is equivalent to condition 12 of the Planning Permission.
- *Requirement 19: Investigation and remediation of contamination* – this sets out that no part of the authorised development may commence until a scheme for investigation of contamination on the site has been submitted to and approved by the relevant planning authority. The scheme must be in accordance with the ES and must include the elements specified in sub-

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paragraph (3). Where an appraisal identifies the need for removal of unacceptable risks in order for the site to be in a condition suitable for the intended use, remediation scheme must be submitted containing the details set out in sub-paragraph (5). Both schemes must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', and the authorised development must be carried out in accordance with the approved schemes. This requirement is equivalent to condition 13 of the Planning Permission.

- *Requirement 20 - Implementation of remediation scheme* – this provides that the authorised development must not commence until the scheme submitted pursuant to requirement 19 has been implemented. Following implementation a verification report demonstrating the effectiveness of the remediation scheme must be submitted to and approved by the relevant planning authority, prior to the authorised development coming into operation. This requirement is equivalent to condition 14 of the Planning Permission.
- *Requirement 21: Procedure in cases of unexpected contamination* – this sets out that where contamination is encountered that was not expected under the scheme approved pursuant to requirement 19, such contamination must be notified to the relevant planning authority in writing before the end of the following working day. Within three months of such notification, the details required under sub-paragraphs (2) and (4) of requirement 19 must be submitted to the relevant planning authority. Within three months of approval of such details, the schemes must be implemented as approved, and within three months of implementation a verification report must be prepared in accordance with requirement 20 and submitted to and approved by the relevant planning authority. This requirement is equivalent to condition 15 of the Planning Permission.
- *Requirement 22: Flood risk mitigation* – this provides that no part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and approved by the planning authority. The scheme must be in accordance with the ES and that the planning authority must consult with the Environment Agency on the draft scheme. The scheme must provide for critical equipment assets to be elevated at a specified height or otherwise adequately protected. The scheme must be implemented as approved and maintained throughout the operation of the authorised development. This requirement is equivalent to condition 16 of the Planning Permission.
- *Requirement 23: Flood warning and evacuation plan* – this set outs that the authorised development must not be occupied until a flood emergency response/contingency plan has been submitted to and approved by the relevant planning authority. The scheme must secure the subscription of the authorised development to the Floodline Warnings Direct Service or equivalent. The scheme must be implemented as approved prior to the

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occupation of the authorised development and maintained throughout operation. This requirement is equivalent to condition 17 of the Planning Permission.

- *Requirement 24: Delivery and servicing plan* – this provides that the authorised development must not come into operation until a Delivery and Servicing Plan for all operational HGVs entering/leaving the Site has been submitted to and approved by the relevant planning authority. The plan submitted must be in accordance with the plan in the ES, and must be implemented as approved throughout the operation of the authorised development. This requirement is equivalent to condition 18 of the Planning Permission.
- *Requirement 25: Operational travel plan* – this provides that the authorised development must not come into operation until an Operational Travel Plan has been submitted to and approved by the relevant planning authority. The plan must be in accordance with the Business Travel Plan Guidance published by the local highway authority and in accordance with the framework plan in the ES. The plan must be implemented as approved throughout the operation of the authorised development. This requirement is equivalent to condition 19 of the Planning Permission.
- *Requirement 26: Visibility splays* – this sets out that the authorised development must not come into operation until details of the visibility splays at the proposed new highway access have been submitted to and (following consultation with the local highway authority) approved by the relevant planning authority. The details must be in accordance with the Access and Rights of Way Plan and the Swept Path Analysis Plan, and must be implemented as approved and maintained throughout the operation of the authorised development. This requirement is equivalent to condition 20 of the Planning Permission.
- *Requirement 27: New highway access* – this provides that the authorised development must not come into operation until details of the proposed new highway access and highway drainage system have been submitted to and (following consultation with the local highway authority) approved by the relevant planning authority. The details submitted must include the information specified in sub-paragraph (2), and must be implemented as approved and maintained throughout the operation of the authorised development. This requirement is equivalent to condition 21 of the Planning Permission so far as relating to the new highway access.
- *Requirement 28: Parking* – this provides that the authorised development may not come into operation until details of the parking spaces have been submitted to and approved by the relevant planning authority. The details must be implemented as approved and maintained throughout the operation of the authorised development. This requirement is equivalent to condition 21 of the Planning Permission so far as relating to parking.
- *Requirement 29: Road condition survey* – this provides that no development may take place until a survey of the condition of the adopted

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section of South Marsh Road has been carried out, with the details submitted to and approved by the relevant planning authority. The details must include the content specified in sub-paragraph (2).

- Within six months of the authorised development coming into operation a report containing the results of traffic surveys undertaken along South Marsh Road (and containing the information specified in sub-paragraph (3)) must be submitted to and approved by the relevant planning authority. Where the report shows that actual HGV tonnage and volumes using the road exceed its theoretical capacity, the applicant must submit a scheme for the improvement of South Marsh Road to the local highways authority, and then implement it. This requirement is equivalent to condition 22 of the Planning Permission.
- *Requirement 30: Air safety* – this requires details of the information required by the Defence Geographic Centre of the Ministry of Defence to be submitted to and approved by the planning authority before commencement of the authorised development. This requirement is equivalent to condition 23 of the Planning Permission.
- *Requirement 31: Fuel type* – this provides that only fuel comprising of processed waste from specified sources may be used in the combustion system in Work No. 1 (except for the purposes of start-up and support firing when gas or fuel oil may be used). This requirement is equivalent to condition 24 of the Planning Permission.
- *Requirement 32: Fuel storage* – this sets out that fuel for the energy recovery facility must not be stored outside of the main building at any time. This requirement is equivalent to condition 25 of the Planning Permission.
- *Requirement 33: Decommissioning* – this requires the undertaker to submit a Decommissioning Plan (including a Decommissioning Environmental Management Plan) to the planning authority within two years of deciding to end operation of the authorised development. The planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved. This requirement is equivalent to condition 26 of the Planning Permission.
- *Requirement 34: Amendments agreed by the relevant planning authority* – this clarifies that where the phrase "unless otherwise agreed by the relevant planning authority" appears in requirements, it does not permit changes which would or could take the authorised development outside the scope of the ES. It also makes clear that where the requirement requires the planning authority to consult with another body, then any approval or agreement to any amendments must not be given without the planning authority having first consulted with that body.
- *Requirement 35: Combined heat and power* – this is not a model provision. It is based on requirement 25 of the Rookery South (Resource Recovery Facility) Order 2011. It requires the authorised development to include space and routes through the later provision of heat pass-puts for

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off-site users of process or space heating and its later connection to such systems.

- *Paragraph 36: Anticipatory steps towards compliance with any requirement* – allows steps to be taken prior to grant of the Order in relation to requirements and for those steps to ‘count’ as a formal step towards satisfaction of the relevant requirement. This provision is particularly relevant as EPWM is very likely to be progressing construction of the Consented Development pursuant to the Planning Permission prior to the Order being granted, and it may be logical (in construction programme terms) to carry out detailed design and submit details to the planning authority prior to the Order being granted. Paragraph 36(2) requires that any documents submitted with a view to constituting such ‘steps’ must say so on their face. This provision has been discussed and agreed in principle with NELC.

5.2.6 Schedule 3 (Deemed approval of matters referred to in requirements) provides a table of the corresponding conditions on the Planning Permission and the requirements, as described in relation to Article 5 above.

5.2.7 Schedule 4 (Streets subject to street works) sets out the streets that would be subject to street works (including reference to the relevant plan, the location and the specific street).

5.2.8 Schedule 5 (Streets subject to permanent alteration of layout) sets out the streets to be permanently altered.

5.2.9 Schedule 6 (Access) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively).

5.2.10 Schedule 7 (Streets to be temporarily stopped up) sets out the streets that will be subject to a temporary stopping up (including reference to the relevant plan, the location and the extent of the temporary stopping up).

5.2.11 Schedule 8 (Protective provisions) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. The standard protective provisions are included covering gas, electricity, water and sewerage undertakers (at Part 3), and separately for electronic communications code operators (at Part 4).

5.2.12 In addition specific protective provisions are included for:

5.2.12.1. National Grid Electricity Transmission plc and National Grid Gas plc (Part 2) – these are based on National Grid's standard provisions, with updates where appropriate, such as to remove provisions relating to compulsory acquisition and to provide for the mitigation of claims, in order to protect the undertaker; and

5.2.12.2. Anglian Water Limited (Part 1) – these are based on Anglian Water's standard provisions, again with appropriate updates which are similar to those made to National Grid's.

5.2.13 Neither sections 127 or 138 of the Planning Act 2008 apply in this case, since both apply only where powers to acquire land are sought in the DCO (see sections 127(2), 127(5) and 138(1)). Notwithstanding that, the undertaker

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considers that the Secretary of State is likely to consider the presence of the statutory undertakers' land, rights and apparatus (as described in the Book of Reference) and the powers in the DCO (such as articles 19 and 20) to be a matter which is "important and relevant" and therefore should be taken into account in determining the DCO application (pursuant to section 104 PA2008). The undertaker considers that, with the benefit of the general and company-specific protective provisions, all statutory undertakers are adequately protected and there will not be an impact on any of their respective statutory undertakings.