

Planning Act 2008

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

The Port Talbot Steelworks (Power Generation Enhancement) Order

4.01 Statement of Reasons

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GLOSSARY

"Act"	means the Planning Act 2008.
"APFP Regulations"	means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
"Application"	means the application for the Port Talbot (Power Generation Enhancement) Order made to the Secretary of State under section 37 of the Act in respect of the proposed development.
"DCO"	means a development consent order.
"Guidance"	means the Department of Communities and Local Government guidance, 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (September 2013).
"Land Plans"	means the plans showing the land required for or affected by the proposed development (submitted with the Application at Document Reference 2.03).
"MWe"	means megawatts electrical.
"NPS EN-1"	means the Overarching National Policy Statement for Energy (EN-1).
"Order Land"	means the land required for or affected by the authorised development shown on the Land Plans and described in the book of reference.
"Order Limits"	means the limits shown on the Works Plans within which the proposed development may be

carried out.

"Works Plans"

means the plans showing the numbered works referred to in the DCO and submitted with the Application at Document Reference 2.04.

1. SUMMARY INTRODUCTION

- 1.1 This Statement of Reasons relates to an Application (the "**Application**") submitted by Tata Steel UK Limited (the "**Applicant**") to the Secretary of State under the Planning Act 2008 (the "**Act**") for powers to construct, operate and maintain a new thermal generating station (the "**generating station**") on land at the existing Port Talbot Steelworks together with a new integral electrical connection (the "**electrical connection**"). The generating station and the electrical connection are together described in this Statement as the "**proposed development**".
- 1.2 This Statement has been prepared in accordance with Regulation 5(2)(h) of the APFP Regulations. It explains why it is necessary and justifiable for the draft DCO to contain powers of compulsory acquisition in respect of rights over land and powers to suspend or extinguish private rights or to interfere with existing interests, rights or restrictive covenants for the purposes of the proposed development.
- 1.3 The generating station will be located within the existing Port Talbot Steelworks site near the town of Port Talbot in the County Borough of Neath Port Talbot. The proposed development will involve the installation of up to two new boilers (nominally up to 164 megawatt thermal (MWth) each) and associated steam turbine sets, to be predominantly powered by process gases generated through the steel-making process, with natural gas used as a standby fuel.
- 1.4 The plant will be designed to provide an electrical output capacity of up to 150 Megawatts electrical ("**MWe**") and represents a significant enhancement of existing onsite power generation at Port Talbot. The proposed development is described in more detail in Chapter 1 (Introduction) and Chapter 3 (Project Description) of the Environmental Statement (Document Reference 6.01).
- 1.5 This Statement forms part of the suite of documents accompanying the Application submitted in accordance with section 37 of the Act and regulation 5 of the APFP Regulations. The Application seeks the making of the proposed Port Talbot Steelworks (Power Generation) Order (the "**Order**"), which would confer the powers required to construct, operate and maintain the proposed development.
- 1.6 The Statement is one of a number of documents required to support the Application listed in the Introduction to the Applicant (Document Reference 1.01). In particular, in accordance with the requirements of the APFP Regulations and Guidance, the Applicant has provided the following documents relating to the compulsory acquisition powers sought as part of the Application:
- 1.6.1 this Statement;
- 1.6.2 a statement to explain how the proposals contained in the DCO will be funded ("**the Funding Statement**") (Document Reference 4.02);

- 1.6.3 plans showing the land over which rights would be acquired ("**the Land Plans**") (Document Reference 2.03); and
 - 1.6.4 a book of reference containing details of the rights over land which may be acquired (by being created) and the names and addresses of all those with interests in or rights over the land which may be affected by the proposed development ("**the Book of Reference**"). (Document Reference 4.03).
- 1.7 The following documents are also referred to in this Statement:
- 1.7.1 the draft DCO (Document Reference 3.01);
 - 1.7.2 the Environmental Statement (Document Reference 6.01); and
 - 1.7.3 the Works Plan (Document Reference 2.04);
- 1.8 The document references listed in paragraph 1.4 and 1.5 above have not been repeated throughout this document for ease of reading.

2. **SCHEME DETAILS**

- 2.1 The Applicant is applying to the Secretary of State under the Act for powers to construct, operate and maintain a new thermal generating station on land at the Port Talbot Steelworks together with an integral electrical connection (the "proposed development").
- 2.2 The proposed development, being an electricity generating plant with a gross electrical output in excess of 50 MWe, falls within the definition of a "nationally significant infrastructure project under section 15(2)(c) of the Act. It is, therefore, necessary for the Applicant to apply to the Secretary of State for development consent to construct, operate and maintain the proposed development under Section 31 of the Act.
- 2.3 The site required for the proposed development (the Order Limits) is located on approximately 22.9 ha of land on or adjacent to the Tata Port Talbot steelworks. The Port Talbot steelworks is located in the County Borough of Neath Port Talbot, approximately 1.5km to the south east of Port Talbot. The A48 lies just to the east of the site running parallel to the M4. The Port Talbot Docks Industrial Area adjoins the Port Talbot site to the North West as does Port Talbot Parkway station, where a branch line serves the steelworks and links Port Talbot with Llanwern steelworks in Newport.
- 2.4 Other nearby settlements include Margam, Cwmavon, Goetre, Bryn, Pwll-y-glaw, Pontrhydyfen, North Cornelly, South Cornelly, Pyle, Kenfig, Briton Ferry, Llandarcy, Skewen, Neath and Baglan.
- 2.5 The proposed development will be located in the north of the Port Talbot site adjacent to existing power generation facilities. The proposed development will

be separated from local communities by the new Peripheral Distributor Road (PDR) known as Harbour Way, which opened in October 2013.

- 2.6 The proposed development comprises several major components as well as ancillary buildings and includes:
- 2.6.1 up to two steam boilers and their associated stacks (maximum 80m in height), annexe bay and boiler house;
 - 2.6.2 a turbine hall housing turbine sets and associated condensers;
 - 2.6.3 cooling tower unit;
 - 2.6.4 an electrical switchgear station building;
 - 2.6.5 a condensate storage tank and additional condensate polishing units;
 - 2.6.6 water treatment plant and chemical dosing system skids;
 - 2.6.7 administration, workshop, pump house, gas booster house, control buildings and ancillary infrastructure;
 - 2.6.8 the extension of existing pipe work connections (for water, nitrogen, process gases, natural gas and compressed air) from the existing on site utilities pipe work infrastructure to the generating station. All the extended pipe work will be contained within the Order Limits;
 - 2.6.9 an integrated 66kV electrical connection up to 2.8km in length to connect the generating station to the existing onsite substations on the south east of the site. For most of the route, the cables will either be run underground (either in new and existing ducting and excavations) or be supported off existing structures. There will potentially be a cable bridge constructed, due to restricted space to run cables underground, at the southern end of the electrical connection between the two onsite existing substations. If required, this cable bridge will be consistent with the other cable bridges on site and be constructed of a metal lattice structure approximately 5m in height (to provide suitable clearance) and approximately 800m in length;
 - 2.6.10 modifications to the two existing onsite substations to accept the electrical connection including the installation of new 66kV bays at each substation;
 - 2.6.11 security infrastructure, including perimeter fencing and site lighting infrastructure;
 - 2.6.12 connections to the existing internal road layout for the provision of site vehicular access(es), roads, pedestrian network, parking and cycle storage;

2.6.13 temporary construction compounds; and

2.6.14 connection to site drainage systems.

2.7 The proposed development is described in more detail in Chapter 1 (Introduction) and Chapter 3 (Project Description) of the Environmental Statement. All of the above elements form, or are integral to, the nationally significant infrastructure project for which the Applicant is seeking a DCO. Accordingly the Application does not seek the authorisation of any associated development.

2.8 The proposed development will provide an electrical output capacity of up to 150 Megawatts electrical ("MWe") and will be predominantly fuelled by gases which are generated by the steel making processes, with imported natural gas being used as a standby fuel to maintain minimum load on the boiler if and when process gases are not available.

2.9 The proposed development represents a significant enhancement of existing onsite power generation at Port Talbot. It is one of many steps being taken by the Applicant to ensure that its steel production operation at Port Talbot remains competitive. The Applicant is seeking to increase steel production at Port Talbot Steelworks to 4.7 million tonnes of iron per annum, which would result in an increase in both demand for energy and creation of process gases.

2.10 As energy is a major cost related to the production of steel, using process gases (which are otherwise flared) to produce energy and reducing the amount of electricity imported from the National Grid would result in cost savings and increased competitiveness, supporting the long-term future of steel making in Wales.

3. **POWERS OF COMPULSORY ACQUISITION**

3.1 Regulation 5(2)(h) of the APFP Regulations requires a Statement of Reasons where a development consent order would authorise "the compulsory acquisition of land or an interest in land or right over land". The purpose of the statement of reasons is to justify the compulsory acquisition rights sought in the DCO and in particular to demonstrate that there is a compelling case in the public interest for such rights and that interference with private rights would be proportionate and justified.

3.2 All of the land required for the proposed development is already owned by the Applicant with the exception of the Ogmere Vale railway line (disused) that runs through the steelworks site. This railway line is owned by Network Rail and is required to be crossed by the electrical cables connection and the utilities pipe work that will connect the new generating station to the existing onsite infrastructure.

3.3 Accordingly, the powers of compulsory acquisition in the DCO are very limited. No power to acquire freehold land is included. The DCO includes powers for the compulsory acquisition of new rights only over two sections of railway line for

utilities connections: one crossing in the north of the Order Limits for the extension of existing pipework (as described in Work No.1C at Schedule 1 to the DCO) and a second crossing to the south of the Order Limits for part of the electrical connection (as described in Work No.2 at Schedule 1 to the DCO).

- 3.4 The DCO makes modifications to compensation provisions for the compulsory purchase of land so as to apply in the case of a compulsory acquisition under the DCO of a right by the creation of a new right the compensation procedures as they apply with respect to compensation on the compulsory purchase of land and interests in land.
- 3.5 The land which is subject to a power to compulsorily acquire new rights is shown shaded blue on the Land Plans and listed in Part 1 of the Book of Reference. The land is also described in more detail in Table 1 below together with a description of the rights sought. Articles 13 and 18 of the DCO are relied upon in respect of the acquisition of these rights.

Table 1

Number on Plan	Description of Land	Rights to be acquired
01/07	2,026.17 square metres of land, embankments and former freight railway line (Margam Yard and Sidings) at Port Talbot Steel Works, Port Talbot (CYM716660 L/H)	The right for the undertaker and all persons authorised on its behalf to enter on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of utilities pipes (for water, nitrogen, process gases, natural gas and compressed air) and associated telecommunications cables on, over or under the land together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct replace and improve the said pipes and cables.
02/04	243.38 square metres of land, embankments and former freight railway line at Port Talbot Steel Works, Port Talbot	The right for the undertaker and all persons authorised on its behalf to enter on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of 66kV electricity cables and associated telecommunications cables on,

Number on Plan	Description of Land	Rights to be acquired
		over or under the land together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct replace and improve the said cables.

- 3.6 In addition, article 19 of the DCO provides a power to suspend or extinguish private rights over the plots of land listed above where the continuance of these rights would be inconsistent with the exercise of any new right acquired by the undertaker.
- 3.7 The remainder of the land within Order limits (shaded yellow on the Land Plans) is owned by the Applicant. There are no powers of compulsory acquisition over this land as it is already owned by the Applicant. However, this land is subject to the power in article 19 of the DCO to suspend or extinguish any private rights which would be inconsistent with any activity authorised by the DCO. This land is described in more detail in Part 3 of the Book of Reference together with the rights which are known to exist over it.
- 3.8 The draft DCO also includes the following powers which apply to all of the land within the Order limits:
- 3.8.1 a power to interfere with an interest or right (which includes any easement, liberty, right or advantage annexed to land and adversely affecting other land, including any natural right to support) or breach a restrictive covenant (article 17); and
 - 3.8.2 a power to extinguish the rights of statutory undertakers or reposition or remove the apparatus of statutory undertakers over or within the Order land is sought. The exercise of this power is subject to the protective provisions set out in Schedule 4 to the DCO (article 20).
- 3.9 The land within the Order Limits generally comprises gravel hardstanding, semi-improved grassland and scrub within the generating station site and hardstanding and semi-improved grassland within the electrical connection corridor. A row of trees is also located to the south of the electrical connection corridor over a short section. More detail on the land within the Order Limits is contained within the Environmental Statement.
- 3.10 An Air Quality Management Area (AQMA) is located directly to the north east and east of the proposed development. There are two Landscape of Outstanding Historic Interest designations located to the north east and to the south.
- 3.11 Ecological designations comprise eleven Sites of Special Scientific Interest (SSSI), three Special Areas of Conservation (SACs), one Ramsar and two

National Nature Reserves (NNR) within 10km of the Order Limits, designated for their habitats and plant assemblages.

- 3.12 There are no archaeological designations, listed buildings, scheduled ancient monuments or registered parks and gardens located within the Order Limits but some are located within close proximity of the proposed development and within the 15km study area for the environmental assessment (as set out in Chapter 11 of the Environmental Statement).

4. **JUSTIFICATION FOR POWERS SOUGHT**

- 4.1 Under Section 122 of the Act, a DCO which includes compulsory acquisition powers may be granted only if the conditions in Sections 122(2) and 122(3) of the Act are met. The conditions to be met are:

4.1.1 at section 122(2), that the land is required for the development to which the DCO relates or is required to facilitate or is incidental to the development; and

4.1.2 at section 122(3), there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO. The Secretary of State must be persuaded that the public benefits from the compulsory acquisitions will outweigh the private loss suffered by those whose land is to be acquired.

- 4.2 In respect of the section 122(2) condition, the Guidance (at paragraph 11) states that applicants should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Guidance goes on to say that the Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

- 4.3 In respect of the section 122(3) condition, the Guidance (at paragraph 13) states that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. At paragraph 14, the Guidance states that in determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

- 4.4 Further, paragraphs 8 to 10 of the Guidance also set out a number of general considerations that the Applicant must demonstrate to the satisfaction of the Secretary of State when justifying an order authorising compulsory acquisition. These are as follows:

4.4.1 that all reasonable alternatives to compulsory acquisition (including modifications to the proposed development) have been explored;

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- 4.4.2 that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
 - 4.4.3 that the Applicant has a clear idea of how it intends to use the land which it is proposed to acquire;
 - 4.4.4 that there is a reasonable prospect of the requisite funds for the acquisition becoming available; and
 - 4.4.5 that the purposes for which compulsory acquisition of land powers are included in the DCO are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.
- 4.5 The following section sets out the factors that the Applicant considers demonstrate that the conditions in Section 122 of the Act, and the considerations set out in the Guidance, are satisfied. These paragraphs also set out the justification for the powers to interfere with, suspend or extinguish private rights over the Order land.
- 4.6 All of the land required for the proposed development is owned by the applicant with the exception of the Ogmores Vale railway line (disused) that runs through the steelworks. This railway line separates the site of the generating station from the existing infrastructure to which the generating station needs to be connected. In particular, the railway line separates the main site from:
- 4.6.1 the existing substations (Grange and Cefn Gwrgan) that connect the site to the local electricity distribution network; and
 - 4.6.2 the existing supplies for water, nitrogen, process gases, natural gas and compressed air.
- 4.7 The only feasible way to connect the generating station to the features listed above is by crossing the railway line with the electrical cables connection and the utilities pipe work. Accordingly, the Applicant will require easements over or under the railway line for all purposes in connection with the laying, installation, use and maintenance of electrical cable and the utilities pipes (and associated telecommunications cables) together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct replace and improve the said pipes and cables.
- 4.8 The Applicant is in discussions with Network Rail regarding these rights and is seeking to acquire the necessary rights by means of a negotiated agreement. However, as at the date of the application, such an agreement has not been reached and it is therefore necessary for the Applicant to include powers in the DCO for the rights to be acquired compulsorily.
- 4.9 This approach of applying for powers of compulsory acquisition in parallel with negotiations to acquire land by agreement, accords with paragraph 26 of the Guidance. The powers of compulsory acquisition are necessary to ensure that,

in the absence of a negotiated grant of the easements, the Applicant will be able to acquire the rights necessary to deliver the proposed development.

- 4.10 The Applicant's justification for seeking compulsory purchase powers, in accordance with the provisions of the Act, is to provide certainty that the new rights required to construct, operate and maintain the proposed development can be obtained within a reasonable commercial timeframe. The rights required are no more than necessary to facilitate the proposed development, its construction and future maintenance
- 4.11 The Applicant has designed the proposed development and the route of the electrical connection, in particular, to minimise impacts on third party land and rights.
- 4.12 No freehold land is being acquired and the chosen location for the proposed development requires the acquisition of new rights in only two places (shaded blue on the Land Plans) to allow utilities connections to cross over the disused railway line which runs through the Order Limits. The exercise of these rights will not interfere with the current use of the railway (which is currently disused) and would not interfere with railway operations in the future if the line was brought back into use.
- 4.13 Without these rights it will not be possible to connect the generating station into the existing onsite infrastructure and therefore an ability to obtain these rights in the absence of a voluntary agreement is necessary to ensure the proposed development can be constructed, operated and maintained.
- 4.14 The Applicant considers that all reasonable alternatives have been considered prior to the making of the Application and such consideration has included reasonable factors at relevant stages, such as technical feasibility, and the minimisation of land take and environmental and visual impacts. The Applicant considers that the site of the proposed development (i.e. the Order Limits) is an appropriate location at which to develop the proposed development because:-
- 4.14.1 it is of sufficient size and of a suitable shape to accommodate the proposed development and the majority of the site is already in the ownership of the Applicant;
- 4.14.2 the location requires only a very small amount of compulsory acquisition of rights;
- 4.14.3 it is sufficiently proximate to the steelworks to enable efficient use of the process gases to power the generating station and has good accessibility;
- 4.14.4 the location of the generating station is on an existing industrial site and constructing and operating the proposed development on it would be compatible with local planning policy;
- 4.14.5 it avoids significant impacts upon environmentally sensitive areas; and

- 4.14.6 local adverse and environmental impacts are capable of being minimised to an acceptable degree when considered in the context of the wider public benefits of the proposed development, as set out in the Environmental Statement.
- 4.15 The DCO also confers powers on the Applicant to interfere with, suspend or extinguish private rights over the Order land. These powers are described below:
- 4.15.1 article 19(1) provides a power to suspend or extinguish private rights over the land subject to the compulsory acquisition of rights where the continuance of these rights would be inconsistent with the exercise of any new right acquired by the undertaker;
- 4.15.2 article 19(2) provides a power over land owned by the Applicant to suspend or extinguish private rights which would be inconsistent with any activity authorised by the DCO. This land is described in more detail in Part 3 of the Book of Reference together with the rights which are known to exist over it.
- 4.15.3 a power to interfere with an interest or right (which includes any easement, liberty, right or advantage annexed to land and adversely affecting other land, including any natural right to support) or breach a restrictive covenant (article 17); and
- 4.15.4 a power to extinguish the rights of statutory undertakers or reposition or remove the apparatus of statutory undertakers over or within the Order land is sought. The exercise of this power is subject to the protective provisions set out in Schedule 4 to the DCO (article 20).
- 4.16 These powers are necessary to ensure that there are no impediments to the timely construction, operation and maintenance of the proposed development.
- 4.17 The potential existing private rights, interests and restrictive covenants are identified in Part 3 to the Book of Reference. However, it is not possible at this time to confirm whether any of those private rights, interests or restrictive covenants will need to be suspended or extinguished or otherwise interfered with (as applicable) until detailed design stage and commencement of the development.
- 4.18 For this reason, the Applicant has inserted a notification procedure into article 19 where the Applicant needs to extinguish a private right pursuant to that article. These powers are necessary as, despite diligent inquiry by the Applicant, there may be unknown rights, restrictions, easements or servitudes affecting that land which have not yet been identified but which will also need to be suspended or extinguished or interfered with in order to facilitate the construction, operation and maintenance of the proposed development without hindrance.
- 4.19 The Applicant considers that the powers of compulsory acquisition included in the DCO are proportionate in relation to the benefits that the proposed development

would bring. The Planning Statement (document ref. 10.01) which accompanies the Application explains the benefits of the proposed development which include the following:

- 4.20 The proposed development will result in increased economic efficiency through cost reduction and increased operational efficiency and reliability of onsite power generation and steam production, protecting the long-term future of steelmaking in South Wales.
- 4.21 The proposed development will result in air quality improvements through the reduction in flared process gases which will now be used to generate power. The proposed development will also reduce onsite electricity imports (from approximately 65MWe to 10MWe per annum on average) from the grid which in turn will result in an off-set of approximately 400,000 tonnes per annum of CO₂ through significant reduction in electricity import from the grid (based on electrical generation from coal fired power stations).
- 4.22 All relevant likely environmental impacts have been assessed using appropriate methodologies, informed by consultation with relevant bodies. The proposed development minimises or mitigates adverse environmental impacts to an acceptable degree.
- 4.23 Due regard has been paid to all relevant and important considerations. These include the findings of community and statutory consultation processes which, as documented in the Consultation Report (document ref 5.1.0), have influenced considerations as to the design and siting of the proposed development. Welsh and local economic development and environmental policy designations have been considered in the design, siting and mitigation proposals within the proposed development.
- 4.24 The proposed development is in line with the relevant National Policy Statements, being NPS EN-1, NPS EN-2 and NPS EN-4. Considerations as to siting, Habitats and Species Regulations, alternatives, Good Design, grid connection, safety, health, nuisance and security have been given due consideration as demonstrated in the Environmental Statement and its appendices (document ref 6.03), the Design and Access Statement (document ref 10.03), the Planning Statement (document ref 10.01), the Grid Connection Statement (document ref 9.01) and the Health and Safety Report (document ref 10.05).
- 4.25 The Funding Statement (document ref. 4.02) confirms that the Applicant has the ability to procure the financial resources required for the proposed development, including the cost of acquiring any rights over land and the payment of compensation, as applicable.
- 4.26 The Applicant therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

4.27 The Environmental Statement has also assessed all relevant likely environmental effects and has proposed appropriate mitigation wherever feasible. These are to be secured through compliance with various submitted documents and further approvals such as under the proposed requirements attached to the draft DCO (see Schedule 2 to the draft DCO). As such, it is considered that there are no relevant matters that give rise to adverse impacts sufficient to outweigh the identified benefits of the proposed development.

4.28 It is considered that there are no international obligations that would be breached if the DCO were made in the terms proposed.

5. SPECIAL CONSIDERATIONS AFFECTING THE ORDER LAND

5.1 None of the Order land is subject to any special considerations. In particular the DCO does not affect any Crown land or any special category land as defined in Regulation 2(1) of the APFP Regulations, i.e. land forming part of a common, open space, National Trust land or fuel or field garden allotment.

5.2 An assessment of the effects of the proposed development on statutory or non-statutory sites or features of nature conservation, and on sites of historic interest has been undertaken in accordance with regulations 5(2)(l) and 5(2)(m) of the APFP Regulations. The detailed findings of this assessment are set out in the relevant chapters of the Environmental Statement.

5.3 The Applicant has also prepared a report presenting the findings of an assessment of the likely effects of the proposed development on European sites to which the Conservations of Habitats and Species Regulations 2010 apply. The report concludes that there will be no significant effects on such sites and therefore an appropriate assessment will not be required (see Document Reference 5.03).

6. ENVIRONMENTAL PERMIT

6.1 As required by the Environmental Permitting (England and Wales) Regulations 2010 as amended, the Applicant will submit an application to Natural Resources Wales for an Environmental Permit, required to operate the proposed development.

6.2 The Applicant has met with Natural Resources Wales who have indicated that, at this stage, they see no impediment to the grant of the Environmental Permit but reserve their right to decide the application for the Environmental Permit after it has been submitted.

6.3 The Applicant is not aware of anything that would justify refusal of an Environmental Permit and does not regard the need for the permit as a risk to delivery of the proposed development.

7. HUMAN RIGHTS

- 7.1 The Human Rights Act 1998 incorporated into UK law the European Convention on Human Rights (the "**Convention**"). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.
- 7.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether the DCO should be made so as to include powers of compulsory acquisition:
- 7.2.1 *Article 1*: this protects the right of everyone to a peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.
- 7.2.2 *Article 6*: this entitles those affected by the powers sought in the DCO to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision making process.
- 7.2.3 *Article 8*: this protects private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.
- 7.3 The Secretary of State, as the decision maker, is under a duty to consider whether the exercise of powers interacts with the rights protected by the Convention.
- 7.4 The DCO has the potential to infringe the rights of persons who hold interests in land within the Order Limits under article 1 of the First Protocol. Such an infringement is authorised by law so long as:
- 7.4.1 the statutory procedures for making the DCO are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO; and
- 7.4.2 the interference with the convention right is proportionate.
- 7.5 In preparing the Application, the Applicant has considered the potential infringement of the Convention rights in consequence of the inclusion of compulsory acquisition powers within the DCO. The Applicant considers that there would be a significant public benefit arising from the grant of the DCO. The benefit is only realised if the DCO is accompanied by the grant of powers of compulsory acquisition. The Applicant has concluded on balance that the significant public benefits outweigh the effects upon persons who own property within the Order Land. For the small number affected by the exercise of the Order powers, compensation is payable in accordance with the statutory compensation code.

- 7.6 In relation to article 6, there has been opportunity to make representations regarding the preparation of the Application. In accordance with Part 5 of the Act, the Applicant has consulted with persons set out the categories contained in section 44 of the Act, which includes owners of land within the Order Limits and those who may be able to make claims either under sections 7 and 10 of the Compulsory Purchase Act 1965 in respect of injurious affection and claims under Part 1 of the Land Compensation Act 1973. Also, the beneficiaries of rights overridden by the exercise of powers in the DCO would be capable of making claims under section 10 of the Compulsory Purchase Act 1965.
- 7.7 Furthermore, representations can also be made in response to any notice given under section 56 of the Act for consideration at examination of the Application by the examining authority and in any written representations procedure which the examining authority decides to uphold or at any compulsory purchase hearing held under section 92 of the Act.
- 7.8 Should the DCO be made, any person aggrieved may challenge the DCO in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the Act.
- 7.9 In relation to matters of compensation for land to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), which is an independent judicial body to determine the compensation payable.
- 7.10 For the above reasons, any infringement of the Convention rights of those whose interests are affected by the inclusion in the DCO of powers of compulsory acquisition, is proportionate and legitimate and is in accordance with national and European law. For the reasons set out in this Statement, the Applicant considers that there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition. The Applicant considers that it would, therefore, be appropriate and proportionate for the Secretary of State to make the DCO, including the grant of compulsory acquisition powers.

8. **CONCLUSIONS**

- 8.1 The Applicant submits, for the reasons explained in this Statement, that the inclusion of powers of compulsory acquisition in the DCO for the purposes of the proposed development meets the conditions of Section 122 of the Act as well as the considerations in the Guidance.
- 8.2 The extent of land subject to the powers of compulsory acquisition is no more than is reasonably required to facilitate or is incidental to the proposed development. Furthermore, the rights identified to be subject to compulsory acquisition are proportionate and are no more than are reasonably necessary for that purpose.
- 8.3 All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the proposed development and the support for it found in policy, as well as the suitability of the Order Limits (for the reasons

outlined above), compulsory acquisition of rights identified by the Applicant for the proposed development is justified.

- 8.4 The proposed interference with the rights of those with an interest in the Order Land is for a legitimate purpose, namely the proposed development, and is necessary and proportionate to that purpose. The Applicant considers that the public benefits to be derived from the proposed compulsory acquisition of rights within the Order Land would decisively outweigh the private loss that would be suffered by those whose land would be affected.
- 8.5 The Applicant has set out clear and specific proposals regarding how the Order Land will be used.
- 8.6 The requisite funds are available to meet any costs of land acquisition and compensation payable as a result of the use of powers of compulsory acquisition.
- 8.7 The purposes for which powers of compulsory acquisition are included in the DCO are legitimate and justify interfering with the rights of those persons with an interest in the land who would be affected.
- 8.8 These are the compelling reasons for the exercise of compulsory powers of acquisition in respect of the land and rights set out in the Book of Reference and shown on the land plans.