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Date: 02/01/2019
Contact: Daniel Bates (Consents Manager)
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Thanet Extension Offshore Wind Farm – EN010084

Submission of Nemolink Interconnector planning documents

Dear Ms Mignano,

As requested by the Examining Authority (ExA) in Annex E of the rule 6 letter, enclosed is a USB drive containing the publicly available planning and environmental documents including the planning consent for the Nemolink Interconnector.

I would like to confirm that these documents have been submitted purely on the request of the ExA and that the Applicant does not rely on or refer to these documents in the Application and does not intend to (unless requested) during the examination.

Kind regards

[redacted]

Daniel Bates
Consents Manager – Thanet Extension Offshore Wind Farm
Vattenfall Wind Power Ltd

CIRCULAR FROM
THE OFFICE OF THE DEPUTY PRIME MINISTER

ODPM Circular 06/2004
Office of the Deputy Prime Minister
Eland House, Bressenden Place, London SWIE 5DU

31 October 2004

COMPULSORY PURCHASE *and* THE CRICHEL DOWN RULES

INTRODUCTION

1. Part 1 of the Memorandum to this Circular provides updated and revised guidance to acquiring authorities in England on the use of compulsory purchase powers.

2. Part 2 of the Memorandum sets out revised Crichel Down Rules, with accompanying new guidance, on the disposal of surplus land in England acquired by, or under the threat of, compulsory purchase. The Rules are included for the convenience of local authorities and other statutory bodies, to whom they are commended.

3. The content of this Circular and the Memorandum has no statutory status, and is guidance only.

CANCELLATIONS

4. ODPM Circular 02/2003 *Compulsory Purchase Orders* is cancelled except to the extent that it is applicable to earlier compulsory purchase orders to which Part 1 of the Memorandum to this Circular is not applicable[1].

5. The version of the Crichel Down Rules published in 1992 by the Department of the Environment and the Welsh Office is superseded in England (and for certain land in Wales[2]) by the Rules set out in Part 2 of the Memorandum to this Circular.

STAFFING AND FINANCIAL IMPLICATIONS

6. Action in accordance with this Circular and Memorandum will have no significant effect on central or local government staffing levels or expenditure.

[1] See paragraph 9 of Part 1 of the Memorandum

[2] See Rule 2 of Part 2 of the Memorandum

LISETTE SIMCOCK

Divisional Manager
Plans, International, Compensation and Assessment Division

The Chief Executive,
Regional Development Agencies

The Chief Executive,
English Partnerships

The Chief Executive,
Urban Development Corporations

The Chief Executive,
County Councils in England
District Councils
London Borough Councils
Metropolitan Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The Chief Executive,
National Park Authorities in England

The Chief Executive, Broads Authority

MEMORANDUM

PART 1 – COMPULSORY PURCHASE

INTRODUCTION

1. Ministers believe that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.

2. The purpose of this Part of the Memorandum is to provide guidance to acquiring authorities in England making compulsory purchase orders to which the Acquisition of Land Act 1981 (as amended) applies. Its aim is to help them to use their compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory or administrative requirements, to ensure that orders progress quickly and are without defects. It is not, however, intended to be comprehensive[1]. It concentrates mainly on those policy issues, procedures and administrative requirements to which authorities need to have regard to assist the speedy handling of their orders by the relevant confirming Department, along with guidance on certain key elements of the implementation and compensation arrangements. For convenience, an Annex explaining the changes to compulsory purchase and compensation legislation made by Part 8 of the Planning and Compulsory Purchase Act 2004 is also included.

3. The main topics covered are:

4. Appendices A to W to this Part are detailed supplementary explanatory notes, and relate to powers, procedural issues and allied matters including certificates of appropriate alternative development (see list on page 20).

[1] More detailed guidance on managing the process is provided, for example, in *The Compulsory Purchase Procedure Manual*, available on subscription, price £250 including CD-ROM and access to dedicated Web-site, from The Stationery Office (TSO); telephone order line 0870 600 5522, quoting subscription category 700 30 95.

5. The content of this Part has no statutory status and is guidance only. The procedural guidance in the Appendices about submission of orders for confirmation should, however, be observed as closely as possible in the interest of avoiding delay incurred by the need to clarify details after submission.

6. The advice in this Part applies to orders which are to be confirmed by any one or more of the following:

the Deputy Prime Minister and First Secretary of State;
the Secretary of State for Transport;
the Secretary of State for Trade and Industry;
the Secretary of State for Culture, Media and Sport;
the Secretary of State for Health;
the Secretary of State for Work and Pensions;
the Secretary of State for the Home Department;
the Secretary of State for Education and Skills;
the Secretary of State for Environment, Food and Rural Affairs; or
the National Assembly for Wales (in respect of an order made for flood defence/land drainage purposes covering land in England and Wales, acting jointly with the Secretary of State for Environment, Food and Rural Affairs).

7. References in this Part to 'the confirming Minister' or 'the Department' should be read as referring to the Minister or Department responsible for confirmation. References to 'the Secretary of State' are clarified where they occur as necessary (NB, the Deputy Prime Minister acts in his formal capacity as First Secretary of State). In addition to the guidance in this Part, including any relevant Appendices, authorities should have regard to any particular requirements of the confirming Department and/or of the legislation granting the specific acquisition powers being exercised.

TERMS USED

8. In this Part (including the Appendices and Annex), meanings are as follows:

'the 1961 Act'	Land Compensation Act 1961
'the 1965 Act'	Compulsory Purchase Act 1965
'the 1973 Act'	Land Compensation Act 1973
'the 1981 Act'	Acquisition of Land Act 1981
'the 1990 Act'	Town and Country Planning Act 1990
'the Listed Buildings Act'	Planning (Listed Buildings and Conservation Areas) Act 1990
'the 1993 Act'	Leasehold Reform, Housing and Urban Development Act 1993
'the 1998 Act'	Regional Development Agencies Act 1998
'the 2004 Act'	Planning and Compulsory Purchase Act 2004
'the 1990 Inquiries Procedure Rules'	Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 (SI 1990 No. 512)
'the 2004 Prescribed Forms Regulations'	Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595)
'the 2004 Written Representations Regulations'	Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004 No. 2594)
'acquiring authority'	meaning assigned by s7(1) of the 1981 Act

TRANSITION

9. The amendments to the 1981 Act in sections 100 and 102 of the 2004 Act relating to the making and confirmation of an order do not apply to an order of which the newspaper notice under section 11 of the 1981 Act has been published before 31 October 2004 (the commencement date for those provisions). The provisions of this Part are only applicable to an order to which the amended provisions of the 1981 Act provided for in sections 100 and 102 apply. The amendments to section 226(1)(a) of the 1990 Act in section 99 of the 2004 Act are not applicable to an order made before the

date of commencement of section 99[2], being 31 October 2004. Appendix A to this Part is only applicable to such orders made on or after that date. (See paragraph 3 of the Circular for cancellations.)

RELATED CIRCULARS

10. DoE Circular 1/90 gives detailed guidance on the 1990 Inquiries Procedure Rules. Advice on the forms of orders to which the 1994 Regulations apply is given in Appendix U to this Part.

11. This Part should be read with the following:

DoE Circular 8/93: Award of costs incurred in planning and other (including compulsory purchase order) proceedings

DoT Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highways schemes and car parks for which the Secretary of State for Transport is the confirming authority; and

PPG 15 – orders affecting historic buildings and conservation areas.

POWERS

13. An acquiring authority can only make use of the 1981 Act statutory procedures for the compulsory acquisition of land where an enabling power is provided in an enactment. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under that particular legislation and the types of acquiring authority by which it can be exercised.

14. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought; and that, in turn, will influence the factors which the confirming Minister will want to take into account in determining confirmation.

15. Authorities should look to use the most specific power available for the purpose in mind, and only use a general power where unavoidable[3]. Factors relevant to specific individual powers are considered in Appendices A to K. Those are intended to supplement, rather than to replace, the general guidelines set out in the following paragraphs.

JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER

16. It is for the acquiring authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts. The following guidance indicates the factors to which a

[2] See section 99(5) of the 2004 Act.

[3] For instance, although the courts have held that the planning compulsory purchase power in section 226(1)(b) of the 1990 Act may be used to acquire a house that has become dilapidated, the Secretary of State would normally expect such acquisitions to be made under Housing Act powers (see Appendix E).

confirming Minister may have regard in deciding whether or not to confirm an order, and which acquiring authorities might therefore find it useful to take into account.

17. A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

18. The confirming Minister has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land it is proposed to acquire compulsorily. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Part is not intended to imply that the confirming Minister will require any particular degree of justification for any specific order. Nor will a confirming Minister make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required immediately in order to secure the purpose for which it is to be acquired.

19. If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Human Rights Act reinforces that basic requirement.

Resource implications of the proposed scheme

20. In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required. It may be that the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

21. The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could

be made available immediately to cope with any acquisition resulting from a blight notice[4].

Impediments to implementation

22. In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence.

23. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld. In particular, this means that, irrespective of the legislative powers under which the actual acquisition is being proposed, the provisions of section 38(6) of the 2004 Act require that the scheme which is the subject of the planning application should be in accordance with the development plan for the area unless material considerations indicate otherwise. Such material considerations might include, for example, the provisions of the local authority's Community Strategy or supplementary planning guidance (as defined in PPS12) which has been subject to public consultation as required by regulations[5].

PREPARING AND MAKING AN ORDER

Preparatory work

24. Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

25. Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings. Early negotiations with statutory undertakers and similar bodies may pay dividends later on. Likewise where railway lands or assets are likely to be affected by proposals including the

[4] Blight notices under section 150 of the 1990 Act can only be served in the circumstances listed in Schedule 13 to that Act.

[5] The Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004 No. 2204).

use of compulsory purchase early consultation with the Strategic Rail Authority, Network Rail and the relevant Train Operating Company is advised.

Use of Alternative Dispute Resolution techniques

26. In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access **to alternative dispute resolution (ADR) techniques**. These should involve a suitably qualified independent third party and should be available wherever appropriate[6] throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed. The use of ADR can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. It also echoes the spirit of the Government's own pledge to settle legal disputes to which it is a party by means of mediation or arbitration wherever appropriate and the other party agrees[7].

Other means of involving those affected

27. Other actions which acquiring authorities should consider initiating during the preparatory stage include:

- providing full information about what the compulsory purchase process involves[8], the rights and duties of those affected and an indicative timetable of events, all in a format accessible to those affected; and

- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

28. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible. This means that the authority should be in a position to make, advertise and submit a fully documented order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the order is made correctly and under the terms of the most appropriate enabling power.

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[6] Bearing in mind that statutory objectors have a statutory right to be heard at an inquiry and claimants have a statutory right of recourse to the Lands Tribunal to determine compensation disputes.

[7] *Government pledges to settle legal disputes out of court*, Press Notice by Lord Chancellor's Dept, 117/01, 23 March 2001.

[8] To this end, authorities might find it helpful to offer copies of Booklet 1: *Compulsory Purchase Procedure* to anyone expressing concerns. It is published by ODPM as part of a series of five public information booklets on the compulsory purchase and compensation system, all of which are available on request, free of charge, from 'ODPM Free Literature', PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: odpm@twoten.press.net. Booklet 1 describes the other four booklets which are also available free of charge and which provide information on compensation relevant, respectively, to business owners and occupiers; agricultural owners and occupiers; residential owners and occupiers; and those likely to require mitigation works. Authorities may wish to acquire stocks of these to issue as required.

29. An acquiring authority may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Tribunal), including the basis on which disturbance costs would be assessed.

Making sure that the order is made correctly

30. The confirming Minister has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed order (see paragraph 50 below). This means that the confirming Department has to check that no one has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing orders in conformity with the 2004 Prescribed Forms Regulations, including recording the names and addresses of those with an interest in the land to be acquired. This is particularly important in view of the extension by the 2004 Act of the category of interests in land which give a right to be served personal notices and have objections heard at an inquiry (see the Annex to this Part, paragraph 7).

31. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to an order. Errors or omissions may occasionally emerge after an order has been made and submitted. Authorities therefore need to bear in mind that a confirming Minister's power of modification in such cases (as in all other cases – see paragraphs 51-52 below) is limited by section 14 of the 1981 Act. This provides that an order can only be modified to include any additional land or interests if all the people who are affected give their consent.

Advice from the confirming Department

32. Acquiring authorities are expected to seek their own legal and professional advice when making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed order, it may seek informal written comments from the confirming Minister by submitting a draft order for technical examination.

33. Experience suggests that such technical examination by the confirming Department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. Any response made by a confirming Department on a draft order will, however, inevitably be subject to the caveat that its comments are without prejudice to its consideration of any order which may subsequently be submitted for confirmation. The role of the confirming Department at that stage will be confined to giving the draft order a technical examination to check that it complies with the requirements on form and content in the statutes and the Regulations, with no consideration of its merits or demerits.

Documentation to be submitted with an order for confirmation

34. Appendix Q provides a checklist of the documents to be submitted to the confirming Minister with an order. The explanatory notes in the Appendices should be consulted

when the order, the map and the supporting documents are being compiled. DoT Local Authority Circular 2/97[9] gives additional guidance on the preparation and submission of orders for highways schemes and car parks.

THE CONFIRMATION PROCESS

Statement of reasons

35. When serving notice of the making and effect of an order on each person entitled to be so served, the acquiring authority is **also** expected to send to each one a copy of the authority's *statement of reasons* for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. (See Appendix R on the contents of the statement.) This non-statutory statement of reasons should be as comprehensive as possible. It ought therefore to be possible for the acquiring authority to use it as the basis for the statement of case which is required to be served under Rule 7 of the 1990 Inquiries Procedure Rules where an inquiry is to be held (see paragraph 15 of DoE Circular 1/90.)

36. As the statement of reasons provides an early indication of the type of case, it will also help the Planning Inspectorate Agency (PINS) to consider possible manpower implications and whether the Inspector to be appointed for any inquiry or inquiries needs particular specialist skills.

Grounds of objection and objectors' statements of case

37. Section 13(3) of the 1981 Act enables the confirming Minister to require every person who makes a relevant objection to state the grounds of objection in writing. The confirming Minister can also require remaining objectors, and others who intend to appear at an inquiry, to provide a statement of case. Although it has not hitherto been general practice to do so, experience has shown that requiring statements of case is a useful device for minimising the need to adjourn inquiries as a result of the introduction of new information, and greater use may be made in the future. Under Rule 7(5) of the 1990 Inquiries Procedure Rules, a person may be required to provide further information about matters contained in any such statement of case.

Supplementary information

38. When considering the acquiring authority's order submission, the confirming Department may if necessary request clarification of particular points. Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices (see also Appendix T); and in such cases the information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs. Where further information is needed, the confirming Department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The Department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

[9] Entitled *Notes on the Preparation, Drafting and Submission of Compulsory Purchase Orders for Highway Schemes and Car Parks for which the Secretary of State is the Confirming Authority*.

Consideration of objections

39. Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice in paragraph 26 above, this should include employing such ADR techniques as may be agreed between the parties.

40. The 2004 Written Representations Regulations, made under section 13A of the 1981 Act, prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming Minister deems it appropriate, as an alternative to holding an inquiry. The procedure is summarised in paragraph 16 of the Annex to this Part. The First Secretary of State's practice[10] is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way.

Appointment of programme officer

41. Acquiring authorities may wish to consider appointing a programme officer to assist the Inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the Inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

Timing of inquiry

42. Practice may vary between Departments but, once the need for an inquiry has been established, it will normally be arranged by PINS in consultation with the acquiring authority for the earliest date on which an appropriate Inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission.

43. Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming Department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority needs more time to prepare its evidence, as the authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

[10] The practice of other confirming authorities may vary.

Scope for joint or concurrent inquiries

44. It is important to identify *at the earliest possible stage* any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, Minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a Minister) or an appeal against the refusal of planning permission. Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

Inquiries Procedure Rules

45. The 1990 Inquiries Procedure Rules apply to non-Ministerial compulsory purchase orders made under the 1981 Act, and to compulsory rights orders[11]. Detailed guidance is given in DoE Circular 1/90[12]. Inquiries into Ministerial compulsory purchase orders which have been published in draft are governed by the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (SI 1994 No. 3264).

Inquiry Costs & Written Representations Costs

46. Advice on statutory objectors' inquiry costs is given in Annex 6 to DoE Circular 8/93[13]. By virtue of this paragraph and paragraph 49 below, the principles of that advice will also henceforth apply to written representations procedure costs. When notifying successful objectors of the decision on the order under the 1990 Rules or the Written Representations Regulations, the First Secretary of State[14] will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs.

47. Acquiring authorities will normally be required to meet the administrative costs of an inquiry and the expenses incurred by the Inspector in holding it. Likewise, the acquiring authority will be required to meet the Inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming Minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the 1981 Act. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used[15],

[11] See rule 2 and section 29 of, and paragraph 11 of Schedule 4 to, the 1981 Act.

[12] Entitled *Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990*.

[13] Entitled *Awards of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings*.

[14] The practice of other Departments may vary.

[15] Section 13B(6) of the 1981 Act applies section 42(2) of the Housing & Planning Act 1986 to the written representations procedure is if it were an inquiry specified in section 42(1) of that Act - which includes section 250(4) of the Local Government Act 1972.

is prescribed in the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000 (SI 2000 No. 237) made under the Housing and Planning Act 1986[16].

48. There are some circumstances in which an award of costs may be made to an unsuccessful objector or to an acquiring authority because of unreasonable behaviour by the other party (unlikely with the written representations procedure). Further advice on this is given in Annex 6 to DoE Circular 8/93.

49. In applying paragraph 2 of Annex 6 to DoE Circular 8/93 to the written representations procedure, reference to a local inquiry should be read as consideration through the written representations procedure, attendance at an inquiry should be read as submission of a written representation, and being heard as a statutory objector should be read as having a written representation considered as that of a remaining objector.

Legal difficulties

50. Whilst only the Courts can rule on the validity of a compulsory purchase order, the confirming Minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant Minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

Modification of orders

51. The confirming Minister may confirm an order with or without modifications, (but see paragraph 31 above about the limitations imposed by section 14 of the 1981 Act). There is, however, no scope for the confirming Minister to add to, or substitute, the statutory purpose(s) for which it was made[17]. The power of modification is used sparingly and not to re-write orders extensively. There is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order. Some minor slips can be corrected, but not significant matters such as the substitution of a different, or insertion of an additional, purpose.

52. If it becomes apparent to an acquiring authority that it may wish the confirming Minister to substantially amend the order by modification at the time of any confirmation, the authority should write to him as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry[18], and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the Inspector will normally wish to provide an opportunity for them to be debated.

[16] This sum was £630 per day at the date of publication of this document, but may be subject to revision from time-to-time.

[17] *Procter & Gamble Ltd* v Secretary of State for the Environment (1991) EGCS 123.

[18] Such as any person required by the confirming authority to provide a statement of case.

Confirmation in stages

53. Section 13C of the 1981 Act provides a general power for orders to which that Act applies to be confirmed in stages. Although this is a new power which can be applied irrespective of the powers under which an order is being made, it replaces similar powers previously available to Ministers confirming orders made under the enabling powers in the Welsh Development Agency Act 1975, the Local Government, Planning and Land Act 1980, the Highways Act 1980, the Housing Act 1988, the1990 Act, the 1993 Act and the 1998 Act. As with those powers, it is designed to be used, at the discretion of the confirming Minister, where he is satisfied that an order should be confirmed for part of the order land but, because of some impediment, he is unable to decide for the time being whether it ought to be confirmed so far as it relates to any other such land[19]. Where an order is confirmed in part under this power, the remaining undecided part is to be treated as if it were a separate order, and the confirming Minister will set a deadline for consideration of that remaining part. (See also paragraphs 19-21 of the Annex to this Part.)

54. The power in section 13C is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order. Furthermore, the confirming Minister will normally need to be satisfied that the scheme for which the order is being made could proceed without the necessity to acquire the remaining land whose acquisition is subject to a postponed determination. If the confirming Minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded[20], he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

Confirmation of an unopposed order by acquiring authority

55. Section 14A of the 1981 Act provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if there are no unwithdrawn objections to it and certain other specified conditions are met (see paragraphs 23-27 of the Annex to this Part for a full description of the legislation).

56. A confirming authority will exercise its discretion under section 14A by serving a notice on the acquiring authority giving it the power to confirm the order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice will indicate that if it is decided to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person having authority to do so. The notice will suggest a form of words for the endorsement, refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 Act (Form 11 in the Schedule to the 2004 Prescribed Forms Regulations prescribes the notice of confirmation to be used by an acquiring authority which has confirmed its own order) and require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order. Circumstances may arise

[19] For example, because further investigations are required to establish the extent, if any, of alleged contaminated land.

[20] For example, because it related to a separate project or scheme programmed for implementation at a later date.

where it is necessary for a confirming authority to revoke a notice giving authority to decide an order, eg. where a late objection is accepted, or where the acquiring authority fails to decide the order within a reasonable timescale. It is therefore essential that the acquiring authority should notify the confirming authority immediately once an order has been confirmed.

Notification of date of confirmation and date of section 19 certification

57. Acquiring authorities are asked to ensure that in all cases the confirming Department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the 1981 Act. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 Act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of Schedule 3 to, the 1981 Act, the Department giving the certificate should be notified straight away of the date when notice is first published.

IMPLEMENTATION

58. Unless it is subject to special parliamentary procedure[21], an order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published in accordance with section 15 of the 1981 Act. The acquiring authority may then exercise the compulsory purchase power (subject to the operation of the order being suspended by the High Court). The advice in this Part is mainly directed towards the procedures leading to the confirmation of an order as those are the stages in which a confirming Minister is directly involved. The actual acquisition process is, however, clearly crucial for both the acquiring authority and those whose interests are being acquired. It is in the interests of both parties that it should be completed as expeditiously as possible.

Notice to treat

59. The period allowed under section 4 of the 1965 Act for the service of a notice to treat following the advertising of the notice of confirmation of the order is three years, after which the notice to treat remains effective under section 5(2A) of the 1965 Act for up to a further three years. It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition by agreement where requested by an owner.

60. Although the whole acquisition process can be long and drawn-out, once the crucial stage of actually taking possession is reached, the acquiring authority is only required by section 11 of the 1965 Act to serve a notice giving not less than fourteen days notice of its intention to gain entry. Furthermore, although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry. Acquiring authorities are urged, however, to adopt a timetable which is more sympathetic to the needs of those being dispossessed, and even when that is not

[21] See Appendix L.

possible, to give them as much notice as possible of proposed events. Thus, for example, it would be good practice to give owners an indication at the time of serving the notice to treat of the approximate date when possession will be taken, and to consider sympathetically the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession. Authorities should be aware that agricultural landowners/tenants may need to know the notice of entry date earlier than others because of crop cycles and the need to find alternative premises. Authorities should also be aware that short notice often results in higher compensation claims.

General vesting declaration

61. As an alternative to the notice to treat procedure an acquiring authority may prefer to proceed by general vesting declaration[22]. This enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation[23]. It can therefore be particularly useful where some of the owners are unknown[24] or the authority wishes to obtain title with minimum delay in order, for example, to dispose of the land to developers.

62. A general vesting declaration may be made for any part or all of the land included in the order, but it will not be effective against interests in respect of which notice to treat has already been served and not withdrawn, minor tenancies, or long tenancies which are about to expire. Where, after reasonable inquiry, it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom preliminary notice[25] is to be served, service must be effected under the procedure described in section 6(4) of the 1981 Act. Where the same circumstances apply in relation to the notice which is required to be served after execution of the declaration[26], the authority should comply with section 329(2) of the 1990 Act.

63. There is uncertainty as to whether the service of a notice under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 or the executing of a general vesting declaration under section 4 of that Act constitutes the commencement of the exercise of compulsory purchase for the purposes of section 4 of the 1965 Act[27]. An authority may therefore wish to ensure that it has executed a general vesting declaration within three years of the order becoming operative.

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[22] General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990 (SI 1990 No 497).

[23] But subject to any special procedures, eg in relation to purchase of commoners' rights: section 21 of, and Schedule 4 to, the 1965 Act).

[24] It is recommended as good practice that where unregistered land is acquired by general vesting declaration acquiring authorities should voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

[25] Under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981.

[26] Under section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981.

[27] In *Westminster City Council v Quereshi* [1990] P & CR 380, Aldous J. held that it was the former, whilst in *Co-operative Insurance Society Ltd v Hastings Borough Council* [1993] 91 LGR 608 Vinelott J. disagreed and ruled that it was the latter.

COMPENSATION

64. The assessment of compensation is a complex and specialised field, governed by extensive case law. Both acquiring authorities and claimants will therefore normally require specialist advice. The following points relate to issues which have arisen in the context of the fundamental review[28] of compulsory purchase procedures and compensation and which are relevant to the operation of the system as it currently stands.

65. The compensation payable for the compulsory acquisition of an interest in land is based on the principle[29] that the owner should be paid neither less nor more than his loss. It thus represents the value of the interest in land to the owner, which is regarded as consisting of:

- the amount which the interest in land might be expected to realise if sold on the open market by a willing seller (open market value)[30];
- compensation for severance and/or injurious affection[31]; and
- compensation for disturbance and other losses not directly based on the value of the land[32].

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg. a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement[33].

The date to which the assessment of compensation should relate

66. Section 5A of the 1961 Act defines for the first time in statute a valuation date – referred to as the 'relevant valuation date' – see also paragraphs 30-32 of the Annex to this Part.

67. Under the terms of section 11 of the 1965 Act interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. It is therefore important that the date of entry is properly recorded by the acquiring authority.

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[28] See Compulsory Purchase Policy Review Advisory Group Final Report (July 1999); *Compulsory Purchase and Compensation: delivering a fundamental change* (consultation document, December 2001); and *Compulsory Purchase Powers, Procedures and Compensation: the way forward* (policy statement, July 2002), available at www.odpm.gov.uk or on request, free of charge, from ODPM Publications, PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: odpm@twoten.press.net.

[29] Established by Lord Justice Scott in Horn v Sunderland Corporation [1941] 2 KB 26; [1941] All ER 480.

[30] Land Compensation Act 1961, section 5, Rule 2.

[31] Compulsory Purchase Act 1965, section 7.

[32] Land Compensation Act 1961, section 5, Rule 6.

[33] Land Compensation Act 1961, section 5, Rule 5.

Advance payments

68. If the acquiring authority takes possession before compensation has been agreed, it is obliged under section 52 of the Land Compensation Act 1973, if requested, to make an advance payment on account of any compensation which is due for the acquisition of any interest in land. The amount payable is 90% of the acquiring authority's estimate of the compensation due or, if the amount of the compensation has been agreed, 90% of that figure; and it is due to be paid within three months of the claimant's written request. Authorities are urged to adopt a responsible approach towards making such payments, in terms of adhering to the three month statutory time limits and the requirement to pay 90% of their estimate or the agreed sum, in order to help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation. Prompt and adequate advance payments will also reduce the amount of the interest ultimately payable by the authority on the outstanding compensation due.

69. Acquiring authorities should also consider making earlier payments where justified to enable claimants to proceed with reinstatement. For example, an acquiring authority which is a local authority may be able to exercise its wide-ranging powers under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It may therefore see advantage in using the power to make payments before taking possession if that seems likely to encourage early settlement to the advantage of all parties. Furthermore, section 80 of the Planning and Compensation Act 1991 gives all acquiring authorities a discretionary power to make payments on account of the compensation and interest payable under any of the provisions referred to in that section or listed in Schedule 18 to that Act. Again, authorities are urged to adopt a sympathetic approach to using these powers to alleviate obvious hardship.

70. See also paragraphs 33-34 of the Annex to this Part on advance payments to mortgagees.

Professional fees

71. Although there is no specific statutory basis for the payment of the fees incurred by a claimant in obtaining professional help in preparing and sustaining his claim for compensation, there is established case law[34] for the payment of such fees as 'any other matter' under Rule (6) of section 5 of the 1961 Act.

72. It is for the parties concerned to agree a reasonable basis for payment of professional fees. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of the more routine claims. This might make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.

[34] For example, Minister of Transport v Lee [1965] 3 WLR 553, CA (confirming (1965) 16 P&CR 62).

Appendices

[1] This is not an exhaustive list of the CPO powers available to acquiring authorities - only those powers for which guidance is considered necessary or helpful are covered.

Appendix A

Orders made under section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004)

APPROPRIATE ACQUIRING AUTHORITIES

1. Section 226 of the 1990 Act enables a local authority as defined in section 226(8) (i.e. county, district or London borough council), a joint planning board[1] or a national park authority[2] to acquire land compulsorily for 'planning purposes' as defined by section 246(1). These are the only bodies to which the powers in section 226 and, hence, the advice to acquiring authorities in this appendix, apply.

THE POWERS

2. The powers in section 226 as amended by section 99 of the Planning and Compulsory Purchase Act are intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can therefore be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. However, these powers should not otherwise be used in place of other more appropriate enabling powers[3], and the statement of reasons should make clear the justification for using the Planning Act powers. In particular, the First Secretary of State ('the Secretary of State' in this Appendix) may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

3. In preparing and submitting compulsory purchase orders under section 226, acquiring authorities with planning powers will need to have regard to the general advice in paragraphs 13 to 57 of this Part, including the guidance about planning requirements and the justification of the order in paragraphs 16 to 23. Authorities proposing to acquire land under section 226 should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. They should submit their orders for confirmation via the relevant regional Government Office.

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[1] section 244(1) of the 1990 Act.

[2] section 244A of the 1990 Act.

[3] eg. section 164 of the Public Health Act 1875, section 89 of the National Parks and Access to the Countryside Act 1949, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 239 of the Highways Act 1980, or section 17 of the Housing Act 1985. See also paragraph 8 of Appendix E, which explains that when land for housing development is being assembled under planning powers, the Secretary of State will have regard to the policies set out in that Appendix.

4. The Secretary of State takes the view that an order made under subsection (1) of section 226 should be expressed in terms of *either* paragraph (a) *or* paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

Section 226(1)(a)

5. The power provided in the amended section 226(1)(a) enables acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development[4], redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. The use of the words 'on, or in relation to' means that the scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

The well-being power

6. The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. The amended power in section 226(1)(a) will assist those authorities to whom the provisions of section 2 of the Local Government Act 2000 apply to fulfil their duties under that section to promote the economic, social and environmental well-being of their area. Acquiring authorities who do not have powers under the Local Government Act 2000 can also make use of section 226(1)(a). They will also need to be able to show that the purpose for which the land is being acquired will contribute to the well-being of the area for which they are responsible. The benefit to be derived from exercising the power is also not restricted to the area subject to the compulsory purchase order, as the concept is applied to the well-being of the whole (or any part) of the acquiring authority's area.

7. In determining whether the purpose for which they propose to acquire land compulsorily under section 226(1)(a) can reasonably be expected to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, an acquiring authority may find it helpful to have regard to the statutory guidance issued by ODPM in 2001 concerning the interpretation of that power in the Local Government Act 2000[5].

[4] Under section 336(1) of the 1990 Act, 'development' has the meaning given in section 55 (including any special controls given by direction in relation to demolition and redevelopment (see DoE Circular 10/95: *Planning Controls over Demolition*)).

[5] Entitled *Power to promote or improve economic, social or environmental well-being*, and accessible on the ODPM website at: http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605709.hcsp

8. As that guidance explains, the Government's purpose in introducing the well-being power has been to relax the traditionally cautious approach adopted by many local authorities by encouraging innovation and closer joint working between local authorities and their partners to improve the quality of life of those living, working or otherwise involved in the community life of their area. As the guidance goes on to suggest, each authority will want to consider how the well-being power can be used to promote the sustainable development of its area by delivering the actions and improvements identified in its community strategy.

9. It is in this context that acquiring authorities may find the new section 226(1)(a) power useful. Section 39 of the 2004 Act requires regional and local plans to be prepared with a view to contributing to the achievement of sustainable development, and sections 1 and 17 require them to adopt a spatial planning approach. Further guidance on this is given in Planning Policy Statement 1: *Creating Sustainable Communities* [6], which points out that spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.

10. That may well include policies relating to such issues as tackling social exclusion, promoting regeneration initiatives and improving local environmental quality. All such issues can have a significant impact on land use, for example by influencing the demands on or needs for development, but they are not necessarily capable of being delivered solely or mainly through the granting or refusal of planning permission. They may require a more proactive approach by the relevant planning authority including facilitating the assembly of suitable sites, for which the compulsory purchase powers in section 226(1)(a) may provide helpful support where such acquisitions can be justified in the public interest.

11. The re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the section 226(1)(a) power might be appropriate. For example, it is likely to be more appropriate than a Housing Act power if the need to acquire and demolish dwellings were to arise as a result of an oversupply of a particular house type and/or housing tenure in a particular locality. A greater diversity of housing provision may be needed to ensure that neighbourhoods are sustainable in the long term, and improved housing quality and choice may be necessary to meet demand. This may involve acquiring land to secure a change in land use, say, from residential to commercial/industrial or to ensure that new housing is located in a more suitable environment than that which it would replace. In urban areas experiencing market renewal problems, the outcome may be fewer homes in total.

Planning matters

12. Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a) powers as a means of furthering the well-being of the wider area. Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes including with

[6] Consultation draft published in February 2004 and accessible on the ODPM website at: http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_027494.pdf

those whose property is directly affected. The Regional Spatial Strategy provides the regional planning context with which local development documents have to be in general conformity under section 24 of the 2004 Act and which will set out more detailed proposals. Where there is a conflict between policies in any of these documents section 38 provides that the conflict must be resolved in favour of the document most recently adopted, approved or published.

13. The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the Inspector, this will be given due weight.

14. Where the local plan is out-of-date and local development documents are still in preparation, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the local development framework at the appropriate time. Such proposals may relate, for instance, to accommodating the need for further growth in an area. Or they might be in the form of detailed proposals for handling the consequences of low housing demand. Such proposals might, for example, be in the form of masterplans or other detailed delivery mechanism prepared by the relevant local authority and giving a spatial dimension to the prospectuses of market renewal pathfinders. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order.

15. It is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it is acknowledged that it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end-use proposed for the particular areas of land included in any particular CPO. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

Confirmation

16. Any decision about whether to confirm an order made under section 226(1)(a) of the 1990 Act will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

    (i) whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area or, where no such up-to-date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community;

(ii) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;

(iii) the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time-limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position;

(iv) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its re-use. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.

Section 226(1)(b)

17. Section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

Section 226(3)

18. In addition to land to which section 226(1) applies ('the primary land'), section 226(3) provides that an order made under section 226(1) may also provide for the compulsory purchase of

(a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or

(b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

Section 226(4)

19. This subsection provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in subsections (1) or (3)(a) of section 226 should be

undertaken or achieved. In particular, the authority need not propose to undertake an activity or achieve a purpose themselves.

Section 245 of the 1990 Act

20. Section 245(1) provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the development plan.

21. Sections 245(2) and (3) have been repealed and replaced by section 13C of the Acquisition of Land Act 1981 as inserted by section 100 of the Planning and Compulsory Purchase Act (see paragraphs 19 to 21 of the Annex to this Part).

INTERESTS IN CROWN LAND

22. Sections 293 and 296 of the 1990 Act apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about the purchase of interests in Crown land is given in Appendix N.

Appendix B

Orders made by Regional Development Agencies under section 20 of the Regional Development Agencies Act 1998

1. Regional Development Agencies (RDAs) were created throughout England by the Regional Development Agencies Act 1998 ('the 1998 Act'), and their purposes are set out in section 4 of that Act (listed in paragraph 5 below). Section 20(1) empowers an RDA to acquire land by agreement or compulsorily for its purposes or for purposes incidental thereto. 'New rights over land' as defined in section 20(8) may also be compulsorily acquired for such purposes under section 20(2). The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by an RDA is currently the Secretary of State for Trade and Industry (referred to as 'the Secretary of State' in this Appendix).

2. In preparing and submitting compulsory purchase orders, RDAs need to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. RDAs should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. RDAs should submit orders for confirmation via the relevant regional Government Office.

3. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables an RDA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling an RDA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers in the 1998 Act, and further advice is provided in paragraphs 28 to 29 of the Annex to this Part. Section 21(1) of the 1998 Act provides RDAs with rights of entry for the purposes of surveying land and estimating its value.

4. The Secretary of State previously had a power to confirm an order in two stages under paragraph 1 of Schedule 5 to the 1998 Act. However, this has now been replaced by a general power inserted as section 13C of the Acquisition of Land Act 1981 by section 100 of the 2004 Act, and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of another part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.

PURPOSES OF AN RDA

5. The purposes of an RDA as set out in section 4 of the 1998 Act are:

- to further the economic development and the regeneration of the area;
- to promote business efficiency, investment and competitiveness in the area;
- to promote employment in the area;
- to enhance the development and application of skills relevant to employment in the area; and
- to contribute to the achievement of sustainable development in the United Kingdom where it is relevant to its area to do so.

EXERCISING COMPULSORY PURCHASE POWERS

6. It is for each RDA to decide how best to use its land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by their sponsoring Department. However, it seems likely that such powers will generally be of greatest value in fulfilling the economic development and regeneration purpose. The fact that the powers have been expressed in wide and general terms reflects the national importance of the task facing RDAs. It is also intended to assist with the practical problems of ensuring that land can speedily be turned to beneficial use. While RDAs should make every effort to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

7. Most RDAs will have land within their areas which is not in effective use. This may be derelict and/or under-used, and will frequently include buildings in need of replacement or refurbishment. Such land is unattractive to existing or potential residents, developers or investors, and therefore needs the catalyst of public sector commitment to turn it round. The fact that the RDA takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to RDAs to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.

8. Examples of the reasons why an RDA might consider it appropriate to exercise its land acquisition powers include (but are not limited to):

- the regeneration of worn out, vacant or derelict property;
- the assembly of previously used land for new development to provide housing, employment, shopping, open space, leisure and other facilities;
- the cleansing of contaminated land;

- the provision of infrastructure and services to encourage development;
- the provision of sites for nationally important inward investment;
- securing routes for major transport infrastructure[1]; and
- the proper and effective management of land and the protection of investment.

9. It is often likely to be the case that RDAs will justify the use of their compulsory purchase powers by showing that such action will be of benefit to a regeneration priority area, although there may be other equally valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in the RDA's Regional Economic Strategy or in its corporate plan, preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen the RDA's case for compulsory acquisition, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes[2].

10. In some circumstances it may make sense for the RDA to make a compulsory purchase order so as to ensure a comprehensive approach to redevelopment and regeneration where this will generate a greater overall benefit than a piecemeal approach based on competing schemes from individual land owners. Such an approach will be strengthened if it has been formulated in a masterplan or development brief which has been adopted by the relevant local planning authority or authorities as one of their Local Development Framework (LDF) documents.

11. As RDAs do not have planning powers, they will often need to work in partnership with the relevant local authorities. It will be for each RDA, in conjunction with its local authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which the RDA takes responsibility for land assembly are likely to be of greater regional significance than those promoted by local authorities. They are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of the RDA's purpose of regenerating its area.

12. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, an RDA can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always be feasible or

[1] This might be appropriate, for example, to secure corridors for Light Rapid Transit routes which cross Local Authority boundaries.

[2] In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

sensible (for example, where time is of the essence) to wait for full planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with the RDA to demonstrate that there are no planning, or other, barriers to the scheme.

13. Furthermore, it may sometimes be appropriate in furtherance of its statutory purposes for an RDA to assemble land for which it has no specific detailed development proposals. It would be unusual for an RDA to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for an RDA to seek to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration and/or economic development proceeds. Nevertheless, the RDA will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its acquisition by the RDA is in the public interest.

CONFIRMATION

14. In reaching a decision about whether to confirm an order made under section 20 of the 1998 Act, the Secretary of State will have in mind the statutory purposes of the RDA and will, amongst other things, consider:

    (i) whether the RDA has established the basis and justification for its actions through its adopted strategy and any related action plan (including any reviews thereof) which should be in general accordance with regional and local planning policies;

    (ii) whether the RDA has demonstrated that the land is in need of regeneration or is needed for such other purposes of the RDA as have been put forward as justification, or for purposes incidental thereto;

    (iii) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the proposals advocated by the other parties may conflict with the RDAs proposals as regards the timing and nature of the regeneration of the wider area concerned;

    (iv) whether regeneration (or such other purposes of the RDA as are given in the order) is, on balance, more likely to be achieved if the land is acquired by the RDA, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;

    (v) whether, if the RDA intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development

or investment, and that the aims of the agency cannot be achieved by any other means;

(vi) the condition of the land and its recent history; and

(vii) the quality of, and proposed timetable for completing, both the proposals for which the RDA is proposing to acquire the land and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for an RDA to have specific proposals for the land concerned beyond any broad indications in its general framework for the area. Although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still, however, want to be reassured that there is a reasonable prospect of the project proceeding as proposed; and the RDA will need to be able to show that the proposed exercise of its compulsory purchase powers is clearly in the public interest.

Appendix C

Orders made by English Partnerships (as the Urban Regeneration Agency) under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993

1. English Partnerships ('EP') in its present form was created administratively in May 1999 by bringing together the Commission for the New Towns ('CNT') and the national structure of the Urban Regeneration Agency ('URA'). EP is therefore able to utilise the powers compulsorily to acquire land and new rights over land given to the URA respectively by sections 162(1) and (2) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). The purpose for which those powers may be used is the achievement of the URA's objectives (or purposes incidental thereto). The confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by the URA is currently the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).

2. The objects of the URA (and therefore the purposes for which EP may exercise compulsory powers) are set out in section 159 of the 1993 Act and are to secure:

    - the regeneration of land in England which is within one or more of the following descriptions:

        – land which is vacant or unused;

        – land which is situated in an urban area and which is under-used or ineffectively used;

        – land which is contaminated, derelict, neglected or unsightly; and

        – land which is likely to become derelict, neglected or unsightly by reason of actual or apprehended collapse of the surface as the result of the carrying out of relevant operations which have ceased to be carried out (section 159(1)(a));

    - the development of land in England which the Agency (having regard to guidance and acting in accordance with any directions given by the Secretary of State under section 167 of the 1993 Act) determines to be suitable for development under the URA's powers and to which the Secretary of State consents (section 159(1)(b) and (3)).

3. The Government has outlined a new role for EP (Parliamentary statement of the Deputy Prime Minister – 24 July 2002). This identified EP as a key delivery agency in the Government's sustainable communities agenda to regenerate the towns, cities and rural areas of England and as the national catalyst for property led regeneration and

development. It is charged with delivering urban renaissance and helping the Government meet its targets for accommodating household growth on brownfield land. EP is clearly in a position to utilise the URA's compulsory powers to assist it in fulfilling this role.

4. In preparing and submitting compulsory purchase orders as the URA, EP needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. EP should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part. EP should submit orders for confirmation via the relevant regional Government Office.

5. The Secretary of State previously had a power to confirm an order in two stages under paragraph 2(1) of Schedule 20 to the 1993 Act. However, this has now been replaced by a general power inserted as section 13C of the 2004 Act and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of the other part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.

6. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables the URA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling the URA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers on the 1993 Act, and further advice is provided in paragraphs 28 and 29 of the Annex to this Part. Section 163(1) of the 1993 Act provides the URA with rights of entry for the purposes of surveying land and estimating its value.

EXERCISING COMPULSORY PURCHASE POWERS

7. It is for EP to decide how best to use the URA's land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by its sponsoring Department. The fact that the powers have been expressed in wide and general terms, together with the Government's statement mentioned above, reflects the national importance of the task facing EP. While EP should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to use the URA's CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

8. EP is charged with securing the regeneration of types of land which may be unattractive to existing or potential residents, developers or investors, and therefore need the catalyst of public sector commitment to turn them round. The Government's statement identified EP as the *national* catalyst for this type of initiative. The fact that EP takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to the URA to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.

9. EP must justify the use of its URA compulsory purchase powers by showing that such action is in fulfilment of its statutory purposes, although there may be other additional valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in EP's Corporate Plan or other form of general framework (or in the development plan, local development frameworks, Community Plans, Supplementary Planning Guidance, Regional Planning Guidance, or in the RDA's Regional Economic Strategy or corporate plan), preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen EP's case for using the URA's compulsory acquisition powers, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes[1].

10. EP's planning powers are restricted to those available to CNT under section 7 of the New Towns Act 1981 and Part III of the Town and Country Planning Act 1990 within parts of the Milton Keynes area, it will need to work in partnership with the relevant local authorities. It will be for EP, in conjunction with the relevant local planning authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which EP takes responsibility for land assembly are likely to be of greater regional or cross-regional significance than those promoted by local authorities. Indeed, the Government has identified a role for EP which makes it responsible for promoting strategic sites and sites of national importance, and hence the compulsory acquisitions necessary to assemble those sites are more likely to be undertaken by EP, using its URA powers, than by the RDAs. Sites are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of EP's objectives.

11. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, EP can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions under its URA powers, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always

[1] In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

be feasible or sensible (for example, where time is of the essence), particularly for schemes of strategic or national importance, to wait for planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with EP to demonstrate that there are no planning, or other, barriers to the scheme.

12. Furthermore it may sometimes be appropriate in furtherance of the URA's statutory purposes for EP to assemble land which is in need of regeneration for which it has no specific detailed development proposals. It would be unusual for EP to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for EP to seek to pre-determine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds. Nevertheless, in exercising its compulsory purchase powers as the URA, EP will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its compulsory acquisition is in the public interest.

13. When assembling land for redevelopment, a URA may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the URA. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the URA.

CONFIRMATION

14. In reaching a decision about whether to confirm an order made under section 162 of the 1993 Act the Secretary of State will have in mind the statutory purposes of the URA and will, amongst other things, consider:

    i) whether EP has established the basis and justification for its actions through its Corporate Plan and any related action plan, (including any reviews thereof), which should be in general accordance with regional and local planning policies and other guidance referred to in paragraph 9 above;

    ii) whether, where appropriate, EP has demonstrated that the land is in need of regeneration;

    iii) any directions and guidance which may be given under section 167 and (in the case of development) any consent under section 159(3);

    iv) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented, (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the

proposals advocated by the other parties may conflict with EP's proposals as regards the timing and nature of the regeneration of the wider area concerned;

v) whether the proposed development or regeneration is, on balance, more likely to be achieved if the land is acquired by EP, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;

vi) whether, if EP intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development or investment, and that the aims of the URA cannot be achieved by any other means;

vii) the condition of the land and its recent history;

viii) the quality of, and proposed timetable for completing, both the proposals for which EP is proposing to acquire the land under the URA's compulsory purchase powers and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for EP to have specific proposals for the land concerned beyond any broad indications in its Corporate Plan or other general framework, the RDA's Regional Economic Strategy or corporate plan, or in the development plan for the area. This would be the more so with projects of strategic or national importance where extremely rapid action may be essential. However, although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and EP will need to be able to show that the proposed exercise of its compulsory purchase powers as the URA is clearly in the public interest.

Appendix D

Orders made by Urban Development Corporations under section 142 of the Local Government, Planning and Land Act 1980.

1. DoE Circular 23/88 *Compulsory Purchase Orders by Urban Development Corporations* was cancelled on 20 January 1998[1] following the winding-up of the last of the Urban Development Corporations (UDCs) originally designated under section 134 of the Local Government, Planning and Land Act 1980 ('the 1980 Act'). However, following the establishment of the first of a new generation of Urban Development Corporations (UDCs) at Thurrock on 29 October 2003 and London Thames Gateway on 26 June 2004 and, subject to Parliamentary processes, the establishment of a UDC for West Northamptonshire later this year, the need for guidance to UDCs on the exercise of their compulsory purchase powers has again become relevant. The following sets out an updated version of the original guidance. The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by a UDC is currently the Deputy Prime Minister and First Secretary of State ('the Secretary of State').

PURPOSES OF A UDC

2. A UDC is set up under section 135 of the 1980 Act with the object, as set out in section 136(1), of securing the regeneration of the relevant UDA. A UDA is likely to have been designated because it contains significant areas of land not in effective use. Some of these areas may have suffered extensive dereliction and include buildings in need of refurbishment. In this state, UDAs are unattractive to existing or potential residents, and to developers and investors. The acquisition of land and buildings, whether by compulsory purchase or other means, is one of the main ways in which a UDC can take effective steps to secure its statutory objectives.

3. Section 136(2) of the 1980 Act indicates that regeneration can be achieved particularly by

   – bringing land and buildings into effective use;

   – encouraging the development of existing and new industry and commerce;

   – creating an attractive environment; and

   – ensuring that housing and social facilities are available to encourage people to live and work in the area.

[1] Paragraph 7 of DETR Circular 01/98.

EXERCISING COMPULSORY PURCHASE POWERS

4. Subject to any limitations imposed under section 137 or 138, section 136(3) of the 1980 Act empowers a UDC to acquire, hold, manage, reclaim and dispose of land, and to carry out a variety of incidental activities. The compulsory purchase powers of a UDC are then set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the UDC's area.

5. It is for each UDC to decide how best to use its land acquisition powers to fulfil its purposes, having regard to any guidance which may be issued from time to time by its sponsoring Department. The compulsory purchase powers available to UDCs are expressed in wide and general terms, reflecting both the national importance of the task of urban regeneration and the practical problems of ensuring that wide areas of dereliction or under-use can speedily be returned to beneficial use. While a UDC should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary for a UDC to use its CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

6. In pursuance of its objectives, it may in some instances be necessary for a UDC to assemble land for which it has no specific, detailed development proposals. UDCs do not generally carry out extensive building development themselves, as they are expected to achieve their objectives largely by stimulating and attracting greater private sector investment. It may, therefore, be counter-productive for a UDC to seek to predetermine what private sector development should take place. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration proceeds. Moreover, ownership by a UDC of land in an area can stimulate confidence that regeneration will take place, and in this way help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. UDCs will often best be able to bring about regeneration by assembling land and providing infrastructure over a wide area in order to secure or encourage its development by others.

7. In cases where existing users are affected by a compulsory purchase order relating to their premises, the UDC will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the UDA. Section 146(2) of the 1980 Act specifically encourages UDCs, so far as practicable, to assist persons or businesses whose property has been acquired, to relocate to land currently owned by the UDC.

8. When assembling land for redevelopment, a UDC may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the UDC. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the UDC.

9. In preparing and submitting compulsory purchase orders, a UDC needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23.

CONFIRMATION

10. In reaching a decision on whether to confirm a section 142 order, the Secretary of State will have in mind the statutory objectives of the UDC set out in paragraph 3 above and will, amongst other things, wish to consider -

    (i) whether the UDC has demonstrated that the land is in need of regeneration;

    (ii) what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration;

    (iii) whether regeneration is on balance more likely to be achieved if the land is acquired by the UDC;

    (iv) the recent history and state of the land;

    (v) whether the land is in an area for which the UDC has a comprehensive regeneration scheme; and

    (vi) the quality and timescale of both the UDC's regeneration proposals and any alternative proposals.

11. The Secretary of State recognises that in the special circumstances in which UDCs operate, and given their specific duty to regenerate their areas, it will not always be possible or desirable for them to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and that therefore the detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where land is required for a defined end use, or for the provision of strategic infrastructure such as roads or sewers to facilitate regeneration, a UDC will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, it is accepted that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order; and this will not in itself be regarded as an impediment to the Secretary of State's consideration of the order.

12. Where a UDC does not advance detailed proposals for redevelopment, it will nevertheless be expected to demonstrate the case for acquisition in the context of its development strategy. The UDC needs to be able to show that the proposed exercise of it compulsory purchase powers is clearly in the public interest and the Secretary of State will want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will therefore expect the statement of reasons accompanying the submission of the order to him to include a summary of the broad framework for the regeneration of the UDA, and the UDC will need to be in a position to present evidence at the public inquiry to support its case for the proposed compulsory acquisition.

13. Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary to consider carefully whether such proposals are likely to be, or are capable of being, implemented. Factors

which the Secretary of State will need to consider include the planning position, how long the land has been unused, and the extent to which these alternative proposals may conflict with the UDC's proposals as regards the timing and nature of regeneration in the area concerned.

Appendix E

Orders made under housing powers.

INTRODUCTION

1. This Appendix provides guidance to local authorities considering whether to make compulsory purchase orders under the Housing Acts. Such orders are subject to confirmation by the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix). This Appendix also provides guidance on the information which should be submitted in support of applications for the confirmation of housing orders in addition to the general requirements described in this Part of the Memorandum.

2. Housing compulsory purchase orders submitted for confirmation will be considered on their merits both in the light of any objections received and the general policy, described in this Part of the Memorandum, that orders should not be made unless there is a compelling case in the public interest. The further policies and requirements in this Appendix apply to compulsory purchase orders made under the Housing Acts.

HOUSING ACT, 1985: PART II

Circumstances in which powers may be used

3. Section 17 of the Housing Act 1985 ('the 1985 Act') empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

4. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, Housing Associations or owner-occupiers.

Information to be included in Applications for confirmation of orders

5. When applying for the confirmation of a compulsory purchase order made under Part II of the 1985 Act the authority should include in its statement of reasons for making the order information regarding needs for the provision of further housing accommodation in its area. This information should normally include the total number of dwellings in the district, unfit dwellings[1], other dwellings in need of renovation and vacant dwellings; the total number of households and the number for which, in the authority's view, provision needs to be made. Details of the authority's housing stock, by type, may also be helpful, particularly where the case advanced for compulsory purchase turns on a need to provide housing of a particular type. Where a compulsory purchase order is made with a view to meeting special housing needs, such as those of single persons, the elderly, disabled or homeless, specific information about these needs should also be included.

6. The authority should also provide information about its proposals for the land or property it is seeking to acquire. Where, as will normally be the case, it proposes to dispose of the land or property concerned, the authority should submit where possible information regarding the prospective purchaser; the purchaser's proposals regarding the provision of housing accommodation; and when these will materialise. Information regarding any other statutory consents required for the proposals will also be relevant. It is recognised that in some cases it may not be possible to identify a prospective purchaser at the time a compulsory purchase order is made. Negotiations may be proceeding or the authority may propose to sell on the open market. In such cases the authority should submit information about its proposals to dispose of the land or property; its grounds for considering that this will achieve the provision of housing accommodation; and when the provision will materialise. Where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner.

Acquisition of land for housing development

7. The acquisition of land for housing development is an acceptable use of compulsory purchase powers, including where it will make land available for private development, or development by Housing Associations. Section 17(4) of the 1985 Act provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years. The Secretary of State would not normally regard compulsory purchase as justified where development will not be completed within 3 years of acquisition.

8 Where an authority has a choice between the use of housing or planning compulsory purchase powers (referred to in Appendix A) the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power. Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this Appendix.

Acquisition of empty properties for housing use

9. Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. When considering whether to confirm a compulsory purchase order the Secretary of State will normally wish to know how long the property has been vacant; what steps the authority has taken to encourage the owner to bring it into acceptable use; the outcome; and what works have been carried out by the owner towards its re-use for housing purposes. Cases may, however, arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only method of acquiring the land.

[1] The Housing Bill which is before Parliament at the time of publication proposes to replace the housing fitness test with assessment under the Housing Health and Safety Rating System as the basis for action against unacceptable housing standards. On implementation of the proposed system the quantity of housing with Category 1 or 2 hazards would become relevant.

Acquisition of sub-standard properties

(a) General use of Power

10. Compulsory purchase of sub-standard properties may also be justified as a last resort in cases where a clear housing gain will be obtained; the owner of the property has failed to maintain it or bring it to an acceptable standard; and other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation. In considering whether to confirm a compulsory purchase order the Secretary of State will wish to know what are the alleged defects in the order property; what other measures the authority has taken to remedy matters (eg. service of a notice on the owner under section 215 of the Town and Country Planning Act 1990 requiring him or her to remedy the loss of amenity that such a property causes); the outcome; and the extent and nature of any works carried out by the owner to secure the improvement and repair of the property. The Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property.

11. The Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

(b) Houses in multiple occupation

12. Cases may arise where an authority wishes to make a compulsory purchase order following a control order[2] under section 379 of the 1985 Act in respect of a house in multiple occupation. Guidance on the relevant statutory provisions is given in paragraphs 4.8.1 – 4.10.4 of the Memorandum accompanying DOE Circular 12/93 *Houses in multiple occupation: guidance to local authorities on managing the stock in their area*. It is recognised that a compulsory purchase order may be justified where there is no realistic possibility of returning a property to the owner at the expiry of the control order.

13. Where a compulsory purchase order is made under Part II of the 1985 Act within 28 days of the control order, Part IV of Schedule 13 provides that the authority need not prepare or serve a Management Scheme until it is notified of the Secretary of State's decision whether or not to confirm the compulsory purchase order. A compulsory purchase order may be made after the 28 day period has elapsed, but the authority will then remain under the duty to prepare a Management Scheme. It should also be borne in mind that where a property has been improved following a control order, there may be less justification for compulsory purchase to secure improved housing accommodation. Where the control order has been in force for a significant period of time, evidence of the previous management of the property, on which the case for compulsory purchase may have to depend, may no longer be current. Authorities who wish to resort to compulsory purchase may therefore find it advisable to do so as soon as possible after the control order has been made.

[2] The Housing Bill before Parliament at the time of publication proposes that no new control orders (and management schemes) made under the provisions of the Housing Act 1985 should be permitted. Instead, in certain circumstances the authority will be required or permitted to make an Interim Management Order. The making of such an order will not affect an authority's power to make a compulsory purchase order under Part II of the Housing Act 1985.

14. Difficulties have arisen where authorities wishing to take advantage of the 28 day provision have prepared compulsory purchase documents hastily and then found the compulsory purchase order to be defective and incapable of confirmation. Therefore, in making a control order, an authority may at the same time want to anticipate the possible use of compulsory purchase procedures and prepare accordingly.

(c) Limitations

15. The Department is advised that the powers under Part II of the 1985 Act to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement in the case of *R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea* (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part II where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

16. Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with Section 106A of the 1985 Act. The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

Acquiring authority undertakings not to implement compulsory purchase orders

17. Where they are seeking to acquire compulsorily an empty and neglected property some acquiring authorities have adopted the practice of offering to the owner an undertaking that if he (or she) withdraws his objection and agrees to improve the property and bring it into acceptable use within a specified period, the confirmed order will not be implemented. Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order the subject of such an agreement will still be considered by the Secretary of State on its individual merits as described in paragraphs 9 and 10 above. The Secretary of State has no powers to confirm an order subject to conditions.

HOUSING ACT 1985: PART IX

Clearance areas

18. General guidance on clearance areas is given in Annex B to DoE Circular 17/96 *Private Sector Renewal: a Strategic Approach*[3]. Advice on use of clearance area compulsory purchase powers is set out below.

[3] see footnote 1 on replacement of basis for action on unacceptable housing conditions. Declaration of a clearance area will remain an option, though this would be on the basis of risk assessment under the HHSRS. Draft HHSRS enforcement guidance for consultation was published in December 2003, which can be found on the ODPM website via www.housing.odpm.gov.uk

19. Clearance area CPOs are made under section 290 of the Housing Act 1985. In addition to the general requirements set out in this Part of the Memorandum, an authority submitting a clearance area order will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification, having regard to the Code of Guidance for dealing with unfit premises in Annex G to the Housing Renewal Guidance.

- the unfitness of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are unfit as required by Rule 22(2) in the 1990 Inquiries Procedure Rules;

- the justification for acquiring any added lands included in the order;

- proposals for re-housing and for re-locating commercial and industrial premises affected by clearance; and

- the proposed after-use of the cleared site. Where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning consent will not materialise.

20. Authorities promoting clearance area orders will need to demonstrate that they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that.

LOCAL GOVERNMENT AND HOUSING ACT 1989: PART VII

Renewal areas

21. General guidance on renewal areas is given in Annex E and appendix 1 to ODPM Circular 05/2003 *Housing Renewal Guidance*. Annex E, Appendix 1 gives guidance on acquisition of land and property in relation to renewal areas, and for ease of reference is reproduced at paragraphs 22-28 below.

22. Section 93(2) of the Local Government and Housing Act 1989 (the 1989 Act) empowers authorities to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair; their effective management and use; or the well-being of residents in the area. They may provide housing accommodation on land so acquired.

23. Section 93(2) of the 1989 Act also provides that authorities may acquire by agreement or compulsorily properties for improvement, repair or management by other persons. Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner-occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area (RA).

[4] see footnote 3.

24. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall RA strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg. manpower) resources available to them and to other bodies concerned.

25. Section 93(4) of the 1989 Act empowers authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in an RA. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Where projects involve the demolition of properties, regard should be had to any adverse effects on industrial or commercial concerns.

26. The powers in sections 93(2) and 93(4) of the 1989 Act are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in RAs.

27. The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

28. As explained in this Part of the Memorandum, compulsory purchase orders are considered on their merits but should not be made unless there is a compelling case in the public interest. Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the 1989 Act, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the RA. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the RA; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made

OTHER HOUSING POWERS

29. Compulsory purchase orders made by local authorities under other Housing powers (sections 29 and 300 of the 1985 Act and section 34 of the Housing Associations Act 1985) fall to be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this Appendix where applicable.

Appendix F

Orders made under Part VII of the Local Government Act 1972 for purposes of other powers

INTRODUCTION

1. Some of the powers in legislation for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase. The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with such powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

2. Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the 1972 Act. Section 120 provides a general power for a principal council[1] to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power (see examples at paragraph 9 below), or where land is intended to be used for more than one function.

3. The normal considerations in relation to making and submission of a compulsory purchase order, as described in this Part of the Memorandum, would apply to orders relying upon section 121. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.

4. Section 125 of the 1972 Act (as amended by section 43 of the Housing and Planning Act 1986) is a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

5. The confirming authority for orders under Part VII of the 1972 Act is the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).

ACQUISITION AND ENABLING POWERS

6. When an order is made by a principal council under section 121 of the 1972 Act, or by a district council on behalf of a parish council under section 125 of that Act, paragraph 1 of the order should cite the relevant acquisition power and state the purpose of the order, by reference to the Act ('enabling Act') under which the purpose may be achieved.

7. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the 2004 Regulations). For example -

[1] defined in section 270 of the 1972 Act as a county, district, or London borough council.

'……. the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of ……] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.'

8. As mentioned above, authorities should note that sections 121 and 125 of the 1972 Act are subject to some constraints. Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121. These are as follows:-

(a) for the purposes specified in section 120(1)(b), ie. the benefit, improvement or development of their area

(b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

(c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg. section 9(a) of the Open Spaces Act 1906.

There are similar limitations in section 125(1) in relation to orders made by district councils on behalf of parish councils.

9. An enabling power (see paragraph 1) may or may not also contain a power to acquire land. Section 164 of the Public Health Act 1875 (public walks and pleasure grounds) is an example of a power to acquire land which itself has no provision for the use of compulsion, but which can be exercised in conjunction with the power of compulsory purchase at section 121.

10. Other powers which do not include a land acquisition power (see paragraph 2) but which can be used in conjunction with sections 120 and 121 of the 1972 Act to achieve compulsory purchase include the following:

(i) public conveniences – section 87, Public Health Act 1936;

(ii) cemeteries and crematoria – section 214 of the 1972 Act (see also paragraph 15 below);

(iii) recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976 (used in the example in paragraph 7 above);

(iv) refuse disposal sites – section 51, Environmental Protection Act 1990; and

(v) land drainage – section 62(2), Land Drainage Act 1991.

ORDERS MADE ON BEHALF OF PARISH COUNCILS

11. If a parish council have been unable to acquire by agreement and on reasonable terms, they may make representations to the district council to make an order under section 125. The district council should have regard to this and to all the other matters set out in section 125, some of which are mentioned in paragraph 13 below.

12. A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg. section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8) of section 226).

13. Section 125 does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 Act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that Act.

14. If the district council refuse to make an order under section 125, or do not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order. Where an order is made by the Secretary of State in such circumstances, section 125 and the 1981 Act apply as if the order had been made by the district council and confirmed by the Secretary of State.

JOINT ORDERS AND MIXED PURPOSES

15. A single order may be made under section 121 of the 1972 Act by more than one council and, as mentioned in paragraphs 1 and 2 above, for more than one purpose. Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments (or departments and relevant Government Office, as appropriate), involving concerted action by them. Where an inquiry is required or is considered to be appropriate, the Inspector's report will be submitted to each of them simultaneously and the decision will be given by the relevant Ministers acting together.

16. A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council. (See also paragraph 10(ii) above.)

COSTS AND COMPENSATION

17. A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This involves the administrative expenses and costs of the inquiry; the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part (see also paragraphs 46-49 of this Part of the Memorandum); statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or any compensation for injurious affection payable to adjoining owners who may be entitled to claim.

18. When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

Appendix G

Orders made under section 89(5) of the National Parks and Access to the Countryside Act 1949

1. Section 89(5) of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') includes powers for a local planning authority to acquire land compulsorily in order to:

   - plant trees to preserve or enhance the natural beauty of their area (section 89(1)); or

   - carry out works to enable land in their area which appears to them to be (a) derelict, neglected or unsightly, or (b) is likely to become so by reason of actual or apprehended collapse of the surface as the result of underground mining operations (other than coal mining) (section 89(2) as amended), to be reclaimed or improved or brought into use.

2. The confirming authority for orders under section 89(5) in the Secretary of State for Environment, Food, and Rural Affairs (referred to as 'the Secretary of State' in this Appendix).

3. If an authority doubt whether the powers under section 89 should be used, or where various uses are proposed, it is open to them to consider acquisition under section 226 of the Town and Country Planning Act 1990 (see Appendix A). The various other powers under which local authorities can acquire and develop land for particular purposes, such as for housing or public open space, can also be exercised in relation to land which is derelict, neglected or unsightly.

4. When considering whether to make an order under section 89(5) of the 1949 Act, or when preparing their case in support of such an order, authorities may find it helpful to have the Secretary of State's view about the meaning of the words 'derelict, neglected or unsightly' for these purposes.

5. The phrase 'derelict, neglected or unsightly' is used in connection with the specific powers of reclamation given to a local authority under section 89(2) of the 1949 Act. There are no statutory definitions of these words and so they are to be given their natural, common-sense meaning. It is preferable, where possible, to consider the words taken together, as there is a considerable overlap between all three words. The word 'unsightly' is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be 'neglected' without having been the subject of any operations by man (such as building, dumping or excavating), but it may be inappropriate to describe such land as 'derelict'.

6. It may be that land is being put to some slight use but is still properly described as 'derelict' or 'neglected' when its condition is considered in the light of the potential use of the land. It is not the purpose of section 89, however, to enable a local authority to

carry out works or to acquire land compulsorily solely because they consider that they have a better use for the land than the present one.

Appendix H

Orders for educational purposes, and for public libraries and museums

EDUCATION – LOCAL EDUCATION AUTHORITIES' COMPULSORY PURCHASE POWERS

1. Section 530 (as amended) of the Education Act 1996 ('the 1996 Act') gives power to the local education authority (LEA) to acquire compulsorily land which is required for the purposes of its functions, including the purposes of any LEA-maintained or assisted school or institution.

2. Orders made by LEAs under section 530 of the 1996 Act should be submitted for confirmation to the Secretary of State for Education and Skills ('the Secretary of State' in paragraphs 1-9 of this Appendix) at the address given in Appendix W. LEAs may seek guidance, if necessary, from that Department on the form of draft orders where there is doubt about a particular point.

3. Before making an order under section 530 of the 1996 Act, the LEA should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.

THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998

4. The LEA may wish to acquire land compulsorily in conjunction with proposals under section 28 or 31 of the School Standards and Framework Act 1998 ('the 1998 Act'). In such circumstances the LEA should publish the 1998 Act proposals before making and submitting any compulsory purchase order under section 530 of the 1996 Act.

5. The relevant school organisation committee or adjudicator will consider the application for approval of the 1998 Act proposals on its merits and independently from consideration by the Secretary of State of the case for confirming the compulsory purchase order. Where the relevant body is minded to approve the proposals, it should do so conditionally under regulation 9(1)(b) of the Education (School Organisation Proposals) (England) Regulations 1999 (as amended) on condition that the relevant site is acquired. The LEA will be informed of the decision so that it may then make and submit the order. If the Secretary of State decides to confirm the order he will seal it and return it to the LEA. When the purchase of the site has been effected, the condition of the approval is thereby met and the approval of the proposals becomes final with no further action required.

6. If the decision is to reject the 1998 Act proposals, however, the LEA should not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

THE EDUCATION ACT 2002

7. Sections 70 and 72 of the Education Act 2002 introduce new arrangements for the publication of proposals for additional secondary schools, and for the Learning and Skills Council for England to publish proposals for the restructuring of school sixth form education. The final decision on whether to approve both categories of proposals will be made by the Secretary of State. The need for a compulsory purchase order will be taken into account by the Secretary of State when he considers the statutory proposals, and any decision to approve them will be conditional upon the acquisition of the site. The LEA will be informed of the decision on the proposals so that it may then make and submit the necessary compulsory purchase order. The Secretary of State will consider the order separately. If the order is confirmed, the proposals will be fully approved when the site purchase is completed. If the order is not confirmed the proposals will fall when the condition is not met.

VOLUNTARY AIDED SCHOOLS

8. Where compulsory purchase orders are made for voluntary aided schools, the following documents, additional to those specified in Appendix Q, should accompany, or be submitted as soon as possible after, the order:

   (a) a completed copy of form SB1 (obtainable from Department for Education and Skills at the address in Appendix W); and

   (b) a qualified valuer's report.

EDUCATION – SECRETARY OF STATE'S COMPULSORY PURCHASE POWERS

9. Paragraph 3 of Schedule 35A to the Education Act 1996 gives power to the Secretary of State to acquire compulsorily land which is required by an Academy. The Secretary of State may exercise this power where the LEA has disposed of land, without prior consent, which has been used wholly or mainly for the purposes of a county or community school at any time in the period of eight years ending with the day on which the disposal was made. On completion of the purchase the Secretary of State must transfer the land to the person concerned with the running of the Academy.

PUBLIC LIBRARIES AND MUSEUMS

10. Land for public libraries and museums may be acquired compulsorily under section 121 of the Local Government Act 1972 in conjunction with an appropriate enabling power (see also Appendix F). Orders for these purposes should be submitted to the Secretary of State for Culture, Media and Sport at the address given in Appendix W. Such orders should be accompanied by the following additional documents:

    (a) a completed copy of form CP/AL1 (obtainable from the Department for Culture, Media and Sport, Libraries Division); and

    (b) a qualified valuer's report.

11. Authorities are reminded of the general advice in paragraph 7 of this Part of the Memorandum that all orders should be made having due regard to statutory requirements and to any guidance from the relevant Department.

Appendix J

Orders for airport Public Safety Zones

1. Department for Transport Circular 1/2002 *Control of Development in Airport Public Safety Zones* includes a policy on the purchase of property within the 1 in 10,000 individual risk contour. The nature of the area within this contour is such that the annual individual third party risk of being killed as a result of an aircraft accident exceeds 1 in 10,000.

2. The Secretary of State for Transport's policy is that there should be no occupied residential properties or all-day workplaces within the 1 in 10,000 contour. He therefore expects airport operators to offer to purchase such property by agreement, with compensation being payable under the Compensation Code. Although Public Safety Zones are a non-statutory designation, if purchase by agreement is not possible the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

3. The airport operator will need to demonstrate that the property to be acquired falls into the categories described above and that it has not been possible to purchase by agreement.

4. When acquired, airport operators will be expected to demolish any buildings and to clear the land.

5. Compulsory purchase orders made for this purpose should be sent to the Secretary of State for Transport at the address given in paragraph 8 of Appendix W.

Appendix K

Orders made under section 47 of the Listed Buildings Act – Listed Building in need of repair

1. Sections 47, 48 and 50 of the Listed Buildings Act relate to the compulsory acquisition by the appropriate authority of a listed building in need of repair; service on the owner of a repairs notice; and inclusion in the order of a direction for minimum compensation.

2. At least two months before making an order under section 47 of the Listed Buildings Act the acquiring authority must, under section 48, serve a repairs notice on the owner as defined in section 91(2) of the Listed Buildings Act. Advice about repairs notices is found in Chapter 7 of PPG 15.

3. In order to comply with regulation 4 of the 2004 Prescribed Forms Regulations all personal notices must include additional paragraphs 3 and 5 of Form 8 in the Schedule to the Regulations. If the acquiring authority have included a direction for minimum compensation under section 50 of the Listed Buildings Act, they must also insert additional paragraph 4 of Form 8.

4. Optional paragraph 4 of Form 1 in the Schedule to the 2004 Prescribed Forms Regulations sets out the terms for a minimum compensation direction. This paragraph can instead be incorporated into orders drafted using Form 2 or 3 as appropriate to the circumstances of the order.

5. Note (p) to Form 8 in the Schedule to the Regulations states that the Notice should refer to a place (eg. 'below' or 'in the attached note') where the meaning of the direction is explained, as required by section 50(3). The explanation should normally include the text of subsections (4) and (5) of section 50.

6. When an order made under section 47 of the Listed Buildings Act is submitted to the Secretary of State for Culture, Media and Sport for confirmation, a copy of the repairs notice served in accordance with section 48 must be included with all the supporting documents listed in Appendix Q to this Part of the Memorandum.

7. A local authority which has made an order under section 47 of the Listed Buildings Act should notify the Department for Culture, Media and Sport immediately they become aware of any application to a magistrates' court either under section 47(4) or section 50(6). Depending on the circumstances, it may be necessary to hold the order in abeyance until such time as the court has considered the application.

Appendix KA

Exercise of compulsory purchase powers at the request of the community

1. From time to time, authorities may receive requests from the community (by petition or otherwise) to acquire community assets that are in danger of being lost to the detriment of that community. If the owner is unwilling to sell, the implication is that the community would ask the authority to use its compulsory purchase powers to acquire the asset.

2. Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

3. As with any compulsory purchase, local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the Compulsory Purchase Order process either from their own resources, or with a partial or full contribution from the requesting organisation (see paragraphs 20 – 23 of Part 1 of the Memorandum to this Circular).

4. In order to assess whether there is a compelling case in the public interest for compulsory acquisition, local authorities should ask those making the request for such information that is necessary for them to do so. This could include the value of the asset to the community; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed. This list is not exhaustive, but the level of detail required should be tailored to the circumstances.

Special kinds of land

1. Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by provision that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure[1]. The 'special kinds of land' are those set out in Part III of, and Schedule 3 to, the 1981 Act (see also Appendix U, paragraph 17):

   (a) land acquired by a statutory undertaker (as defined in section 16 of the 1981 Act) for the purposes of their undertaking (section 16 and Schedule 3, paragraph 3);

   (b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers (as defined in section 17 of the 1981 Act) for the purposes of their undertaking (section 17 and Schedule 3, paragraph 4);

   (c) land held by the National Trust inalienably (section 18 and Schedule 3, paragraph 5); and

   (d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and Schedule 3, paragraph 6).

Structure of this Appendix

2. Section 1 of this Appendix covers orders to which paragraphs (a) and (b) above apply, section 2 provides guidance on orders which include National Trust land held inalienably or land forming part of a common, open space etc. (paragraphs (c) and (d)), and Section 3 contains some basic details concerning special parliamentary procedure.

3. Unless stated otherwise:

   – advice in this Appendix about the compulsory purchase of the special kinds of land mentioned in Part III of the 1981 Act also applies to the compulsory acquisition of new rights over such land and to the corresponding paragraph, or paragraphs, in Part II of Schedule 3;

   – any reference to statutory undertakers' land means land which has been acquired by statutory undertakers for the purposes of their undertaking.

SECTION 1

Statutory undertakers

4. Section 8(1) defines 'statutory undertakers' for the *general* purposes of the 1981 Act. Paragraphs 10 and 11 below explain the effects of section 17, for the purposes of which

[1] see paragraphs 29-30.

other bodies (eg. housing action trusts) may be defined as, or deemed to be, statutory undertakers. Gas transporters, electricity licence holders who can exercise compulsory purchase powers, the Environment Agency, Regional Development Agencies, English Partnerships and water and sewerage undertakers are deemed to be statutory undertakers for the purposes of the 1981 Act. British Telecom are not statutory undertakers for the purposes of the Act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the Act. Where their operations are carried out under the specific authority of an Act, however, such operators will fall within the definition in section 8(1) of the 1981 Act.

Protection for statutory undertakers' land

5. Sections 16 and 17 provide protection for statutory undertakers' land. In both cases, the land must have been acquired for the purposes of the undertaking and these provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate Minister under section 16, or an objection in respect of land to which they think section 17 applies (but see paragraphs 10 and 11 below), undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant Act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg. a redundant, manufactured gas works. In the circumstances, the land is not held for the purpose of the statutory provision namely the conveyance of gas through pipes to any premises or to a pipe-line system operated by a gas transporter.

Section 16 of the 1981 Act

6. Under section 16, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate Minister'. This is the Minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Trade and Industry[2]. Such representations must be made within the period stated in the public and personal notices, ie. not less than twenty-one days, as specified in the Act.

7. A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual Minister'). Where the appropriate Minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate Minister would also be the confirming authority where, for example, an airport operator under Part V of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

[2] DTI have prepared a guidance note about section 16 representations by gas and electricity undertakers, which is available from the address given in Appendix W.

8. Subject to advice in paragraph 9 below about orders to which section 31 applies, where a section 16 representation is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a Minister) so as to include the interest owned by the statutory undertakers unless the appropriate Minister gives a certificate in the terms stated in section 16(2). These are either (16(2)(a)) that the land can be taken without serious detriment to the carrying on of the undertaking, or (16(2)(b)) that if taken it can be replaced by other land without serious detriment to the undertaking.

Joint confirmation

9. By virtue of section 31(2) of the 1981 Act, an order made under any of the powers referred to in section 31(1) may still be confirmed where a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused, if that confirmation is undertaken jointly by the appropriate Minister and the usual Minister.

Section 17 of the 1981 Act

10. Section 17(2) provides that for an order acquiring land owned by a local authority or statutory undertaker, in the event that such an authority or undertaker objects, any confirmation would be subject to special parliamentary procedure. Section 17(3), however, excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore be very limited.

11. The Secretary of State may by order under section 17(4)(b) extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

    (a) a housing action trust – Housing Act 1988, section 78 and Schedule 10, paragraph 3;

    (b) Regional Development Agencies – Regional Development Agencies Act 1998 section 20(4) and Schedule 5, paragraph 2; and

    (c) English Partnerships (the Urban Regeneration Agency) – Leasehold Reform, Housing and Urban Development Act 1993 section 169 and Schedule 20, paragraph 3.

SECTION 2

Section 18 of the 1981 Act

12. Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section 18(3)), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

Section 19 of the 1981 Act

13. Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the 1981 Act:

- 'common' includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green[3]. The definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965;

- 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and

- 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.

14. An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17) gives a certificate under section 19 indicating his satisfaction that either:

- section 19(1)(a) – exchange land is being given which is no less in area and equally advantageous as the land taken; or

- section 19(1)(aa) – that the land is being purchased to ensure its preservation or improve its management; or

- section 19(1)(b) – that the land is 250 sq yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary.

15. Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under Schedule 3, paragraph 6. See Appendix M paragraphs 10-14.

16. As to the form of order, see Appendix U, paragraphs 17 to 24 and Appendix M, paragraphs 13 to 16.

Application for a section 19 certificate

17. An acquiring authority which will require a certificate from the relevant Secretary of State under section 19 and/or Schedule 3, paragraph 6, should apply as follows:

- common land – the Secretary of State for Environment, Food and Rural Affairs (Countryside (Landscape and Recreation) Division, see Appendix W for details);

- open space – Deputy Prime Minister/First Secretary of State, at the appropriate regional Government Office (see Appendix W for addresses);

[3] Where rights of common are extinguished by an order, acquiring authorities should also consider the need to seek consent under section 22 of the Commons Act 1899. Further information can be obtained from the DEFRA address given in Appendix W, paragraph 5.

– fuel or field garden allotments – Deputy Prime Minister/First Secretary of State, Office of the Deputy Prime Minister (LSC Division, see Appendix W for details)

Applications for certificates should be made when the order is submitted for confirmation (or, in the case of an order prepared in draft by a Minister, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

18. The land, including any new rights, should be described in detail, by reference to the compulsory purchase order, and all the land clearly identified on an accompanying map. This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land. The acquiring authority should also provide copies of the order, including the Schedules, and order map. For a particularly large order, they may provide: (a) copies of the order and relevant parts or sheets of the map; and (b) a copy, or copies, of the relevant extract or extracts from the order Schedule or Schedules, which include the following:

(i) the plot(s) of common, open space etc. which they propose to acquire or over which they propose to acquire a new right ('the order land'); and

(ii) any land which they propose to give in exchange ('the exchange land').

(Where Schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute 'the rights land' and 'the additional land' for the definitions given in (i) and (ii) above, respectively.)

19. When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 Act or of paragraph 6(4) of Schedule 3 to that Act.

20. It must be specified under which sub-section(s) an application for a certificate is made – eg. section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

21. In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number);
- the plots numbers and their areas, in square metres;
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised;
- the purpose of the acquisition;

- details of any special provisions or restrictions affecting any of the land in the application; and

- any further information which supports the case for a certificate.

22. In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the Inspector at the inquiry into the compulsory purchase order.

23. Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the Inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the Inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an Inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

24. The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.[4]

Exchange land

25. Where a certificate would be in terms of section 19(1)(a), the exchange land must be **no less** in area than the order land; and must be equally advantageous to any persons entitled to rights of common or to other rights, and to the public. Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the Schedule to the 2004 Regulations.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exist at that date. Other issues may arise involving questions of the respective merits of order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be

[4] *[1994] J. P. L. 607.*

disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg. pending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

Meaning of the 'the public' in section 19

26. With regard to exchange land included in an order, the Secretary of State takes the view that 'the public' means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

Section 19(1)(aa)

27. In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be 'improvement' within the sense of section 226(1)(a) of the 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Appendix G), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie. where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Appendix U, paragraph 24.

Section 19(1)(b)

28. A certificate can only be given in terms of section 19(1)(b) where the Secretary of State concerned is persuaded that both the criteria set out in paragraph 14 third bullet are met. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

SECTION 3

Special parliamentary procedure

29. In the event that an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965. The confirming authority will give full instructions at the appropriate time.

30. Described briefly for information, special parliamentary procedure is as follows: following the confirming authority's decision to confirm, the order is laid before Parliament, after giving 3 days notice in the London Gazette. If a petition of general objection or amendment is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve. If no petition is lodged, the confirmation is usually approved without such referral.

Appendix M

Compulsory purchase of new rights and other interests

1. This appendix gives some general advice[1] about the compulsory acquisition of new rights over land where full land ownership is not required eg. the compulsory creation of a right of access.

2. Such compulsory acquisition of rights over land by creation of new rights is, by virtue of section 28 of the 1981 Act, subject to the provisions of Schedule 3 to that Act. It can only be achieved using a specific statutory power. Powers include (with the bodies by whom they may be exercised) the following:

   (i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities);

   (ii) Highways Act 1980, all highway authorities may acquire rights under Part XII by virtue of section 250. (Guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97.);

   (iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers); Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency);

   (iv) Leasehold Reform, Housing and Urban Development Act 1993 section 162(2) (English Partnerships);

   (v) Regional Development Agencies Act 1998, section 20(2) (regional development agencies);

   (vi) Electricity Act 1989, Schedule 3 (electricity undertakings); and

   (vii) Gas Act 1986, Schedule 3 (gas transporter undertakings).

ORDER HEADING

3. For an order which relates solely to new rights, the order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981. For an order which includes new rights and land to be acquired for other purposes, the order heading should refer to the appropriate enabling Act, any other Act(s), and the 1981 Act, as required by the Regulations. See Note (b) to Forms 1, 2 and 3 in the Schedule to the 2004 Prescribed Forms Regulations.

[4] Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is referred to within this appendix as an an example. Where in practice a different power is used, eg section 250 of the Highways Act 1980, the authority should take into account any special requirements which may apply to the use of that power.

ORDERS SOLELY FOR NEW RIGHTS

4. Where an order relates solely to new rights and does not include other interests in land which are to be purchased outright, paragraph 1 of the order should identify the purpose for which the rights are required, eg. 'for the purpose of providing an access to a community centre which the Council are authorised to provide under section 19 of the 1976 Act'.

ORDERS FOR NEW RIGHTS AND OTHER INTERESTS

5. Where an order relates to the purchase of new rights and of other interests in land under different powers, paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes. Where the purpose is the same for both new rights and other interests, it may be relatively straightforward. For example:

'. . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and

(b) under section 13 of the said Act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose.

[etc., as in Form 1 of the Schedule to the Regulations].

6. Where also the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made. For example:-

'. . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use,; and

(b) under section 13 of the Local Government Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the above-mentioned land for [*the authority*] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.

7. The acquiring authority's statements of reasons and case should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority are also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

SCHEDULE AND MAP

8. The land over which each new right is sought should be shown as a separate plot in the order Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg. where there are a number of new rights, they could be shown together in the Schedule with appropriate cross-referencing between the related plots.

9. The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See Note (*g*) to Forms 1, 2 and 3 or Note (*d*) to Forms 4, 5 and 6.)

SPECIAL KINDS OF LAND (see also Appendices L and U)

10. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc.). The order will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17 of Appendix L) gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

11. A certificate may be given in the following circumstances:

paragraph 6(1)(a) – the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or

paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land (but see paragraph 13 below); or

paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the Act; or

paragraph 6(1)(c) -

(i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or,

(ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway,

and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.

12. The same compulsory purchase order may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of

such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

13. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Appendix U, paragraph 24; and Appendix L, paragraph 27.

14. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the Schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Appendix U, paragraphs 20 and 21 and Appendix L, paragraph 18.)

15. Where additional land which is not being acquired compulsorily is to be vested in the owners) of the rights land, the additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the order. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.

16. An order which does not provide for the vesting of additional land but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired, should comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also paragraph 13 above.)

Appendix N

Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

GENERAL POSITION

1. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land . If it is proposed to include such land in an order, careful consideration should be made of the enabling legislation.

EXCEPTIONS TO GENERAL POSITION

2. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land. Section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 Act – including the compulsory purchase powers – shall apply to the Crown. Section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that Act to apply to Crown land with the consent of the 'appropriate authority' .

3. The enactments listed below also provide that interests in Crown land **which are not held by or on behalf of the Crown** *may* be acquired compulsorily if the appropriate authority agree:

   – section 296 of the Town and Country Planning Act 1990;

   – section 83 of the Planning (Listed Buildings and Conservation Areas) Act 1990;

   – section 25 of the Transport and Works Act 1992; and

   – section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part III of the Housing Act 1988 and Part VII of the Local Government and Housing Act 1989).

ISSUES FOR CONSIDERATION

4. From the foregoing, therefore, a Crown interest in land should generally not be included in an order unless -

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[1] Under various provisions, eg s283(1) of the Town and Country Planning Act 1990 and s83(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

[2] As appropriate, the Government Department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

[3] This is not an exhaustive list.

(a) there is an agreement under section 327 of the Highways Act 1980 which provides for the use of compulsory purchase powers; or

(b) the order is made under a power to which the provisions mentioned in paragraph 3 above relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land.

5. Where (b) above applies, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

6. Where the appropriate authority have entered into an agreement with a highway authority so as to permit the inclusion in a compulsory purchase order of the Crown's interest or interests, the land may be included and described as for any privately owned land. Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order Schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order Schedule should specify that 'all interests' in [*describe the land*] except the interest(s) held by [*the relevant Crown body*]' are being acquired. (See also Appendix U, paragraph 14).

Appendix P

Land Compensation Act 1961

Certificates of appropriate alternative development

INTRODUCTION

1. Part II of the Land Compensation Act 1961 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, sections 14-16 of the 1961 Act provide for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

2. Where, however, existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part III of the 1961 Act provides a mechanism for indicating the kind of development (if any) for which planning permission can be assumed by means of a so called 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

CERTIFICATE SYSTEM

4. Section 17(1) of the 1961 Act provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Circumstances in which certificates may be required include:

   (a) where there is no adopted development plan covering the land to be acquired;

   (b) where the adopted development plan indicates a 'green belt' or 'area of special landscape value' or leaves the site without specific allocation; and

   (c) where the site is allocated in the adopted development plan specifically for some public purpose, eg. a new school or open space.

5. The local planning authority is required to respond by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(4) requires the certificate to state either:

   – planning permission would have been given for development of one or more specified classes and for any development for which the land is to be acquired, but would not have been granted for any other development (a 'positive certificate'); or

– planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development (a 'nil' or 'negative' certificate).

Where the planning authority consider that permission would only have been granted subject to conditions or at a future time, or both, they are required to specify those conditions and/or that future time, as the case may be. 'Classes' here merely means types of development and is not limited to development within the classes listed in the Town and Country Planning (Use Classes) Order 1987. Planning authorities are not restricted to consideration of the classes specified by the applicant.

6. The applicant must state whether or not he considers that there are any classes of development which either immediately or at a future time would be appropriate for the land if it were not being acquired by an authority possessing compulsory purchase powers. If the applicant considers that there are such classes of development he must say what they are and when they would be appropriate. An applicant must give his grounds for the opinions expressed in his application, ie, the onus is on the applicant to substantiate the reasons why he considers certain alternative development to be appropriate. Acquiring authorities are able to apply for a 'nil' certificate indicating that no development would have been permitted.

7. The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers. That event is defined in section 22(2) of the 1961 Act, and so the relevant date will be:

(i) ***acquisition by private or hybrid Parliamentary Bill***—the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;

(ii) ***acquisition by compulsory purchase order*** – the date of notice of making of the order (or date of publication of the draft compulsory purchase order, if the acquiring authority is a Government Department);

(iii) ***acquisition by Transport and Works Act order*** – the date of notice of the making of the order;

(iv) ***acquisition by blight notice or a purchase notice*** – the date on which 'notice to treat' is deemed to have been served;

(v) ***acquisition by agreement*** – the date of the written offer by the acquiring authority to negotiate for the purchase of the land; or

(vi) ***vesting in the Urban Regeneration Agency (English Partnerships)*** – the date the draft vesting order is laid before Parliament.

Thereafter application may be made at any time, except that after a case has been referred to the Lands Tribunal an application may not be made unless both parties agree, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

8. The First Secretary of State ('the Secretary of State') considers it important as far as possible that the certificate system should be operated on broad and common-sense lines; it should be borne in mind that a certificate is not a planning permission but a statement to be used in ascertaining the fair market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Secretary of State would expect the local planning authority to exercise its planning judgement, on the basis of the absence of the scheme, taking into account those factors which would normally apply to consideration of planning applications eg. the character of the development in the surrounding area, any general policy of the development plan, and national planning policy along with other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard. Only those forms of development which for some reason or other are inappropriate should be excluded. Local planning authorities will note from section 17(7) that their certificate can be at variance with the use shown by the development plan for the particular site.

9. Where there is no adopted development plan, regard should be had to the draft plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development.

MAKING AN APPLICATION FOR A CERTIFICATE

10. The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 5 and 6 of the Land Compensation Development Order 1974 (SI 1974 No. 539) as amended (by SI 1986 No 435). Article 3(3) of the order requires that if a certificate is issued otherwise than for the class or classes of development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal to the Secretary of State (see paragraph 15 below). Article 3(4) requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued:

11. Attention is drawn to the following points-

    (a) acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly;

    (b) it may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some

development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie. in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world'); and

(c) a certificate once issued must be taken into account in assessing compensation for the compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

ADDITIONAL INFORMAL ADVICE

12. In order that the valuers acting on either side may be able to assess the fair open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. For example, they may be asked to assist in interpreting the relevant provisions of the development plan in a case falling within section 16. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should -

(a) give any such advice to both parties to the negotiation;

(b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.

DISREGARDING THE ACQUISITION AND THE UNDERLYING SCHEME (THE 'NO SCHEME WORLD')

13. As referred to in paragraph 5 above, section 17(4) of the 1961 Act requires the local planning authority (or the Secretary of State in relation to an appeal) to certify the alternative development (if any) for which planning permission would have been granted 'in respect of the land in question, *if it were not proposed to be acquired by an authority possessing compulsory purchase powers*'. For this reason, the purpose for which land is being acquired must always be disregarded, as must any other purpose involving public acquisition. It is not sufficient to ignore the fact of acquisition—the underlying public purpose of the scheme must also be disregarded. This principle was settled by the House of Lords in *Grampian Regional Council and others -v- Secretary of State for Scotland and others* [1983] 1 WLR 1340. The approach to be adopted is considered at paragraph 18 below.

14. Section 17(7) of the 1961 Act provides that a certificate may not be refused for a particular class of development solely on the grounds that it would be contrary to the relevant development plan. The purpose of this provision is to avoid the whole purpose of the certificate system being defeated, where land is allocated in the development plan

for the use for which it is being acquired. It follows that the local planning authority (or the Secretary of State as the case may be) must ignore development plan policies with no function beyond the acquisition scheme—for example, policies that earmark land for a road or school. But the decision maker may take account of broader policies—for example, Green Belts and countryside protection policies—if these imply that the classes of alternative development suggested by the applicant or appellant would not have been acceptable in the 'no scheme world'.

APPEALS

15. The right of appeal against a certificate under section 18 of the 1961, exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the Secretary of State[1]. He may confirm, vary or cancel it, or cancel it and issue a different certificate in its place, as he considers appropriate. Before determining an appeal he must, if required by either party, give both parties and the local planning authority an opportunity to be heard. Article 4 of the Land Compensation Development Order 1974, as amended, requires that written notice of an appeal must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued. The Secretary of State has no power to extend the appeal period. After notice of appeal has been given, however, the appellant has a further month to provide the Secretary of State with a copy of the application to the planning authority, a copy of the certificate issued (if any) and a statement of the grounds of appeal. The Secretary of State does have the power to extend this period, but only if he receives the request to do so before it expires. If the required documentation is not received within the required time scale, the appeal has to be treated as withdrawn. Any person aggrieved by the Secretary of State's decision on the appeal may challenge its validity in the High Court within a period of six weeks from the date of the decision.

RELEVANT DATE FOR APPRAISAL OF APPLICATIONS AND APPEALS

16. As can be concluded from the foregoing, there are three main issues in reaching a decision on any application or appeal—

    (a) the physical considerations—that is, the state of the land and the area in which it is situated;

    (b) the current and reasonably foreseeable planning policies; and

    (c) identifying and disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.

[1] Appeals should be addressed to him at the Planning Inspectorate Special Appeals and Call-ins Branch, 3/17 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

17. Case law, as established by the judgement of the House of Lords in *Fletcher Estates (Harlescott) Ltd -v- the Secretary of State for the Environment and the Secretary of State for Transport and The Executors of J V Longmore -v- the Secretary of State for the Environment and the Secretary of State for Transport* [2000] 11 EG 141, determined that all these issues must be considered at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers – the section 22(2) event as described at items (1)-(6) of paragraph 7 above.

18. For issue (c) in paragraph 16 above, the consequences of the scheme underlying the acquisition should be disregarded as they stood at the section 22(2) date, as if the scheme had been cancelled at that date (rather than as if it had never existed at all). And if the method of acquisition changes during the life of the scheme, the relevant date is that of the earliest section 22(2)(a) event.

Check list of documents to be submitted to the confirming authority[1]

The following documents should be submitted to the confirming authority with the compulsory purchase order for confirmation:

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Orders and maps		
	sealed order	1
Appendix V	sealed map	2
	unsealed order	2
	unsealed map	2
Certificates		
Appendix T	general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: - an order made on behalf of a parish council; - Church of England property; or - a listed building in need of repair.	1
Appendix S	protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in paragraph 3 of Appendix S (except for orders under section 47 of the Listed Buildings Act).	1

[1] See also paragraph 34 of this Part of the Memorandum.

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Statements		
Appendix R	Statement of Reasons sent by acquiring authority with personal notices, enclosures to the statement of reasons, and wherever practicable any other documents referred to therein. Statement of Reasons must include a statement concerning the planning position (see paragraphs 22-23 of this Part of the Memorandum).	2
Notices		
Appendix J	Where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990), a copy of the repairs notice served in accordance with section 48	1

Appendix R

Preparing the statement of reasons

The statement of *reasons* (see paragraphs 35-36 of this Part of the Memorandum) should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):

(i) a brief description of the order land and its location, topographical features and present use;

(ii) an explanation of the use of the particular enabling power (see paragraphs 13-15 of this Part of the Memorandum):

(iii) an outline of the authority's purpose in seeking to acquire the land;

(iv) a statement of the authority's justification for compulsory purchase, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human rights, and Article 8 if appropriate (see paragraphs 16-18 of this Part);

(v) a description of the proposals for the use or development of the land (see paragraph 19 of this Part);

(vi) a statement about the planning position of the order site (see paragraphs 22-23 of this Part and, for planning orders, Appendix A);

(vii) information required in the light of Government policy statements where orders are made in certain circumstances, eg. as stated in Annex E where orders are made under the Housing Acts (including a statement as to unfitness[1] where unfit buildings are being acquired under Part IX of the Housing Act 1985); or such information as may be required by any of the other documents mentioned in paragraph 11 of this Part;

(viii) any special considerations affecting the order site, eg. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc;

(ix) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented, eg. need for a waste management licence;

(x) details of any views which may have been expressed by a Government department about the proposed development of the order site;

[1] see footnotes to Appendix E concerning Housing Bill proposals to replace housing fitness test with Housing Health and Safety Rating System assessments.

(xi) any other information which would be of interest to persons affected by the order, eg. proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained;

(xii) details of any related order, application or appeal which may require a co-ordinated decision by the confirming Minister, eg. an order made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application; and

(xiii) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place.

Appendix S

Protected assets certificate and related information

1. Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

2. Every order submitted for confirmation (except orders made under section 47 of the Listed Buildings Act[1]) should therefore be accompanied by a protected assets certificate which includes for each category of buildings or assets protection referred to in paragraph 3 **either**:

   a nil return for that category of protection

   or

   a positive statement in the appropriate format set out in paragraph 3 (or any combination, as required) **and** the additional details described in paragraph 4.

3. The forms of positive statement to be submitted are as follows (numbers in brackets refer to the Notes at the end, * = delete as appropriate):-

   (a) **Listed buildings** (*1*)

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Listed Buildings Act [*insert order reference, list reference, address*].

   (b) **Buildings subject to building preservation notices**

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the……[*insert name of authority*] ……on……..[*insert date(s) of notice(s)*].

   (c) **Other buildings which may be of a quality to be listed**

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in Planning Policy Guidance Note 15, *Planning and the Historic Environment* 'PPG 15'.

[1] For such orders, which are submitted to DCMS for confirmation, only a copy of the repairs notice under section 48 of the Listed Buildings Act is required - see Appendix J.

(d) **Buildings within a conservation area** (*2*)

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 (or, as the case may be, section 70) of the Listed Buildings Act.

(e) **Scheduled Monuments**

The proposals in the order will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to the Department for Culture, Media and Sport.

(f) **Registered parks/gardens/historic battlefields**

The proposal in the order will involve the demolition/alteration/extension* of the following park(s)/garden(s)/historic battlefield(s)* which is/are* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

Notes

(1) This refers to buildings listed by the Secretary of State for Culture Media and Sport only (not other forms of listing).

(2) A direction of the Secretary of State, currently in paragraph 31 of Department of the Environment, Transport and the Regions Circular 01/2001 applies for the purposes of sections 74 and 75 of the Listed Buildings Act. The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 3(d) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of an article 4 direction, the permitted development right has been withdrawn and a planning application required.

4. Any positive statement under paragraph 3 above should also be accompanied by the following details:

- particulars of the asset or assets;

- any action already taken, or action which the acquiring authority propose to take, in connection with the category of protection, eg. consent which has been, or will be, sought; and

- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available.

5. Where a submitted order entails demolition of any building which is subsequently included in a conservation area, the confirming authority should be notified as soon as possible.

Appendix T

General certificate in support of order submission[1]

The certificate should be submitted in the following form:

THE ……. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered……in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues[2] of the …….. dated ……. 20…. and …… 20.... The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was…….. …… 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on …….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being …… 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on

   (i) every owner, lessee, tenant and occupier of all land to which the order relates;

   (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and

   (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry.[3]

   The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was …….. 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [*Where the order includes land in unknown ownership*] Notices in the Form numbered …….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of

[1] This certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures - see paragraph 38 of this Part of the Memorandum.

[2] The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the Department.

[3] For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.

the notices was not less than 21 days and the last date is/was …….. 20.... .

4. A copy of the order and of the map were deposited at …… on …… 20.... and will remain/remained available for inspection until …….. .

5. (1) A copy of the authority's statement of reasons for making the order has been sent to:

(a) all persons referred to in paragraph (i), (ii) and (iii) above (see paragraph 35 of this Part of the Memorandum);

(b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.

(2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a 'faculty') is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)

Appendix U

Preparing and serving the order and its associated notices.

PRESCRIBED FORM

1. The order and Schedule should comply with the relevant form as prescribed by regulation 3 of, and shown in the Schedule to, the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595). In accordance with the notes to the prescribed forms, the title and year of the Act authorising compulsory purchase must be inserted. Each acquisition power must be cited and the purpose(s) clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. (See Appendices A and M for examples of how orders made under certain powers may be set out. Appendix F contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

TITLE OF ORDER

2. The Regulations require that the title of the order should be at the head of the order, before the titles and years of the Acts. The order title should begin with the name of the acquiring authority, followed in brackets by the general area within which the order land is situated (note (*a*), to Forms 1-6) (see also paragraph 7 below). The title to an order should include the current year, ie. the year in which the order is actually made and not the year in which the authority resolved to make it, if different.

PLACE FOR THE DEPOSIT OF THE MAPS

3. A certified copy of the order map should be deposited for inspection at an appropriate place within the locality, eg. the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps are forwarded to the offices of the confirming authority (see Appendix Q).

INCORPORATION OF THE MINING CODE

4. Parts II and III of Schedule 2 to the 1981 Act, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the Act applies. The incorporation of both Parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

5 Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence. The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code. In areas of coal working notified to the local planning authority by the Coal Authority under paragraph (j) of article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (GDPO), authorities are asked to notify the Coal Authority[1] and relevant licensed coal mine operator if they make an order which incorporates the mining code.

EXTENT, DESCRIPTION AND SITUATION OF LAND SCHEDULED

6. The prescribed order formats require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore the area of each plot, eg. in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the 1981 Act prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

7. Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map. (See notes to prescribed Forms 1 to 6 and paragraph 2 above.)

8. Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as 'pasture land' or 'arable land'; agricultural and non-agricultural afforested areas may be described as 'woodland' etc.; and, if necessary, be related to some well-known local landmark, eg. 'situated to the north of School Lane about 1 km west of George's Copse'.

9. Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

10. Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly

[1] The Coal Authority, 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG, e-mail: thecoalauthority@coal.gov.uk

identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

COMPULSORY ACQUISITION OF NEW RIGHTS

11. See Appendix M.

COMPULSORY ACQUISITION WHERE AUTHORITY ALREADY OWNS INTERESTS

12. Except for orders made under highway land acquisition powers in Part XII of the Highways Act 1980, to which section 260 of that Act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [*describe the land*] except interests already owned by the acquiring authority'. The remaining columns should be completed as described in sub-paragraphs (l) to (n) in paragraph 16 below. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg. a Regional Development Agency might decide it wishes to exclude its own interests *and* local authority interests from an order.

13. Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a General Vesting Declaration (see this Part of the Memorandum, paragraphs 61-63). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming Minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

14. A similar form of words to that described in paragraph 12 above may be appropriate where the acquiring authority wish to include in the order Schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Appendix N.

SCHEDULED INTERESTS

15. The Schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2) of the 1981 Act and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is –

    (i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the 1981 Act);

    (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the 1981 Act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry[2] (section 12(2B) of the 1981 Act).

16. The following points should be noted in connection with service of notice and the compilation of the order Schedule:

(a) the Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, eg. persons who have entered into a contract to purchase a freehold or lease;

(b) the names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agree that service may be upon a person whom they designate to accept service on their behalf. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain;

(c) service should be effected on the Secretary or Clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie. as owner, lessee etc. (section 6(2) and (3) of the 1981 Act);

NB Under Company Law requirements, notices served on a company should be addressed to the Secretary of the company at its principal or registered office.

(d) individual trustees should be named and served;

(e) in the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the Secretary;

NB The land may be vested in the trustees and not the Secretary, but the trustees may be somewhat remote from the running of the club etc.; and since communications should normally be addressed to its Secretary, it is considered to be reasonable that the Secretary should also be served. However, service solely on the Secretary of such a body is not sufficient unless it can be shown that the Secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

(f) in the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees;

[2] See paragraph 16(p) below.

(g) where land is ecclesiastical property, ie. owned by the Church of England, notice of the making of the order must be served on the Church Commissioners[3] as well as on the owners etc. of the property (see section 12(3) of the 1981 Act);

(h) where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as 'English Heritage'), or the County Archaeologist, according to the circumstances shown below:

(1) in respect of a *scheduled* ancient monument – English Heritage, Fortress House, 23 Savile Row, London W1S 2ET; or

(2) in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist.

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission;

(i) where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify, respectively, the Countryside Agency or English Nature;

(j) when an order relates to land being used for the purposes of sport or physical recreation, the appropriate Regional Office of Sport England should be notified of the making of the order;

(k) where a person is served at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown;

(l) owners or reputed owners (column (3) of Table 1) – where known the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order may include covenants or restrictions which amount to interests in land and which can, therefore, be acquired or extinguished compulsorily. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, where the owner or occupier of the land and the person benefiting

[3] The Church Commissioners for England, 1, Millbank, Westminster, London, SW1P 3JZ.

from the right would not normally have been shown in the order Schedule, either (a) the Schedule should include the relevant owner or occupier, or (b) the statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest. Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the Schedule should refer to the right etc. and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority have no interest to acquire.

(m) lessees, tenants, or reputed lessees or tenants (column (3) of Table 1) – where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown;

(n) occupiers (column (3) of Table 1) – the sub-column should be completed in all cases. Where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly.

(o) Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in section 12(2A) and (2B) set out in paragraph 15(ii) and (iii) above should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order Schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire[4] which they are seeking to exercise. Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order Schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.

(p) In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry[5]. An acquiring authority does not have any statutory power under section 5A of the 1981 Act to requisition information about land other than that which it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the1981 Act provides an additional means

[4] An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Nature Conservancy Council to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.

[5] Popplewell J. in *R v Secretary of State for Transport ex parte Blackett [1992]* JPL 1041

of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

SPECIAL CATEGORY LAND (see also appendices L and M)

17. Land to which sections 17, 18 and 19 of the 1981 Act apply, (or paragraphs 4, 5 and 6 of Schedule 3 to the 1981 Act in the case of acquisition of a new right over such land) should be shown both in the order Schedule and in the list at the end of the Schedule, in accordance with the relevant Notes. But in the case of section 17 of the 1981 Act (or, for new rights, Schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of Schedule 3 (see also Appendix L paragraph 10). In the event that an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming Minister may need to consider whether confirmation should be refused as a result.

COMMONS, OPEN SPACES ETC.

18. An order may provide for special category land to which section 19 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

19. The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg. in green) on the order map and described in Schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in Schedule 3. See paragraph 22 below.

20. When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg. where the acquiring authority already own some of the exchange land.

21. In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (s)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

    (a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or

    (b) where the order land is all the land being acquired, the land which is 'described'.

    But if the acquiring authority seek a certificate under paragraph 6(1)(b) of Schedule 3 to the 1981 Act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate paragraph 6(2) of the Form (see Note (s)). Paragraph 6 becomes

paragraph 5 if only new rights are to be acquired compulsorily. (See Appendix M paragraph 14 in relation to additional land being given in exchange for a new right.)

22. Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both Schedules may apply, eg. the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

23. Paragraph 5 of Form 3 should identify the order land, by referring to either:

(a) paragraph 2, where the order land is all the land being acquired; or

(b) specific, numbered plots in the Schedule, where the order land is only part of the land being acquired.

This Form may also be used if new rights are to be acquired but additional land is not being provided. An order in this Form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

24. An order may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of Schedule 3 to the 1981 Act. (See also Appendix L, paragraph 27 and Appendix M, paragraph 13.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

SEALING, SIGNING AND DATING

25. All orders should be made under seal, duly authenticated and dated at the end (after the Schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure that this is achieved.

Appendix V

The order map(s)

1. The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words 'map referred to in [*order title*]' should be included in the actual heading or title of the map(s).

2. Land may be identified on order maps by colouring or any other method (see Note (*g*) to Forms 1, 2 and 3 and, in relation to exchange land, Note (*q*) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

3. The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master 'location plan' should indicate how the various sheets are interrelated.

4. Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked 'Map referred to in... 'in accordance with the prescribed form[1], a location map might be marked 'Location plan for the Map referred to in...' Such a location plan would not form part of the order and order map, but be merely a supporting document.

5. It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order Schedule or Schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

6. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order Schedule(s). (For orders which include new rights, see paragraphs 8 and 9 of Appendix M.) Land which is delineated on the map but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.

[3] see Form 1 in the Schedule to the 2004 Prescribed Forms Regulations 2004.

7. There should be no discrepancy between the order Schedule(s) and the map or maps, and no room for doubt on anyone's part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.

Appendix W

Addresses to which orders, applications and objections should be sent

1. Most compulsory purchase orders should be submitted to the Government Offices (GOs) for the Regions at the addresses shown in paragraph 3 below. The special cases mentioned in paragraphs 4-12 below should, however, be noted.

ORDERS FOR WHICH THE DEPUTY PRIME MINISTER AND FIRST SECRETARY OF STATE IS THE CONFIRMING AUTHORITY:

2. Where the Deputy Prime Minister and First Secretary of State is the confirming authority, the correspondence should be addressed 'The Deputy Prime Minister and First Secretary of State, Government Office for the [*region concerned*]' at the relevant address shown in paragraph 3, and identified by '(Planning)' or '(Housing)', as appropriate.

3. The Government Offices' addresses are-

North East
Citygate, Gallowgate, Newcastle upon Tyne NE1 4WH

North West
Sunley Tower, Piccadilly Plaza, Manchester M1 4BE

Yorkshire and Humberside
City House, New Station Street, Leeds. LS1 4US

West Midlands
77 Paradise Circus, Queensway, Birmingham. B1 2DT

East Midlands
The Belgrave Centre, Stanley Place, Talbot Street, Nottingham. NG1 5GG

South West
2 Rivergate, Temple Quay, Bristol BS1 6ED

East
Eastbrook, Shaftesbury Road, Cambridge CB2 2DF

South East
Bridge House, 1 Walnut Tree Close, Guildford, Surrey. GU1 4GA

London
Riverwalk House, 157-161 Millbank, London. SW1P 4RR

SECTION 19 CERTIFICATES

4. Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981, should be addressed to the Deputy Prime Minister and First Secretary of State at the Government Office (Planning) to which a compulsory purchase order would normally be sent for decision.

5. Applications for certificates relating to common land, town or village greens should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Countryside (Landscape and Recreation) Division, Common Land Branch, Zone 1/05, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB.

6. Applications for certificates relating to fuel or field garden allotments should be sent to the Deputy Prime Minister and First Secretary of State, Office of the Deputy Prime Minister (ODPM), Liveability and Sustainable Communities Division Branch C, Zone 4/G5, Eland House, Bressenden Place, London SW1E 5DU.

HIGHWAYS AND ROAD TRAFFIC ORDERS

7. Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984 should be addressed to the Secretary of State for Transport at the Government Office for the North East, Local Authority Orders Section, at the address given in paragraph 3. above.

AIRPORTS, AIRPORT SAFETY ZONES, AND CIVIL AVIATION ORDERS

8. Airports, and airport Public Safety Zones orders should be addressed to the Secretary of State for Transport at Airports Policy Division, Zone 1/26,Great Minster House, 76 Marsham Street, London SW1P 4DR. Civil aviation orders under the Civil Aviation Act 1982 and the Airports Act 1986 should be addressed to the Secretary of State for Transport at Civil Aviation Division, Department for Transport, Zone 1/22 Great Minster House, at the same address.

WASTE DISPOSAL ORDERS

9. Orders for *waste disposal* purposes should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Waste Strategy Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

WATER & SEWERAGE UNDERTAKER ORDERS

10. Orders made by *water or sewerage* undertakers should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Water Supply and Regulation Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

LOCAL AUTHORITY SEWERAGE OR FLOOD DEFENCE ORDERS AND DRAINAGE BOARD ORDERS

11. Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and Orders made by internal drainage boards under section 62(1)(b) of that Act, should be sent to the

Department for Environment, Food and Rural Affairs, Flood Management Division, Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

FLOOD DEFENCE ORDERS AND COAST PROTECTION ORDERS

12. Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work, should be sent to the Secretary of State for Environment, Food and Rural Affairs, Flood Management Division, Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

OTHER CONFIRMING AUTHORITIES

13. For other confirming authorities (see also paragraph 6 of this Part of the Memorandum) the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful:

Department	Address
Department for Education and Skills	Schools Assets Team, Mowden Hall, Staindrop Road, Darlington, Co. Durham DL3 9BG
Department of Health	(for NHS), NHS Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE (for civil estate, occupied by DH), Richmond House, 79 Whitehall, London SW1A 2NS
Home Office	50 Queen Anne's Gate, London SW1H 9AT
Department for Culture, Media & Sport	2-4 Cockspur Street, London SW1Y 5DH
Department for Work and Pensions	(for Benefits Agency), BA Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AB
Department of Trade and Industry	(electricity and gas undertakings), Onshore Electricity Development Consents. Licensing and Consents Unit, Bay 2123, 1 Victoria Street, London SW1H 0ET. (See guidance in Appendix B, paragraph 2 on submitting RDA orders)

Planning and compulsory purchase act 2004

Part 8: Compulsory purchase

INTRODUCTION

1. Part 8 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') came into force on 31 October 2004[1]. For non-Ministerial compulsory purchase orders, it makes changes to the statutory provisions governing compulsory purchase and compensation which fall into three broad categories:

   - changes to the planning compulsory purchase power in section 226(1)(a) of the 1990 Act – section 99 of the 2004 Act;

   - changes to the procedures for authorising compulsory purchase in the 1981 Act – sections 100[2], 102 and 105 of the 2004 Act; and

   - changes to compensation arrangements – definition of the valuation date in section 104 and provisions for a new 'loss payment' regime in sections 106 -109 of the 2004 Act.

2. Section 110 of the 2004 Act provides that the Secretary of State can by order amend certain enactments so that they correspond with the provisions in Part 8 of the Act or apply any such provisions or corresponding provisions. These enactments are those providing for the compulsory acquisition of an interest in land, for the interference with, or otherwise affecting, any right in relation to land, and for the compensation payable as a result. The provision is intended to cover enactments to which the procedure in the 1981 Act does not apply. Section 111 in Part 9 of the 2004 Act then provides that amendments made by, or by virtue of, Part 8 apply to the Crown to the extent that the enactments amended so apply.

CHANGES TO SECTION 226(1)(A) OF THE TOWN AND COUNTRY PLANNING ACT 1990

3. Section 99 of the 2004 Act amends section 226(1)(a) of the 1990 Act to substitute a new power for the compulsory acquisition of land for planning purposes. Under the new power, local authorities, joint planning boards and National Park authorities can acquire land compulsorily for the purposes of development, redevelopment or improvement if they think that –

   - the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, that land; and

[1] SI 2004 No. 2593.

[2] Section 101 makes similar changes to those in section 100 for orders published in draft and then made by Ministers (and the National Assembly for Wales).

- the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area.

These provisions do not affect any order made before 31 October 2004. *Appendix A provides additional guidance on the application of this power.*

PROCEDURES FOR THE MAKING AND CONFIRMATION OF NON-MINISTERIAL COMPULSORY PURCHASE ORDERS UNDER THE 1981 ACT

Procedure for orders made by non-Ministerial authorities

4. Section 100 of the 2004 Act amends the procedure for the making and confirmation of non-Ministerial compulsory purchase orders. Amendments and insertions are made to sections 6, 11, 13 and 15 of the 1981 Act and sections 13A, 13B and 13C are inserted. It only applies to orders for which the newspaper notices required under section 11 of the 1981 Act are published after 31 October 2004.

Service of notices to unknown owners

5. Section 6(4) of the 1981 Act provides that order documents can be regarded as having been properly served where it has not been possible to identify the name or address of an owner, lessee, or occupier by addressing them to the 'owner', 'lessee', or 'occupier' and delivering them to some person on the land, or by leaving them on or near the land. Section 100(2) of the 2004 Act extends this provision to apply to *unidentified tenants* by addressing the documents to the 'tenant'. This is necessary because the category of persons who qualify to be served with a notice of the making of an order has been extended under section 100(5) (see paragraph 10 below).

Site notices of making of orders

6. Section 100(4) of the 2004 Act inserts subsections (3) and (4) into section 11 of the 1981 Act requiring notices of the making of an order to be fixed on or near the order land and maintained there for a minimum of 21 days. These notices repeat the matters required to be included in the newspaper notices, giving at least twenty one days from the date of fixing the notice during which objections can be made to the confirming Minister.

Entitlement to receive notices and have objections heard

7. Section 100(5) of the 2004 Act amends section 12 of the 1981 Act to extend the categories of persons who are entitled to be served with notice of the making of an order. Such a person is referred to as a qualifying person. In addition to an owner, lessee and occupier, a qualifying person includes:

- a tenant whatever the period of the tenancy;

- a person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give notice to treat; and

- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry.

8. An objection made by a qualifying person is defined by section 13(6) of the 1981 Act as a relevant objection, subject to an exception. If a person is a qualifying person by virtue only of the provisions of the last bullet point of the last paragraph above, but the confirming Minister thinks that he is not likely to be entitled to make a claim under section 10 of the 1965 Act, any objection he makes will not be a relevant objection.

9. If a relevant objection is neither withdrawn nor disregarded, it will be a remaining objection (section 13A(1) of the 1981 Act). If a person has made a remaining objection, the confirming Minister must either hold a public inquiry or give every person who has made a remaining objection the opportunity of being heard by a person appointed to hear representations (section 13A(3) of the 1981 Act).

10. The categories of persons entitled to be served with notice of the making of an order has been extended to enable all those with an interest in the land to be acquired to have a right to have their objections heard. However, not all such persons may be identifiable by an acquiring authority after diligent inquiry, for instance, those who may claim to enjoy prescriptive rights across the land. The new requirements in section 11(3) and (4) of the 1981 Act to affix site notices therefore provide an additional means of informing those likely to have relevant interests.

Confirmation of orders

11. Section 100(6) amends sections 13 and 15 of the 1981 Act, setting out the procedure for confirming an order and giving notice of confirmation. In summary, these amended sections together with sections 13A, 13B and 13C of the 1981 Act provide that :

- objections to an order can be considered by means of a written representations procedure to be prescribed by regulations, as an alternative to an inquiry or hearing, where all those with remaining objections give their consent;

- awards of costs can be made where the written representations procedure is followed;

- confirmation of orders can be made in stages; and

- notice of confirmation of an order is also to be given by fixing a notice on or near the order land.

Unopposed orders

12. The amended subsections (1) and (2) of section 13 of the 1981 Act provide for the appropriate Minister to confirm an unopposed order with or without modifications so long as he is satisfied that the notice requirements have been complied with and either:

- no relevant objection is made; or

- every relevant objection made is withdrawn or disregarded (as defined in new section 13(7)).

Section 102 of the 2004 Act inserts section 14A of the 1981 Act which enables the acquiring authority to exercise the power to confirm an unopposed order in certain limited circumstances where the confirming Minister has notified it to that effect. These provisions are described in more detail in paragraphs 23 to 27 below.

Opposed orders – written representations procedure or inquiry

13. The new section 13A of the 1981 Act applies to the confirmation of a compulsory purchase order where there is at least one remaining objection which has not been either withdrawn or disregarded.

14. Section 13A(2) provides that the confirming Minister can proceed under the written representations procedure where everyone who has made a remaining objection consents in the prescribed manner. There are, however, exceptions. The order must not be subject to special parliamentary procedure (for example, where open space or common land is being acquired without providing other equivalent land in exchange). Nor, unless a certificate relating to statutory undertaker's land has been given under section 16(2) of the 1981 Act, can an order to which section 16 applies[3] be determined by written representations. This is because, if no such certificate has been given, there may need to be a joint inquiry with the Minister responsible for sponsoring the statutory undertaker's business in order to consider the issue of taking the undertaker's operational land.

15. Section 13A(3) provides that in cases where the written representations procedure cannot be used, or the confirming Minister decides that it would be inappropriate, a public local inquiry must be called. Alternatively, every person with a remaining objection can be given an opportunity to be heard in person by someone appointed by the confirming Minister for that purpose[4]. Whichever procedure is followed, section 13A(5) gives the confirming Minister the power to confirm an order, with or without modification, after he has considered any objections and the report arising from an inquiry or hearing.

16. Section 13A(6) enables a written representations procedure to be prescribed. Such a procedure is now set out in the Compulsory Purchase of Land (Written Representations) (Ministers) Regulations 2004 (SI 2004 No [2595]). In summary, these regulations provide that, once the confirming Minister has indicated that the procedure will be followed (following the consent of all remaining objectors), the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its Statement of Reasons. Once these have been copied to the objectors, they will also have 15 working days to make representations to the confirming Minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.

[3] Where the land concerned had been acquired by a statutory undertaker for the purposes of its undertaking and that undertaker makes representations to the appropriate Minister objecting to the compulsory acquisition.

[4] However, hearings are not normally used to consider objections to compulsory purchase orders because objectors are normally entitled to be heard in a public forum.

17. The Inspector then considers all the evidence, including these various representations, and makes his report to the confirming Minister. The confirming Minister can decide to call an inquiry at any time during this process. Objectors cannot withdraw their consent to the written procedure once it has been given, but they can request the confirming Minister to exercise his discretion to call an inquiry instead. More detailed information about the written representations procedure is given in 'Compulsory Purchase Procedure' (see footnote 10 to Part 1 of the Memorandum).

18. Where the written representations procedure is followed, section 13B of the 1981 Act gives the confirming Minister the power to make orders as to the costs of the parties making those representations, specifying which parties must pay the costs. A costs order can be made a rule of the High Court on the application of anyone named in the order to enable those costs to be recoverable as a civil debt. The acquiring authority can be required to pay the confirming Minister's costs if so directed, in which case the amount certified by the confirming Minister is recoverable as a civil debt.

Confirmation in stages

19. Section 13C of the 1981 Act provides a general power for a compulsory purchase order to be confirmed in relation to part only of the land included in it. This replaces similar powers applicable to specific types of acquiring authorities[5], which have been repealed.

20. To confirm in part, the confirming Minister will need to be satisfied that the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless as to whether the remainder of the order is ever confirmed. In addition, the confirming Minister has to be satisfied the statutory requirements for the service and publication of notices have been followed. A Minister may confirm part of an order prior to holding a public inquiry or following the written representations procedure but, to be able to do so, there must be no remaining objections relating to the part to be confirmed.

21. The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The remaining part is then treated as if it were a separate order. The notices of confirmation of the confirmed part of the order, which have to be published, displayed and served in accordance with section 15 of the 1981 Act, must include a statement indicating the effect of that direction.

Notices after confirmation of an order

22. Section 100(7) of the 2004 Act amends section 15 of the 1981 Act dealing with notices of the confirmation of an order. In addition to the existing provisions, section 15 now requires the confirmation notice to state that a person aggrieved by the order may apply to the High Court for it to be quashed[6]. This is not a new right, but the requirement to refer to it in the confirmation notice has been added in order to ensure that all those

[5] Section 245 of the 1990 Act; paragraph 2 of Schedule 4 to the Welsh Development Agency Act 1975; Schedule 28 to the Local Government, Planning and Land Act 1980 (re urban development corporations); section 259 of the Highways Act 1980; paragraph 2 of Schedule 10 to the Housing Act 1988 (re housing action trusts); Schedule 20 to the Leasehold Reform Housing and Urban Development Act 1993 (re Urban Regeneration Agency); and paragraph 1 of Schedule 5 to the Regional Development Agencies Act 1990 (re RDAs)

[6] as provided for in section 23 of the 1981 Act

with an interest in the land are made aware of it. The other new requirement is for a confirmation notice to be fixed on or near the land covered by the compulsory purchase order. This is to be addressed to persons occupying or having an interest in the land and must, so far as is practicable, be kept in place by the acquiring authority for six weeks beginning with the date on which the order becomes operative[7].

Confirmation by an acquiring authority

23. Section 14A of the 1981 Act (inserted by section 102 of the 2004 Act) enables an acquiring authority to exercise the power to confirm an order if the confirming Minister has notified the acquiring authority to that effect, and such notice has not been revoked. The confirming Minister may only give such notice if there are no objections at all to the order and certain other conditions are met. There is no obligation on the confirming Minister to issue such a notice if he considers that it would be inappropriate to do so. It is intended to help to speed up the confirmation of unopposed orders, and should be particularly helpful where, as part of a wider land assembly exercise, an acquiring authority needs to exercise its compulsory purchase powers in order to acquire title to land in unknown ownership. This power is only exercisable in respect of compulsory purchase orders for which the newspaper notices required under section 11 of the 1981 Act were published after 31 October 2004.

24. The power of the confirming Minister to issue such notice is excluded in cases where either:

- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the Minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking[8]; or

- the land to be acquired forms part of a common, open space, or fuel or field garden allotment[9].

The reason for this is that confirmation of an order in these circumstances is contingent on other ministerial decisions.

25. The confirming Minister must also be satisfied that all the statutory requirements as to the service and publication of notices have been complied with; there are no outstanding objections to the order; and it is capable of being confirmed without modification[10]. These limitations avoid the acquiring authority having to decide potentially contentious matters on which it may not be in a wholly impartial position.

26. The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the

[7] The operative date is defined in section 26 of the 1981 Act as the date on which the confirmation notice is published. The need for the notice to remain visible for six weeks from that date relates to the period specified in section 23(4) of the 1981 Act during which an application can be made to the High Court to quash the order.

[8] Section 16(1) of the 1981 Act

[9] Section 19 of the 1981 Act

[10] This might not be possible if, for example, the acquiring authority has made mistakes in preparing the map or schedule accompanying the order.

acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming Minister to revoke the notice given under these provisions.

27. An acquiring authority exercising the power to confirm must notify the confirming Minister as soon as reasonably practicable of its decision. Until such notification is received, the confirming Minister can revoke the acquiring authority's power to confirm. Such revocation might be necessary, for example, if the confirming Minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable time and those affected by the order were to make representations to the confirming Minister about the delay.

Power to obtain information on interests in land to be acquired

28. Section 105 of the 2004 Act inserts sections 5A and 5B into the 1981 Act. These ensure that acquiring authorities with statutory powers to acquire land compulsorily (to which the 1981 Act applies) can obtain the information about ownership and occupation which they may need in order to proceed with negotiations for the purchase of such land by agreement and/or compulsorily. Some types of acquiring authorities already have powers to do this[11] and, as these alternative powers have not been repealed, any authority needing to obtain information will need to make sure that they quote the correct powers and the correct penalties pertaining to those powers. The new powers are aimed mainly at ensuring that the Regional Development Agencies, Urban Development Corporations and English Partnerships (as the Urban Regeneration Agency) are no longer hampered by the fact that they have not hitherto enjoyed such powers.

29. Section 5A enables acquiring authorities to require details of the names and addresses of any person believed to be an owner, lessee, tenant or occupier, or believed to have an interest in the land which they are seeking to acquire. The persons from whom the acquiring authority can require such information are restricted to the occupier of the land; anyone having an interest in the land as a freeholder, mortgagee or lessee; anyone who receives rent for the land, whether directly or indirectly; and anyone who is authorised to manage the land or its letting by an agreement with someone having an interest in the land. Section 5B makes failure to provide such information without reasonable excuse or knowingly to provide false information an offence subject to a fine on level 5 on the standard scale.

CHANGES TO COMPENSATION ARRANGEMENTS

Section 103 of the 2004 Act – Assessment of compensation: valuation date

30. Section 103 of the 2004 Act inserts section 5A into the Land Compensation Act 1961. This new section establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that

[11] Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 empowers local authorities to requisition for such information with a view to performing a function conferred on them by any enactment. Local planning authorities have similar, but not identical, powers under section 330 of the 1990 Act exercisable for the purpose of enabling them to perform functions under that Act. Highways authorities have powers to require information under section 297 of the Highways Act 1980.

such a valuation is to be based on market values prevailing as at the valuation date and on the condition of the relevant land and any structures on it on that date.

31. Where an acquiring authority is following the notice to treat procedure, the relevant valuation date is the date on which the acquiring authority enters and takes possession of the land. Alternatively, where title to the land is being vested in the acquiring authority automatically by means of a general vesting declaration, the relevant valuation date is the date on which title to the land vests in the authority (the 'vesting date'). The only statutory variation from these dates arises if the compensation payable has already been determined by the Lands Tribunal before either such trigger date has been reached. In such a case, the date on which the compensation is determined by the Lands Tribunal becomes the relevant valuation date. It also remains open to the person whose land is being acquired to agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

32. Section 5A(5) of the 1961 Act makes it clear that the relevant valuation date for the *whole* of the land included in any single notice of entry is to be the date on which the acquiring authority first takes possession of any *part* of that area of land. This means that compensation becomes payable to the claimant for the whole site from that date; and section 5A(6) gives him the right to receive interest on the compensation due to him in respect of the value of the whole site from that date until full payment is actually made.

Advance payments of compensation to mortgagees

33. Section 104 of the 2004 Act amends sections 52 and 52A of the Land Compensation Act 1973 and inserts sections 52ZA, 52ZB and 52ZC into that Act. Their effect is that, once possession has been taken and so long as certain conditions are fulfilled, a claimant mortgagor can require the acquiring authority to make advance payments of compensation direct to his mortgagee. Advance payments relating to the amount owing to the mortgagee can only be made direct to the mortgagee, and can only be made with his consent. Payments can be made to more than one mortgagee, but no payment can be made to any mortgagee until the interest of any other mortgagee whose interest has priority has been released.

34. Section 52ZA enables an acquiring authority to make an advance payment to a claimant's mortgagee where the total amount of the mortgage principal outstanding does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB applies where the principal exceeds 90% of the total estimated compensation due to the claimant. The conditions relating to both types of payments are complex and, in order to protect the interests of all three parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgagee(s) in determining the amount of the advance payable.

Loss payments

35. Sections 106-109 of the 2004 Act insert sections 33A to 33K into the Land Compensation Act 1973 to provide a new statutory scheme which, with certain exclusions, provides for 'loss payments' to be paid to those with an interest in a property being compulsorily acquired and who are not already entitled to receive payments under

the home loss scheme in sections 29 to 33 of the 1973 Act. Loss payments are additional to the compensation due on the basis of the value of the claimant's interest in the land being acquired, any compensation due for severance and injurious affection and compensation to cover disturbance costs.

36. The new regime applies both to compulsory acquisitions and, by virtue of section 33J, to situations where the land is being acquired by agreement by an authority which has the power to acquire it compulsorily. The intention behind this is to provide an additional incentive to encourage early voluntary negotiations between acquiring authorities and landowners, possibly even avoiding the need to initiate the statutory acquisition procedures. Loss payments can only be made in respect of the compulsory acquisition of any interest in land resulting from a compulsory purchase order made[12] after 31 October 2004. In the case of voluntary acquisitions, though, such payments can be made in respect of any acquisition agreed from that date.

Repeal of farm loss payments

37. As the new loss payments regime includes compensation for the loss of agricultural land, the farm loss payments scheme under sections 34 to 36 of the 1973 Act has been repealed from 31 October 2004.

Basic loss payments

38. Section 33A of the 1973 Act provides for the payment of a *basic loss payment* to any person who has a qualifying interest in land being acquired under compulsory purchase powers and in respect of which he or she is not entitled to receive a home loss payment. This payment is assessed at the rate of 7.5% of the value of the claimant's interest in the property to be acquired, subject to a maximum of £75,000. This means that the maximum becomes payable where the value of the claimant's interest in the property being acquired is £1 million. No minimum sum is specified.

39. If any part of a claimant's interest is a dwelling for which he is entitled to receive a home loss payment, the value of that dwelling (as assessed for entitlement to a home loss payment) has to be subtracted from the value of the entire interest before calculating the basic loss payment due for the remainder.

40. Where a claimant's compensation has been assessed on the basis of equivalent reinstatement, the open market value is deemed to be nil. This means that no basic loss payment is payable. Nevertheless, the claimant would be entitled to claim an occupier's loss payment (referred to below) if in occupation.

Occupiers' loss payments

41. Section 107 inserts sections 33B and 33C into the 1973 Act providing for *occupier's loss payments* to be made to any person who satisfies the conditions for the basic loss payment and has also occupied the land to be acquired for the qualifying period.

42. Section 33B provides for occupier's loss payments in respect of *agricultural land* and section 33C provides for occupier's loss payments in respect of *other land*. Subject to a

[12] made in draft in the case of a Ministerial compulsory purchase order (or a compulsory purchase order made by the National Assembly for Wales).

maximum of £25,000, the occupier's loss payment is assessed either on the basis of 2.5% of the value of the claimant's interest in the land being acquired or, where to do so would be more advantageous to the claimant, on the basis of one of two alternative formulae. One of these relates to the area of *land* being taken and the other to the floor space of the *building* from which the claimant is being displaced. Whichever of these three alternative approaches is adopted, the maximum amount payable for an occupier's loss payment is £25,000. This means that the maximum TOTAL loss payment to an owner-occupier is £100,000[13].

Occupier's loss payments – land amounts

43. Where it is advantageous to the claimant to calculate his entitlement to a loss payment on the basis of the area of land being taken, section 33B(8) specifies that for agricultural land, this is to be £100 per hectare for the first 100 hectares taken, and then £50 per hectare for the next 300 hectares or part of a hectare. A minimum payment of £300 is also specified to benefit those whose land-take is less than 3 hectares.

44. Where land other than agricultural land is being taken, section 33C(8) specifies that the land amount is to be £2,500 or, if it would yield a higher amount, £2.50 per square metre (or part of a square metre). This is substantially higher than the land amount payable in respect of agricultural land to reflect the differential in the range of typical values between agricultural and other land. The minimum threshold of £2,500 is intended to ensure that a claimant whose interest is not very valuable will still receive a meaningful sum to compensate for the upset and inconvenience caused by being displaced. Hence, if only part of a claimant's land is being taken so that he is not being displaced, section 33C(9) stipulates that the minimum payable is to be £300.

Occupier's loss payments – buildings amounts

45. Section 33B(9) specifies that the basis for calculating the alternative buildings amount for agricultural land is to be £25 per square metre (or part of a square metre) of the external gross floor space of any buildings on the land. This is identical to the buildings amount for the occupiers' loss payments in respect of other land, as provided for in section 33C(10), as the upset and inconvenience caused by being displaced from operational buildings is likely to be similar whatever the purpose to which they are being put.

Exclusions from entitlement to loss payments

46. Section 108 of the 2004 Act inserts section 33D into the 1973 Act to specify exclusions from entitlement to loss payments where the compulsory acquisition has been triggered by the owner's failure to comply with the terms of one of the statutory notices or orders specified in that section. This is aimed at persons who have either deliberately or neglectfully allowed their property to deteriorate to the point where, following their failure to comply with a statutory requirement to remedy the situation, it has to be compulsorily purchased in order to bring it into beneficial use. The section includes a regulation-making power to enable the Minister to add any new statutory remedial actions which may be created in the future and to delete any of the current remedial powers if they were to be repealed.

[13] £75,000 for the basic loss payment plus an occupier's loss payment of £25,000.

PART 2 – THE CRICHEL DOWN RULES

RULES AND PROCEDURES

1. This Part of the Memorandum sets out the revised non-statutory arrangements ('Crichel Down Rules') under which surplus Government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the Annex to this Part below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this Part all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are Government Departments, including Executive Agencies, other non-departmental public bodies ('NDPBs'), local authorities or other statutory bodies. See paragraphs 3 and 4 below. The Annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the Department, the Rules apply in a mandatory manner.

2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK Government Department. Similar rules have been issued by the National Assembly for Wales. Departments disposing of land in Scotland should follow the procedures set out in circular SODD 38/1992: *Disposal of Surplus Government Land – The Crichel Down Rules* and in Northern Ireland they should follow the guidance produced by the Central Advisory Unit of the Valuation and Lands Agency.

3. Detailed guidance on the general procedures to be followed when disposing of surplus land are set out in Annex 24.2 to Chapter 24 of Government Accounting 2000 (Disposal of land and buildings and other land transactions on the open market). Disposing departments should, where appropriate, also have regard to the advice in *Revised Guidance on Securing the Better Use of Empty Homes* issued in August 1999 by the Department of the Environment, Transport and the Regions.

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the Government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of PFI/PPP projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the PFI/PPP contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water

Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

THE LAND TO WHICH THE RULES APPLY

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter II in Part VI of, and Schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

THE GENERAL RULES

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

INTERESTS QUALIFYING FOR OFFER BACK

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. 'Successor' means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

TIME HORIZON FOR OBLIGATION TO OFFER BACK

14. The general obligation to offer back will not apply to the following types of land:

(1) agricultural land acquired before 1 January 1935;

(2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;

(3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

EXCEPTIONS FROM THE OBLIGATION TO OFFER BACK

15. The following are exceptions to the general obligation to offer back:-

(1) Where it is decided on specific Ministerial authority that the land is needed by another department (i.e. that it is not, in a wider sense, surplus to Government requirements).

(2) Where it is decided on specific Ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.

(3) Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile.

(4) Where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.

(5) Where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:-

(i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947;

(ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those Acts, and which is resold for private industrial use;

(iii) where dwellings are bought for onward sale to a Registered Social Landlord (RSL);

(iv) sites purchased for redevelopment by English Partnerships or a regional development agency (RDA).

(6) Where a disposal is in respect of either:-

(i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

(ii) a site which consists partly of land which has been materially changed in character and part which has not;

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (i.e. its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

(7) Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible Minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

DWELLING TENANCIES

18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this Part) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

PROCEDURES FOR DISPOSAL

19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

Where former owner's address is known

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:-

    (a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site;

    (b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

    Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED

25. The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

TERMS OF RESALE

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

RECORDING OF DISPOSALS

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.

Appendix A

(see paragraph 18 of the Rules)

SITTING TENANTS

1. In the context of the Rules, the expression 'sitting tenant' was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department's requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:-

   (a) a regulated tenancy under the Rent Act 1977, (i.e. a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   (b) an assured tenancy under the Housing Act 1988, (i.e. a tenancy begun on or after that date, but excluding an assured shorthold tenancy).

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:-

   (a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   (b) an assured shorthold tenancy under the Housing Act 1988.

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B

(see paragraph 25 of the Rules)

SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Annex

(see paragraph 1 of the Rules)

Guidance for departments

CHANGES FROM THE 1992 RULES

1. Several changes have been made to the Rules following the recommendations in the research report 'The Operation of the Crichel Down Rules' (Gerald Eve with the University of Reading, DETR July 2000), the comments received on them and in response to the ODPM consultation exercise of September 2003. A significant change is the provision of this guidance, which is intended to provide clarification even where the terms of a particular Rule remained unaltered.

2. Substantive changes have been made to the following Rules:-

- **Rule 2** a new Rule to set out the territorial application of the revised Rules;
- **Rule 3** updated references to guidance on the general procedures to be followed when disposing of surplus land;
- **Rule 4** revision of the former Rules 3 and 4 dealing with the application of the Rules to local authorities, statutory bodies and certain bodies in the private sector;
- **Rule 5** a new rule dealing with land transfers from public bodies to other bodies, PFI/PPP projects;
- **Rule 8** formerly Rule 6, dealing with land acquired under blight provisions;
- **Rule 9** formerly Rule 7, this applies the Rules to leasehold disposals;
- **Rule 10** formerly Rule 9, the references to 'agricultural land' and 'urban site' have been deleted;
- **Rule 12** formerly Rule 11, clarification of the arrangements for offering back land that at the time of acquisition was subject to a long lease;
- **Rule 14** formerly Rule 13, defines the date of acquisition as the date of conveyance, transfer or vesting declaration;
- **Rule 15** formerly Rule 14, clarifies the handling of transfers of land between bodies with compulsory purchase powers, the treatment of small areas of land, provides examples where the offer back would be inconsistent with purpose of the original acquisition, the treatment of consortia and competing bids;

- **Rule 16** new Rule dealing with the notification of former owners if any of the exceptions to the Rules apply;

- **Rules 17 & 18** formerly Rules 15 and 16 the application of Rule 17 to sitting tenants is clarified and references to 'house' and 'tenanted house' amended;

- **Rule 22** rationalises the arrangements for advertisements;

- **Rule 28** new Rule dealing with the maintenance of records.

BODIES TO WHICH THESE RULES APPLY (RULE 2)

3. These Rules apply to all Government Departments, executive agencies and NDPBs in England and other organisations in England (such as NHS Trusts) which are subject to a power of direction by a Minister. They also apply to land in Wales acquired and still owned by a UK Government Department.

APPLICATION OF THE RULES BY LOCAL AUTHORITIES AND STATUTORY BODIES (RULE 4)

4. Local authorities and other statutory bodies which are not subject to a Ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK Minister, such as the Secretary of State for Trade and Industry. The previous practice amongst such authorities has been very variable, but the Government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires Government Departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

5. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon Ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the Chairman. For disposals at the end of PPP/PFI agreements, departments may wish to seek legal advice in order to take account of the Rules.

THE THREAT OF COMPULSION (RULE 7)

6. A 'threat of compulsion' should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively 'threatened' to use them for this Rule to apply. It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority could use its powers

under the Highways Act 1980 to make a CPO. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

WHAT CONSTITUTES A DISPOSAL? (RULE 9)

7. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting PFI/PPP projects do not fall within the Rules, see Rule 5. Government Accounting makes it clear that sale is normally preferable to lease but there may be cases where a short-term lease is appropriate if there is little prospect of an early sale. See paragraph 6 of Annex 24.2 to Chapter 24 of Government Accounting 2000.

WHAT IS A MATERIAL CHANGE OF CHARACTER? (RULE 10)

8. The Rules refer to a 'material change in character' to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, 'material change' was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

LAND SUBJECT TO A LONG LEASE (RULE 12)

9. If neither the former freeholder or former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

WHO IS A SUCCESSOR? (RULE 13)

10. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification 'otherwise than by purchase' may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

WHEN IS THE DATE OF ACQUISITION? (RULE 14)

11. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.

WHAT ARE 'REASONS OF PUBLIC INTEREST'? (RULE 15(2))

12. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See *R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler*, The Times 4 August 2000).

SMALL AREAS OF LAND (RULE 15(3))

13. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

WHEN IS IT INCONSISTENT WITH THE PURPOSE OF THE ORIGINAL ACQUISITION TO OFFER LAND BACK? (RULE 15(5))

14. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by English Partnerships or a regional development agency (RDA) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

TRANSFER TO THE PRIVATE SECTOR

15. Rule 14(6) of the 1992 Rules, (which would have been Rule 15(6) in these Rules) has been deleted as such transfers are now dealt with by Rule 5, which makes it clear that land transferred to another body for the same functions is not surplus.

DWELLING TENANCIES (RULE 18)

16. For the purposes of the Rules a 'dwelling' includes a flat.

PROCEDURES FOR DISPOSAL (RULES 19-24)

17. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

MARKET VALUE AND THE DATE OF VALUATION (RULE 26)

18. For the purposes of the Rules, 'market value' means 'the best price reasonably obtainable for the property'. This is equivalent to the definition of 'market value' in the RICS Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (i.e. any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). Full guidance is available in Annex 24.2 to Chapter 24 of Government Accounting 2000. 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

MAINTENANCE OF RECORDS (NEW RULE 28)

19. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.

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ODPM

Circular 06/2004

Compulsory Purchase and the Crichel Down Rules

Secretary of State
Department for Energy and Climate Change
c/o Denise Libretto
Head of Networks, National Infrastructure Consents
Kings Building, 2nd floor, c/o 3 Whitehall Place
London
SW1A 2AW

Your Ref

Our Ref
LKS/NJE/147833.Y070869

Date
18 March 2015

Dear Sir

APPLICATION FOR CONFIRMATION OF COMPULSORY PURCHASE ORDER
NATIONAL GRID NEMO LINK LIMITED (PEGWELL BAY) COMPULSORY PURCHASE ORDER ("the ORDER")
SECTION 10 AND SCHEDULE 3 ELECTRICITY ACT 1989

We act on behalf of the applicant Nemo Link Limited ('**the acquiring authority'**), which was previously known as National Grid Nemo Link Limited (company registration number 8169409). By this letter, the acquiring authority is applying to the Secretary of State, as the confirming Minister, to confirm the Order.

The acquiring authority made the Order on 31 December 2014 using its powers under the Electricity Act 1989. The Order would give the acquiring authority the power to purchase compulsorily rights over land needed in relation to the construction of an electrical interconnector between the UK and Belgium known as the Nemo Link.

Nemo Link is a joint project between National Grid and Elia as set out in paras 1.3 and 3.2 of the enclosed Statement of Reasons. At the time the Order was made the acquiring authority was wholly owned by the National Grid group. The application for confirmation is being made now that the acquiring authority is jointly owned by National Grid and Elia, which acquired a share in the acquiring authority on 27 February 2015.

This application is made in accordance with the guidance in OPDM circular 06/2004. Please find enclosed with this application the following:

- 1 x sealed Order;
- 2 x sealed maps;
- 2 x unsealed Order;
- 2 x unsealed maps;

- 1 x general certificate ir
- 2 x copies of statement of reasons;
- 2 x copies of enclosures to statement of reasons where these have not already been provided to the Secretary of State's office in electronic form.

Should you have any questions regarding this application please do not hesitate to contact Lauren Spencer on the contact details below.

Yours faithfully

Bircham Dyson Bell LLP
T +44 (0)20 7783 3758
M +44 (0)7973 285822
F +44 (0)20 7222 3480
E laurenspencer@bdb-law.co.uk

economie
FOD Economie, K.M.O., Middenstand en Energie

1000 Brussel, 20 mei 2014.

E26000

ELIA Asset
*t.a.v. de heer Jeroen **MENTENS**,*
verantwoordelijke vergunningen BOG
Keizerslaan 20
1000 BRUSSEL

Betreft : ***Eensluidend verklaard afschrift van het ministerieel besluit van 9 APRIL 2014 (EB-2013-0019-A)***

uw berichten

uw kenmerk

ons kenmerk
E2.A-NT/OFFSHORE/ZEEKABELS/D113/EB-2013-0019-A/2014/001302/nvdv/nv

bijlagen
MB

Geachte heer,

Ik heb de eer U hier ingesloten, een eensluidend verklaard afschrift toe te sturen van het ministerieel besluit van 9 april 2014 houdende toekenning aan de n.v. ELIA ASSET van een vergunning voor de aanleg van een bipolaire gelijkstroom kabelsysteem voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

Met de meeste hoogachting,

In naam van de Minister,
De Gemachtigde ambtenaar

[redacted]

G. VANBAVINCKHOVE.

Contactpersoon: G. VANBAVINCKHOVE
~~Algemene Directie Energie~~ – Afdeling VERGUNNINGEN EN NIEUWE TECHNOLOGIEËN

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KONINKRIJK BELGIE

FEDERALE OVERHEIDSDIENST
ECONOMIE, K.M.O.,
MIDDENSTAND en ENERGIE

ROYAUME DE BELGIQUE

SERVICE PUBLIC FEDERAL
ECONOMIE, P.M.E.,
CLASSES MOYENNES et ENERGIE

EB-2013-0019-A

Ministerieel besluit houdende toekenning aan de n.v. ELIA ASSET van een vergunning voor de aanleg van een bipolaire gelijkstroom kabelsysteem voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

Arrêté ministériel portant octroi à la s.a. ELIA ASSET d'une autorisation de pose d'un système de câbles bipolaires en courant continu pour une interconnexion entre les réseaux de transport de la Grande-Bretagne à Richborough et de la Belgique à Zeebrugge pour la partie des espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer.

De Staatssecretaris voor Energie,

Le Secrétaire d'Etat à l'Energie,

Gelet op de wet van 13 juni 1969 inzake de exploratie en de exploitatie van niet-levende rijkdommen van de territoriale zee en het continentaal plat, artikel 4, vervangen bij de wet van 22 april 1999 en artikel 5, gewijzigd bij de wet van 22 april 1999;

Vu la loi du 13 juin 1969 sur l'exploration et l'exploitation des ressources non vivantes de la mer territoriale et du plateau continental, l'article 4, remplacé par la loi du 22 avril 1999, et l'article 5, modifié par la loi du 22 avril 1999;

Gelet op de wet van 22 april 1999 betreffende de exclusieve economische zone van België in de Noordzee, artikel 38;

Vu la loi du 22 avril 1999 concernant la zone économique exclusive de la Belgique en Mer du Nord, l'article 38;

Gelet op de wet van 29 april 1999 betreffende de organisatie van de elektriciteitsmarkt, laatst gewijzigd bij de wet van 26 december 2013;

Vu la loi du 29 avril 1999 concernant l'organisation du marché de l'électricité, modifiée en dernier lieu par la loi du 26 décembre 2013;

Gelet op het koninklijk besluit van 12 maart 2002 betreffende de nadere regels voor het leggen van elektriciteitskabels die in de territoriale zee of het nationaal grondgebied binnenkomen of die geplaatst of gebruikt

Vu l'arrêté royal du 12 mars 2002 relatif aux modalités de pose de câbles d'énergie électrique qui pénètrent dans la mer territoriale ou dans le territoire national ou qui sont installés ou utilisés dans le cadre de

worden in het kader van de exploratie van het continentaal plat, de exploitatie van de minerale rijkdommen en andere niet-levende rijkdommen daarvan of van de werkzaamheden van kunstmatige eilanden, installaties of inrichtingen die onder Belgische rechtsmacht vallen;

l'exploration du plateau continental, de l'exploitation des ressources minérales et autres ressources non vivantes ou de l'exploitation d'îles artificielles, d'installations ou d'ouvrages relevant de la juridiction belge;

Gelet op het koninklijk besluit van 19 december 2002 houdende een technisch reglement voor het beheer van het transmissienet van elektriciteit en de toegang ertoe;

Vu l'arrêté royal du 19 décembre 2002 établissant un règlement technique pour la gestion du réseau de transport de l'électricité et l'accès à celui-ci;

Overwegende dat de n.v. ELIA ASSET op 25 februari 2013 een aanvraag tot vergunning voor de aanleg van elektriciteitskabels heeft ingediend;

Considérant que la s.a. ELIA ASSET a introduit le 25 février 2013 une demande visant à obtenir une autorisation de pose de câbles d'énergie électrique;

Overwegende dat adviezen zijn geformuleerd door de hierna vermelde administraties :

Considérant que des avis ont été formulés par les administrations mentionnées ci-après :

- Beheerseenheid van het Mathematisch Model van de Noordzee en het Schelde-estuarium van het departement "Beheer van het mariene ecosysteem" van het Koninklijk Belgisch Instituut voor Natuurwetenschappen;
- Unité de Gestion du Modèle mathématique de la Mer du Nord et de l'estuaire de l'Escaut du département « Gestion de l'écosystème marin » de l'Institut royal des Sciences naturelles de Belgique ;
- Federale Overheidsdienst Volksgezondheid, Veiligheid van de Voedselketen en Leefmilieu, DG Leefmilieu;
- Service Public Fédéral Santé Publique, Sécurité de la Chaîne Alimentaire et Environnement, DG Environnement;
- Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie, Algemene Directie Kwaliteit en Veiligheid;
- Service Public Fédéral Economie, P.M.E., Classes moyennes et Energie, Direction générale Qualité et Sécurité;
- Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie, Algemene Directie Economisch Potentieel;
- Service Public Fédéral Economie, P.M.E., Classes moyennes et Energie, Direction générale Potentiel Economique;
- Federale Politie, Scheepvaartpolitie Zeebrugge;
- Police fédérale, Police maritime Zeebrugge;
- Vlaamse Overheid, Departement Landbouw en Visserij, Departement Mobiliteit en Openbare Werken en het Agentschap Maritieme Dienstverlening en Kust;
- Vlaamse Overheid, Departement Landbouw en Visserij, Departement Mobiliteit en Openbare Werken en het Agentschap Maritieme Dienstverlening en Kust;

Overwegende dat de adviezen van de volgende betrokken administraties:

Considérant que les avis des administrations mentionnées suivantes :

- Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie, Algemene Directie Energie, Afdeling Infrastructuur;
- Service Public Fédéral Economie, P.M.E., Classes moyennes et Energie, Direction générale Energie, Division Infrastructure;
- Federale Overheidsdienst Mobiliteit en Vervoer, Maritiem Vervoer;
- Service Public Fédéral Mobilité et Transport, Transport maritime;

- Federaal Wetenschapsbeleid;
- Federale Overheidsdienst Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking;
- Federale Overheidsdienst Financiën, Administratie der Douanen en Accijnzen, Gewestelijke Inspectie Brugge;
- Defensie, DGMR - Divisie CIS & Infra - Sectie Infrastructuur - Ondersectie Support;

gevraagd werden op 28 maart 2013 en dat ze als gunstig worden beschouwd bij gebrek aan antwoord binnen de gestelde termijn;

Overwegende de principeakkoorden die door de aanvrager bekomen werden van de vennootschappen:

- Gassco AS, operator van de gasleiding Franpipe (NorFra), bij e-mail van 14 februari 2013;
- C-Power NV, operator van 2 elektrische zeekabels, bij een schrijven van 7 januari 2013;
- Norther NV, vergunninghouder van 2 nog niet geplaatste elektrische zeekabels, bij een schrijven van 30 januari 2013;
- Level 3 Communications Limited, operator van de Pan European Crossing (PEC)- en de Tangerine-telecommunicatiekabels, bij een schrijven van 21 februari 2013;
- Deutsche Telecom AG, operator van de Sea-Me-We3 telecommunicatiekabel, bij e-mail van 20 februari 2013;
- KPN International, operator van de TAT-14 telecommunicatiekabel, bij e-mail van 15 januari 2013,

BESLUIT :

Artikel 1. Een vergunning wordt verleend aan de n.v. ELIA ASSET voor de aanleg van een bipolaire gelijkstroomverbinding van twee kabels op een spanningsniveau tussen 300 kV

- Politique scientifique fédérale;
- Service Public Fédéral Affaires étrangères Commerce extérieur et Coopération au Développement;
- Service Public Fédéral Finance, Administration des Douanes et Accises, Inspection Régionale de Bruges ;
- Défense, DGMR – Division CIS & Infra – Section Infrastructure – Sous-section Support;

ont été demandés le 28 mars 2013 et qu'à défaut de réponse dans le délai imparti, ces avis sont considérés comme favorables;

Considérant les accords de principe qui ont été obtenus par le demandeur des sociétés :

- Gassco AS, opérateur de la canalisation de gaz Franpipe (NorFra), par e-mail du 14 février 2013;
- C-Power NV, opérateur de 2 câbles d'énergie électrique en mer, par lettre du 7 janvier 2013;
- Norther NV, titulaire de l'autorisation de 2 câbles d'énergie électrique en mer non encore installés, par lettre du 30 janvier 2013;
- Level 3 Communications Limited, opérateur des câbles de télécommunication Pan European Crossing (PEC) et Tangerine, par lettre du 21 février 2013;
- Deutsche Telecom AG, opérateur du câble de télécommunication Sea-Me-We3, par e-mail du 20 février 2013;
- KPN International, opérateur du câble de télécommunication TAT-14, par e-mail du 15 janvier 2013,

ARRETE :

Article 1er. Une autorisation est octroyée à la s.a. ELIA ASSET pour la pose d'une interconnexion bipolaire en courant continu de deux câbles avec un niveau de tension entre

en 500 kV met een vermogen van ongeveer 1000 MW, voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

300 kV et 500 kV d'une capacité d'environ 1000 MW, pour une interconnexion entre les réseaux de transport de la Grande-Bretagne à Richborough et la Belgique à Zeebrugge pour la partie dans les espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer.

De toekenning geschiedt overeenkomstig de bepalingen van het koninklijk besluit van 12 maart 2002 betreffende de nadere regels voor het leggen van elektriciteitskabels die in de territoriale zee of het nationaal grondgebied binnenkomen of die geplaatst of gebruikt worden in het kader van de exploratie van het continentaal plat, de exploitatie van de minerale rijkdommen en andere niet-levende rijkdommen daarvan of van de werkzaamheden van kunstmatige eilanden, installaties of inrichtingen die onder Belgische rechtsmacht vallen alsook mits naleving van de volgende voorwaarden :

L'octroi est effectué conformément aux dispositions de l'arrêté royal du 12 mars 2002 relatif aux modalités de pose de câbles d'énergie électrique qui pénètrent dans la mer territoriale ou dans le territoire national ou qui sont installés ou utilisés dans le cadre de l'exploration du plateau continental, de l'exploitation des ressources minérales et autres ressources non vivantes ou de l'exploitation d'îles artificielles, d'installations ou d'ouvrages relevant de la juridiction belge, ainsi que dans le respect des conditions suivantes :

1° de vergunning wordt toegekend voor het tracé dat is afgebakend overeenkomstig het inplantingsplan gekend onder het projectnummer 11/005405 (REV.L) van maart 2013 vormend het onderwerp van de bijlage 1 aan dit besluit. De coördinaten van het tracé zijn in bijlage 2 bij dit besluit opgenomen;

1° l'autorisation est accordée pour le tracé délimité conformément au plan d'implantation connu sous le numéro de projet 11/005405 (REV.L) de mars 2013 faisant l'objet de l'annexe 1 du présent arrêté. Les coordonnées du tracé sont reprises à l'annexe 2 du présent arrêté ;

2° de aanleg geschiedt volgens de technische beschrijving als bijlage toegevoegd bij de aanvraag vanwege de n.v. ELIA ASSET op 25 februari 2013;

2° la pose est réalisée suivant la description technique jointe en annexe à la demande formulée par la s.a. ELIA ASSET le 25 février 2013;

3° het gekozen materiaal moet voldoen aan de technische specificaties opgenomen in voornoemd aanvraagdossier;

3° le matériel choisi doit répondre aux spécifications techniques figurant dans le dossier de demande précité;

4° voor de kruising van de zeevaartroutes wordt de ingraafdiepte van de kabels bepaald op minstens vier meter onder de zeebodem.

4° au niveau du croisement avec des routes maritimes, la profondeur d'enfouissement des câbles sous le fond marin est fixée à quatre mètres au moins.

De vergunninghouder onderneemt geschikte maatregelen, na goedkeuring van de bevoegde overheden, om de kabels te verdiepen indien door specifieke omstandigheden, vastgesteld vóór het leggen van de kabels, een ingraving van minstens vier meter voor de kruising van of voor de gedeelten in de zeevaartroutes onvoldoende bescherming biedt tegen het indringen van uitgeworpen ankers bij een noodstopmanoeuvre.

Après approbation par les autorités compétentes, le titulaire de l'autorisation prend les mesures appropriées pour enfouir les câbles plus profondément, si pour cause de circonstances spécifiques, constatées avant la pose des câbles, un enfouissement de quatre mètres au moins au niveau du croisement avec ou pour les parties situées dans des routes maritimes n'offre pas une protection suffisante contre l'impact de lâchers d'ancres lors de manœuvres d'urgence.

De vergunninghouder onderneemt geschikte maatregelen, na goedkeuring van de bevoegde overheden, om de kabel voldoende bescherming te bieden tegen het indringen van uitgeworpen ankers bij een noodstopmanoeuvre in de gevallen waar een ingraafdiepte van vier meter niet haalbaar blijkt.

Deze minimumdiepte van vier meter of het nemen van geschikte maatregelen ter bescherming van de kabel zal door de houder van deze vergunning te allen tijde worden nageleefd.

Art.2. De vergunning wordt toegekend voor het leggen van de kabels vanaf de plaats waar ze de Belgische Noordzee binnenkomen tot aan de aanlanding te Zeebrugge, overeenkomstig het verzoek dat door de n.v. ELIA ASSET is ingediend.

De identificatie van het aansluitingspunt aan het transmissienetwerk van de elektriciteitskabels van de n.v. ELIA ASSET gebeurt overeenkomstig de beschikkingen van het federale technische reglement, de artikelen 94 tot en met 112.

Art.3. De n.v. ELIA ASSET dient de voorwaarden na te leven die zijn bepaald door:

- de Beheerseenheid van het Mathematisch Model van de Noordzee en de Schelde Estuarium van het departement "Beheer van het mariene ecosysteem" van het Koninklijk Belgisch Instituut voor Natuurwetenschappen in een schrijven van 8 april 2013;

- het Ministerie van de Vlaamse Overheid, Departement Landbouw en Visserij, Departement Mobiliteit en Openbare Werken en het Agentschap Maritieme Dienstverlening en Kust, in een gecoördineerd schrijven van 12 juni 2013,

en die vallen binnen het kader van hun bevoegdheden. De brieven werden haar integraal betekend.

Art.4 De n.v. ELIA ASSET moet contact nemen met Gassco AS, operator van de gasleiding Franpipe (NorFra), om een finaal akkoord te sluiten over de

Après approbation par les autorités compétentes, le titulaire de l'autorisation prend les mesures appropriées pour assurer une protection suffisante du câble contre l'impact de lâchers d'ancres lors de manœuvres d'urgence dans les cas où une profondeur d'enfouissement de quatre mètres n'est pas réalisable.

Cette profondeur minimale de quatre mètres ou la prise de mesures appropriées pour la protection du câble sera appliquée à tout moment par le titulaire de la présente autorisation.

Art.2. L'autorisation est octroyée pour la pose des câbles à partir de l'endroit où ils entrent en mer du Nord Belge jusqu'à Zeebrugge, conformément à la demande introduite par la s.a. ELIA ASSET.

L'identification du point de raccordement des câbles d'énergie électrique de la s.a. ELIA ASSET au réseau de transport se réalise conformément aux dispositions du règlement technique fédéral, les articles 94 à 112.

Art.3. La s.a. ELIA ASSET est tenue de se conformer aux conditions imposées dans le cadre de leurs compétences par:

- l'Unité de Gestion du Modèle mathématique de la Mer du Nord et de l'Estuaire de l'Escaut du département « Gestion de l'écosystème marin » de l'Institut royal des Sciences naturelles de Belgique, dans sa lettre du 8 avril 2013;

- het Ministerie van de Vlaamse Overheid, Departement Landbouw en Visserij, Departement Mobiliteit en Openbare Werken en het Agentschap Maritieme Dienstverlening en Kust, dans le courrier coordonné du 12 juin 2013,

Ces lettres lui ont été intégralement notifiées.

Art.4. La s.a. ELIA ASSET est tenue de prendre contact avec Gassco AS, opérateur de la canalisation de gaz Franpipe (NorFra), pour conclure un accord final sur les mesures de

voorzorgsmaatregelen betreffende de nabijheid van haar elektriciteitskabels en deze gasleiding en om de voorzorgsmaatregelen toe te passen die zullen overeengekomen worden.

De n.v. ELIA ASSET moet contact nemen met:

- C-Power NV, operator van 2 elektrische zeekabels;
- Norther NV, vergunninghouder van 2 nog niet geplaatste elektrische zeekabels;
- Level 3 Communications Limited, operator van de Pan European Crossing (PEC)- en de Tangerine-telecommunicatiekabels;
- Deutsche Telecom AG, operator van de Sea-Me-We3 telecommunicatiekabel;
- KPN International, operator van de TAT-14 telecommunicatiekabel,

om een finaal akkoord te sluiten over de voorzorgsmaatregelen betreffende de nabijheid van haar elektriciteitskabels met voornoemde kabels en om de voorzorgsmaatregelen toe te passen die zullen overeengekomen worden.

Afschriften van de finale overeenkomsten zullen, binnen een termijn van dertig werkdagen vanaf de datum van hun akkoord, aan de Algemene Directie Energie, Afdeling Vergunningen en Nieuwe Technologieën van de Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie, voor de aanvang van de werkzaamheden gericht worden.

Art.5. §1. De provisie voor het nemen van technische maatregelen voor de definitieve buitengebruikstelling van de elektriciteits-kabels en van om het even welk ander hulpmiddelen noodzakelijk voor het leggen en het exploiteren van de kabels bedoeld in artikel 5, 12°, van voormeld koninklijk besluit van 12 maart 2002, is bepaald op 5 miljoen euro in constante waarde op 1 februari 2013.

Deze provisie kan herzien worden afhankelijk van de op dat moment beschikbare technologieën en van de eventueel gewijzigde maatregelen voor de ontmanteling die

précaution à prendre au sujet de la proximité de ses câbles d'énergie électrique et de cette canalisation de gaz et d'appliquer les mesures de sécurité qui seront convenues.

La s.a. ELIA ASSET est tenue de prendre contact avec :

- C-Power NV, opérateur de 2 câbles d'énergie électrique en mer;
- Norther NV, titulaire de l'autorisation de 2 câbles d'énergie électrique en mer non encore installés;
- Level 3 Communications Limited, opérateur des câbles de télécommunication Pan European Crossing (PEC) et Tangerine;
- Deutsche Telecom AG, opérateur du câble de télécommunication Sea-Me-We3;
- KPN International, opérateur du câble de télécommunication TAT-14,

pour conclure un accord final sur les mesures de précaution à prendre au sujet de la proximité de ses câbles d'énergie électrique avec les câbles précités et d'appliquer les mesures de sécurité qui seront convenues.

Copies des accords finaux seront adressées, dans un délai de trente jours ouvrables à dater de leur conclusion, à la Direction générale de l'Energie, Division Autorisations et Nouvelles Technologies du Service Public Fédéral Economie, P.M.E., Classes Moyennes et Energie, avant le début des travaux.

Art.5. §1er. La provision pour la prise de mesures techniques pour la mise hors service définitive des câbles d'énergie électrique et de tout autre dispositif nécessaire à la pose et à l'exploitation des câbles visée à l'article 5, 12°, de l'arrêté royal du 12 mars 2002 précité est fixée à 5 millions d'euros en valeur constante au premier février 2013.

Cette provision peut faire l'objet d'une révision en fonction des technologies disponibles à ce moment et des mesures éventuellement modifiées pour le démantèlement qui sont

genomen zijn in het kader van het beheer van het mariene milieu door de bevoegde minister.

De samenstelling van de provisie geschiedt volgens de nadere regels bepaald in bijlage 3 bij dit besluit, rekening houdend met een gemiddelde jaarlijkse inflatie geraamd op 2% en een jaarlijkse gemiddelde interest van 5%.

Deze sommen worden geïndexeerd volgens de evolutie van de gezondheidsindex tussen 1 februari 2013 en de voltooiing van de aanleg van de zeekabel(s) in de Belgische zeegebieden.

§2. Vanaf het derde jaar en tot het elfde jaar volgend op de voltooiing van de aanleg van de zeekabel(s) in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht, wordt de provisie samengesteld in de vorm van een in de balans geïndividualiseerde provisie.

§3. Tijdens het twaalfde jaar beslist de federale minister bevoegd voor Energie, na advies van de raadgevende commissie, die is ingesteld bij koninklijk besluit van 12 augustus 2000 tot instelling van de raadgevende commissie belast met de coördinatie tussen de administraties die betrokken zijn bij het beheer van de exploratie en de exploitatie van het continentaal plat en van de territoriale zee en tot vaststelling van de werkings-modaliteiten en -kosten ervan, of de sommen die zijn ingeschreven in de vorm van een in de balans geïndividualiseerde provisie en het totaal bereiken van het schema vastgesteld in bijlage 3 bij dit besluit, moeten overgedragen worden op een bankrekening geopend op naam van de n.v. ELIA ASSET dan wel of zij in genoemde vorm in de balans kunnen behouden blijven.

Over de in het eerste lid bedoelde bankrekening kan enkel beschikt worden met instemming van de federale minister bevoegd voor Energie, voor het nemen van technische maatregelen voor de definitieve buitengebruikstelling van de elektriciteits-kabels op de vervaldag of in geval van intrekking naar aanleiding van vervallenverklaring of verzaking overeenkomstig artikel 23 van voornoemd koninklijk besluit van 12 maart 2002.

§4. Het geheel of een gedeelte van de

prises dans le cadre de la gestion du milieu marin par le ministre compétent.

La constitution de la provision est effectuée suivant les modalités définies à l'annexe 3 du présent arrêté, compte tenu d'une inflation moyenne annuelle estimée à 2% et d'un intérêt annuel moyen de 5%.

Ces sommes sont indexées suivant l'évolution de l'indice santé entre le premier février 2013 et l'achèvement de la pose de(s) câble(s) dans les espaces marins Belges.

§2. A partir de la troisième année et jusqu'à la onzième année suivant l'achèvement de la pose de(s) câble(s) marins pour la partie des espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer, la provision est constituée sous la forme d'une provision individualisée au bilan.

§3. Lors de la douzième année, le ministre fédéral qui a l'Energie dans ses attributions, après avis de la commission consultative établie par l'arrêté royal du 12 août 2000 instituant la commission consultative chargée d'assurer la coordination entre les administrations concernées par la gestion de l'exploration et de l'exploitation du plateau continental et de la mer territoriale et en fixant les modalités et les frais de fonctionnement, décide si les sommes inscrites sous la forme d'une provision individualisée au bilan et totalisées suivant le schéma fixé à l'annexe 3 du présent arrêté, doivent être transférées sur un compte bancaire, ouvert au nom de la s.a. ELIA ASSET, ou si elles peuvent être maintenues sous ladite forme au bilan.

Il ne peut être disposé du compte bancaire visé à l'alinéa 1er que moyennant l'accord du ministre fédéral qui a l'Energie dans ses attributions, pour la prise de mesures techniques pour la mise hors service définitive des câbles d'énergie électrique à l'échéance ou en cas de retrait par suite de déchéance ou de renonciation conformément à l'article 23 de l'arrêté royal du 12 mars 2002 précité.

§4. Tout ou partie des montants constitués

bedragen die zijn samengesteld in toepassing van de mechanismen beschreven in §§2 en 3, kan vervangen worden op initiatief van de n.v. ELIA ASSET, door het afleveren van een bankgarantie van een bedrag equivalent met het geheel of een gedeelte van de aldus vervangen bedragen, voor zover deze garantie goedgekeurd wordt door de federale minister bevoegd voor Energie.

De in het eerste lid bedoelde garantie, is bedoeld om een eventuele onmacht te dekken van de n.v. ELIA ASSET bij het vervullen van haar plicht om technische maatregelen te nemen voor de definitieve buitengebruikstelling van de elektriciteitskabels.

Deze garantie moet onder meer de volgende kenmerken vertonen : ze moet onherroepelijk zijn, inroepbaar op eerste verzoek, indien het definitief buiten gebruik stellen van de elektriciteitskabels niet werd uitgevoerd volgens de wettelijke of reglementaire bepalingen van toepassing op de n.v. ELIA ASSET, door de federale minister bevoegd voor Energie en moet tenminste geldig blijven tijdens de drie jaren die volgen op de termijn of de intrekking van de termijn of de opzegging overeenkomstig artikel 23 van voornoemd koninklijk besluit van 12 maart 2002.

§5. Ten laatste zestig kalenderdagen voor de tenuitvoerlegging van de maatregel bepaald in §§3 of 4 legt de n.v. ELIA ASSET het ontwerp van contract betreffende de samenstelling van provisie op een bankrekening of van de bankgarantie, ter goedkeuring voor aan de federale minister bevoegd voor Energie.

§6. De eventuele ontmanteling dient pas te gebeuren nadat de vergunning is afgelopen en volgens de voorwaarden bepaald door de ministers bevoegd voor het Mariene Milieu en Energie.

Het eventuele overschot van de provisie of de bedragen verworven door de tenuitvoerlegging van de bankgarantie, dat overblijft na het nemen van de technische maatregelen voor de definitieve buitengebruikstelling van de elektriciteitskabels wordt teruggegeven aan de n.v. ELIA ASSET met instemming van de federale minister bevoegd voor Energie.

en application des mécanismes décrits aux §§2 et 3, peut être remplacé, à l'initiative de la s.a. ELIA ASSET, par la production d'une garantie bancaire portant sur un montant équivalent à tout ou partie des montants ainsi remplacés, pour autant que cette garantie soit agréée par le ministre fédéral qui a l'Energie dans ses attributions.

La garantie visée à l'alinéa 1er est destinée à couvrir la défaillance éventuelle de la s.a. ELIA ASSET dans l'accomplissement de son obligation de prise de mesures techniques pour la mise hors service définitive des câbles d'énergie électrique.

Cette garantie doit notamment présenter les caractéristiques suivantes : elle doit être irrévocable, appelable à la première demande, si la mise hors service définitive des câbles d'énergie électrique n'a pas été exécutée selon les obligations légales ou réglementaires applicables à la s.a. ELIA ASSET, par le ministre fédéral qui a l'Energie dans ses attributions, et rester valable au moins dans les trois ans qui suivent l'échéance ou le retrait par suite de déchéance ou de renonciation conformément à l'article 23 de l'arrêté royal du 12 mars 2002 précité.

§5. La s.a. ELIA ASSET soumet, au plus tard dans les soixante jours calendrier précédant la mise en œuvre de la mesure prévue aux §§ 3 ou 4, le projet de contrat relatif à la constitution de la provision sur un compte bancaire ou à la garantie bancaire à l'approbation du ministre fédéral qui a l'Energie dans ses compétences.

§6. Le démantèlement éventuel ne doit se faire que lorsque l'autorisation sera arrivée à échéance et selon les conditions déterminées par les Ministres qui ont le Milieu marin et l'Energie dans leurs attributions.

L'excédent éventuel de la provision ou des montants acquis par l'exécution de la garantie bancaire, subsistant après la mise en œuvre des mesures techniques pour la mise hors service définitive des câbles d'énergie électrique est restitué à la s.a. ELIA ASSET moyennant l'accord du ministre fédéral qui a l'Energie dans ses attributions.

Art.6. §1. Binnen de 50 werkdagen na de aanleg van de elektriciteitskabels, maakt de n.v. ELIA ASSET 20 exemplaren van de definitieve uitvoeringsplannen over aan de Algemene Directie Energie van de Federale Overheidsdienst Economie, K.M.O., Middenstand en Energie, die ze bezorgt aan de administraties die vertegenwoordigd zijn in de schoot van de raadgevende commissie die is ingesteld bij het voornoemd koninklijk besluit van 12 augustus 2000; indien de aanleg van de elektriciteitskabels plaatsvindt in verschillende fasen met een tussentijd van meer dan 50 werkdagen, worden de plannenseries door de n.v. ELIA ASSET overgemaakt na realisatie van elke fase.

§2. De elektriciteitskabels mogen slechts in gebruik worden genomen wanneer zij blijken te voldoen aan alle proeven en controles die volgen uit de toepassing van het koninklijk besluit van 19 december 2002 houdende een technisch reglement voor het beheer van het transmissienet van elektriciteit en de toegang ertoe.

Art.7. De activiteiten voor de aanleg van elektriciteitskabels gaan van start binnen de termijn bepaald in artikel 14 van voornoemd koninklijk besluit van 12 maart 2002.

Art.8. §1 De federale minister bevoegd voor Energie kan voorlopige maatregelen nemen of opleggen aan de n.v. ELIA ASSET, ingeval zij niet voldoet aan de verplichtingen die zij dient te vervullen krachtens dit besluit en krachtens artikel 15 van voornoemd koninklijk besluit van 12 maart 2002.

§2 - Indien wordt vastgesteld dat n.v. ELIA ASSET de verplichtingen van dit vergunningsbesluit niet naleeft, richt de afgevaardigde van de minister, voorafgaand aan het opleggen van de maatregelen zoals bedoeld in §1, bij een ter post aangetekende brief een met redenen omklede ingebrekestelling aan n.v. ELIA ASSET, waarin een termijn wordt vastgelegd die niet korter mag zijn dan vijftig werkdagen, om te voldoen aan haar verplichtingen, of om bij gebreke daaraan, om uitleg te verschaffen.

Art.9. Om de exploiteerbare oppervlakte in de Noordzee zoveel mogelijk te behouden, om aansluitingen op het transmissienetwerk te rationaliseren en om alle bijzondere

Art.6. §1er. Dans les 50 jours ouvrables suivant la pose des câbles d'énergie électrique, la s.a. ELIA ASSET, fournit 20 exemplaires des plans définitifs suivant exécution à la Direction Générale de l'Energie du Service Public Fédéral Economie, P.M.E., Classes moyennes et Energie, qui les fait parvenir aux administrations représentées au sein de la commission consultative établie par l'arrêté royal du 12 août 2000 précité; si la pose des câbles d'énergie électrique est réalisée en plusieurs phases, espacées de plus de 50 jours ouvrables, les jeux de plans sont fournis par la s.a. ELIA ASSET après la réalisation de chaque phase.

§2. Les câbles d'énergie électrique ne peuvent être mis en service que lorsqu'ils auront satisfait à la totalité des essais et contrôles découlant de l'application de l'arrêté royal du 19 décembre 2002 établissant un règlement technique pour la gestion du réseau de transport de l'électricité et l'accès à celui-ci.

Art.7. Les activités de pose des câbles d'énergie électrique débutent dans le délai prévu à l'article 14 de l'arrêté royal du 12 mars 2002 précité.

Art.8. §1er Des mesures provisoires peuvent être prises ou imposées à charge de la s.a. ELIA ASSET, par le ministre fédéral qui a l'Energie dans ses attributions, au cas où elle ne respecte pas les obligations qui lui incombent en vertu du présent arrêté ainsi que de l'article 15 de l'arrêté royal du 12 mars 2002 précité.

§2 - En cas de constat du non-respect par la s.a. ELIA ASSET des conditions du présent arrêté, le délégué du ministre, avant l'imposition des mesures visées au §1er, adresse à la s.a. ELIA ASSET une mise en demeure dûment motivée, par lettre recommandée à la poste, lui fixant un délai qui ne peut être inférieur à cinquante jours ouvrables, afin qu'elle satisfasse à ses conditions, ou, qu'à défaut, elle présente ses explications.

Art.9. En vue de préserver au maximum les surfaces exploitables pour l'implantation d'éoliennes en mer du Nord, de rationaliser des raccordements au réseau de transport et

kenmerken in verband met de zeescheepvaart te respecteren, kunnen aanvullende maatregelen opgelegd worden door de federale minister bevoegd voor Energie.

Art.10. Deze vergunning wordt verleend voor een periode van vijfentwintig jaar die begint te lopen op de dag waarop de laatste toelating of vergunning wordt afgeleverd die vereist is krachtens een andere wetgeving voor de aanleg en de exploitatie van de elektriciteitskabels en uitrustingen bedoeld in artikel 1.

De vergunning kan door de minister een of meerdere malen verlengd worden voor een beperkte duur.

Art.11. De maatschappelijke zetel van de n.v. ELIA ASSET is gevestigd in de Keizerslaan 20 te 1000 Brussel. Elke wijziging van de maatschappelijke zetel moet worden meegedeeld aan de Federaal Overheidsdienst Economie, K.M.O., Middenstand en Energie, Algemene Directie Energie.

Art.12. Een eensluidend verklaard afschrift van dit besluit en zijn bijlagen zal aan de n.v. ELIA ASSET, de Commissie voor de Regulering van de Elektriciteit en het Gas en aan de administraties die vertegenwoordigd zijn in de schoot van de raadgevende commissie die is ingesteld bij het koninklijk besluit van 12 augustus 2000 tot instelling van de raadgevende Commissie belast met de coördinatie tussen de administraties die betrokken zijn bij het beheer van de exploratie en de exploitatie van het continentaal plat en van de territoriale zee en tot vaststelling van de werkingsmodaliteiten en -kosten ervan alsook aan de Vlaamse Overheid, worden overgemaakt.

de respecter toutes particularités liées à la navigation maritime, des mesures complémentaires peuvent être imposées par le ministre fédéral qui a l'Energie dans ses attributions.

Art.10. La présente autorisation est accordée pour une durée de vingt-cinq ans qui prend cours à dater du jour où est délivré l'ultime permis ou autorisation requis en vertu d'une autre législation pour la pose et l'exploitation des câbles d'énergie électrique et des équipements visés à l'article 1er.

L'autorisation peut être prorogée une ou plusieurs fois par le ministre pour une durée limitée.

Art.11. Le siège social de la s.a. ELIA ASSET est établi boulevard de l'Empereur 20 à 1000 Bruxelles. Toute modification du siège social doit être communiquée au Service Public Fédéral Economie, P.M.E., Classes moyennes et Energie, Direction générale de l'Energie.

Art.12. Expédition certifiée conforme du présent arrêté et de ses annexes est adressée à la s.a. ELIA ASSET, à la Commission de Régulation de l'Electricité et du Gaz et aux administrations représentées au sein de la commission consultative établie par l'arrêté royal du 12 août 2000 instituant la commission consultative chargée d'assurer la coordination entre les administrations concernées par la gestion de l'exploration et l'exploitation du plateau continental et de la mer territoriale et en fixant les modalités et les frais de fonctionnement, ainsi qu'à la Vlaamse Overheid.

Brussel, 090414

...SCHE AFDELING
...EENSLUIDEND AFSCHRIFT,
DE ADVISEUR

[redacted]

Bruxelles, le 090414

DIVISION JURIDIQUE
POUR COPIE CONFORME,
LE CONSEILLER

[redacted]

[redacted]

Melchior WATHELET.

BIJLAGE 1

Gezien om te worden gevoegd bij het ministerieel besluit met referentie EB-2013-0019-A van 090414

houdende toekenning aan de n.v. ELIA ASSET van een vergunning voor de aanleg van een bipolaire gelijkstroom kabelsysteem voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

De Staatssecretaris voor Energie,

[redacted]

Melchior WATHELET.

ANNEXE 1

Vu pour être annexé à l'arrêté ministériel référencé EB-2013-0019-A du 090414

portant octroi à la s.a. ELIA ASSET d'une autorisation de pose d'un système de câble bipolaire de courant continu pour une interconnexion entre les réseaux de transmission de la Grande-Bretagne à Richborough et la Belgique à Zeebrugge pour la partie dans les espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer.

Le Secrétaire d'Etat à l'Energie,

BIJLAGE 2

Tracé van de elektriciteitskabels van het gelijkstroom kabelsysteem voor de verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de Belgische zeegebieden.

Coördinaten van de punten met richtingverandering in projectie WGS 84.

ANNEXE 2

Tracés des câbles d'énergie électrique du système de câble bipolaire de courant continu pour l'interconnexion entre les réseaux de transmission de la Grande-Bretagne à Richborough et la Belgique à Zeebrugge pour la partie dans les espaces marins Belges.

Coordonnées des points de changement de direction en projection WGS 84.

	KP	Latitude	Longitude
LWL	0,7	51°19,7488'N	003°9,5010'E
A	0,8	51°19,7684'N	003°9,3887'E
B	1,6	51°20,0108'N	003°8,8123'E
C	4,5	51°20,1188'N	003°6,3610'E
D	7,9	51°20,2752'N	003°3,4858'E
E	10,0	51°20,3530'N	003°1,6387'E
F	12,1	51°20,4958'N	002°59,8559'E
G	14,0	51°20,5141'N	002°58,2077'E
H	17,7	51°20,6633'N	002°54,9929'E
I	24,3	51°21,4798'N	002°49,5208'E
J	28,1	51°21,0971'N	002°46,3050'E
K	30,1	51°20,6530'N	002°44,6955'E
L	32,8	51°20,6920'N	002°42,6408'E
M	32,8	51°20,7084'N	002°42,3817'E
N	42,8	51°21,0328'N	002°33,8018'E
O	43,4	51°21,1456'N	002°33,3416'E
P	45,1	51°21,9204'N	002°32,4672'E
Q	46,0	51°22,1229'N	002°31,7501'E
R	48,0	51°22,1138'N	002°30,0235'E
S	50,0	51°21,6388'N	002°28,5012'E
T	51,1	51°21,4170'N	002°27,6019'E
U	52,5	51°21,4251'N	002°26,4286'E
V	52,8	51°21,3697'N	002°26,2050'E
W	53,3	51°21,1577'N	002°25,9306'E
BDNZ	59,1	51°19,9737'N	002°21,3088'E

Gezien om te worden gevoegd bij het ministerieel besluit met referentie EB-2013-0019-A van 090414

Vu pour être annexé à l'arrêté ministériel référencé EB-2013-0019-A du 090414

houdende toekenning aan de n.v. ELIA ASSET van een vergunning voor de aanleg van een bipolaire gelijkstroom kabelsysteem voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

portant octroi à la s.a. ELIA ASSET d'une autorisation de pose d'un système de câble bipolaire de courant continu pour une interconnexion entre les réseaux de transmission de la Grande-Bretagne à Richborough et la Belgique à Zeebrugge pour la partie dans les espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer.

De Staatssecretaris voor Energie,

Le Secrétaire d'Etat à l'Energie,

Melchior WATHELET.

BIJLAGE 3 **ANNEXE 3**

Provisie voor het nemen van technische maatregelen voor de behandeling en het weghalen van alle elektriciteitskabels en bijhorende materialen.

Provision pour la prise des mesures techniques pour le traitement et l'enlèvement de tous les câbles d'énergie électrique et matériels associés.

(in EUR op 1 februari 2013) **(en EUR au 1er février 2013)**

1. Samenstelling - Constitution				
Jaar Année	Reservering Provision	Cumulatief Valeur cumulée	Interest Intérêt 5%	Totaal Total
0	0	Aanleg - Pose		0
1	0	0	0	0
2	0	0	0	0
3	149.460	149.460	7.473	156.933
4	149.460	306.393	15.320	321.713
5	149.460	471.173	23.559	494.731
6	149.460	644.191	32.210	676.401
7	149.460	825.861	41.293	867.154
8	149.460	1.016.614	50.831	1.067.445
9	149.460	1.216.905	60.845	1.277.750
10	149.460	1.427.210	71.360	1.498.570
11	377.770	1.876.340	93.817	1.970.157
12	377.770	2.347.927	117.396	2.465.324
13	377.770	2.843.094	142.155	2.985.248
14	377.770	3.363.018	168.151	3.531.169
15	377.770	3.908.939	195.447	4.104.386
16	377.770	4.482.156	224.108	4.706.264
17	377.770	5.084.034	254.202	5.338.236
18	377.770	5.716.006	285.800	6.001.806
19	377.770	6.379.576	318.979	6.698.555
20	377.385	7.075.940	353.797	7.429.737
21	Afbraak - Démolition			

2. Berekening huidige waarde van de provisie		Calcul de la valeur actualisée de la provision	
(in EUR op 1 februari 2013)		(en EUR au 1er février 2013)	
Jaar Année	Reservering Provision	Inflatie Inflation 2%	Totaal Total
20	7.429.737	-145.681	7.284.056
19	7.284.056	-142.825	7.141.231
18	7.141.231	-140.024	7.001.207
17	7.001.207	-137.279	6.863.929
16	6.863.929	-134.587	6.729.342
15	6.729.342	-131.948	6.597.394
14	6.597.394	-129.361	6.468.033
13	6.468.033	-126.824	6.341.209
12	6.341.209	-124.337	6.216.872
11	6.216.872	-121.899	6.094.972
10	6.094.972	-119.509	5.975.463
9	5.975.463	-117.166	5.858.297
8	5.858.297	-114.869	5.743.428
7	5.743.428	-112.616	5.630.812
6	5.630.812	-110.408	5.520.404
5	5.520.404	-108.243	5.412.161
4	5.412.161	-106.121	5.306.040
3	5.306.040	-104.040	5.202.000
2	5.202.000	-102.000	5.100.000
1	5.100.000	-100.000	5.000.000

Gezien om te worden gevoegd bij het ministerieel besluit met referentie EB-2013-0019-A van 090414

houdende toekenning aan de n.v. ELIA ASSET van een vergunning voor de aanleg van een bipolaire gelijkstroom kabelsysteem voor een verbinding tussen de transmissienetwerken van Groot-Brittannië te Richborough en van België te Zeebrugge voor het gedeelte in de zeegebieden waarin België rechtsmacht kan uitoefenen overeenkomstig het internationaal zeerecht.

Vu pour être annexé à l'arrêté ministériel référencé EB-2013-0019-A du 090414

portant octroi à la s.a. ELIA ASSET d'une autorisation de pose d'un système de câble bipolaire de courant continu pour une interconnexion entre les réseaux de transmission de la Grande-Bretagne à Richborough et la Belgique à Zeebrugge pour la partie dans les espaces marins sur lesquels la Belgique peut exercer sa juridiction conformément au droit international de la mer.

De Staatssecretaris voor Energie,

Le Secrétaire d'Etat à l'Energie,

[redacted]

Melchior WATHELET.

Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE L'ÉCOLOGIE, DU DÉVELOPPEMENT DURABLE ET DE L'ENERGIE

Le directeur du cabinet du ministre délégué chargé des Transports, de la Mer et de la Pêche

Paris, le 11 JUIN 2013

Réf : 13014350

Madame,

Par courrier du 21 février 2013, vous m'avez soumis au nom de la Société belge ELIA Asset, le projet de câble sous-marin de transport d'énergie nommé « NEMO » à poser entre la Belgique et l'Angleterre.

Le tracé du câble passe dans un espace maritime sous juridiction et souveraineté françaises, au nord immédiat de la zone Natura 2000 en mer « Banc des Flandres », site désigné à la fois au titre de la Directive « Oiseaux » et de la Directive « Habitats ».

Ce type de projet n'est pas, en droit français, soumis à l'évaluation des incidences Natura 2000. De plus, l'évaluation des impacts du projet sur l'environnement fournie dans le dossier communiqué permet de noter l'absence d'impact significatif sur l'état du site « Banc des Flandres ».

S'agissant de la localisation du câble, je vous confirme qu'à ce jour, il n'existe aucune réglementation applicable aux câbles sous-marins traversant l'espace maritime sous juridiction et souveraineté françaises constituant la zone économique exclusive.

S'agissant de la sécurité maritime, il conviendra qu'en phase d'installation du câble une information soit effectuée auprès du préfet maritime de la Manche et de la mer du Nord. En effet, en application des dispositions de l'arrêté n°11-2000 du 23 juin 2000 relatif au signalement des opérations relatives aux travaux sous-marins dans les eaux sous souveraineté française de la Manche et de la mer du Nord auquel je vous invite à vous reporter, l'armateur ou le capitaine du navire retenu pour la pose d'un câble sous-marin doit porter à la connaissance du préfet maritime, avec un préavis de 10 jours francs, diverses informations permettant notamment de localiser le navire, de connaître la route à suivre et de joindre par radio le navire. De plus, une fois les travaux débutés, le capitaine devra signaler au moins une fois par 24 heures sa position et ses intentions de mouvement. Enfin, il avertira de la fin des travaux et de la sortie des eaux sous souveraineté.

Je vous prie de recevoir, Madame, l'expression de mes salutations distinguées.

[redacted]

Emmanuel KESLER

Madame Aurélie COUNIL
Responsable de l'agence de Normandie
CREOCEAN
Rue CHarles Tellier
Zone Technocean
Chef de Baie
17000 LA ROCHELLE

Subject: Officer report
From: Ben Swinton <Ben.Swinton@EKSERVICES.ORG>
Date: 16/06/2015 16:51
To: SPENCER Lauren <LaurenSPENCER@bdb-law.co.uk>

APPLICATION REFERENCE - FUL/DOV/13/00759

LOCATION - Part of Former Power Station Site, Ramsgate Road, Sandwich, CT13 9NL

DESCRIPTION - Installation of 720m of underground high voltage direct current (HVDC) cable, temporary construction compound, erection of security fencing, construction of access road and hard landscaping.

(This is part of a duplicate of an application submitted to Thanet District Council for - Installation of 3.1km underground high voltage direct current (HVDC) cable from Pegwell Bay to former Richborough Power Station, being part of a 130km HVDC electrical interconnector with an approximate capacity of 1000 megawatts (MW) extending from Zebrugge (Belgium) to the former Richborough Power Station site, together with outline application for the erection of converter station building (max height 30.8m), substation building (max height 15m) outdoor electrical equipment for substation (max height 12.7m) and for converter station (max height 11.8m), underground cables from substation and converter station and construction of internal roads, including access and landscaping, together with associated temporary construction compounds).

SITE DESCRIPTION

The application site comprises 18.33 hectares of land between Pegwell Bay and the former Richborough Power Station site and 9.3ha of the former Power Station site.

Pegwell Bay to former Richborough Power Station site

Between low water mark at Pegwell Bay the site extends through Sandwich Bay and Pegwell Bay National Nature Reserve at a width of 340m at its widest point and 20m at its narrowest, to the southwest of the petrol filling station at Cliffsend, with a rectangular area measuring approximately 20m by 50m as a works compound.

The site includes a ten-metre wide strip through the Pegwell Bay Country Park, Stonelees Nature Reserve, the Bay Point sports complex, across the Sandwich Road and the East Kent Access Road to the former Richborough Power Station site (with the exception of two work compounds measuring 30m by 50m within the Country Park and Bay Point).

Pegwell Country Park and Stonelees Nature Reserve are part of Sandwich and Pegwell Bay National Nature Reserve, with Pegwell Bay and Stonelees defined as a part of the Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest, Thanet Coast and Sandwich Bay Special Protection Area and Ramsar site. Pegwell Bay is also included within the Sandwich Bay Special Area of Conservation.

The application site includes several European and national designated sites and ecological features:
- Thanet Coast and Sandwich Bay Ramsar site (designated for migratory birds),
- Thanet Coast and Sandwich Bay Special Protection Area (designated for breeding birds),
- Sandwich Bay Special Area of Conservation (supporting a dune system)
- Thanet Coast Special Area of Conservation (the UK's longest stretch of coastal chalk)
- Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest (the most important sand dune system and sandy coastal grassland in SE England)
- Sandwich and Pegwell Bay National Nature Reserve

The majority of the site lies within the Wantsum Channel flood risk area (south and east of the petrol filling station, along the coast and includes the country park, Stonelees and former Richborough Power Station site).

Pegwell Bay is designated as a Landscape Character Area, as is the land to the north of the former Power Station

site.

There are seven designated heritage assets in the surrounding area to the site – one Grade II* listed building and 6 Grade II listed buildings; and 158 non-designated assets. There is one Scheduled Monument at Richborough Fort, and eleven heritage assets in the area, all of which are more than 1.6km from the former Power Station site.

Former Power Station site

The application site includes 9.3 hectares of the former Richborough Power Station site, with access from the roundabout on the A256. The original cooling towers and chimney serving the former power station were demolished in March 2012 but the site retains the substantial turbine hall frame. The majority of the site is hardstanding.

The UK Power Networks and Thanet Offshore Wind Farm substations lie to the south of the application site. To the east of the site is the A256 and a petrol filling station. A drainage ditch and an area of land designated as a Site of Special Scientific Interest lie to the north of the former Power Station site, with a solar farm and an anaerobic digester plant beyond to the north and northeast respectively.

Abutting the site to the west is the River Stour, beyond which is the Ash Levels characterised by grazing and drainage ditches. The long distance footpath the Saxon Shore Way passes the site on the western side of the River. The eastern bank of the River forms the application boundary. A footbridge crosses the River to the southwest of the application site descending to a point on the existing estate road. There is no public access to the footbridge.

Part of the former Power Station site is subject to a CTRL safeguarding policy, and the site is within two areas covered by the existing Kent Minerals and Waste local plans, and for which there are saved policies still in effect.

The River Stour is located 10m west of the application site at its closest point, and runs along the southwest boundary of the former Power Station site. The Stour is approximately 400m east of the proposed cable route. Minster Stream is situated 100m northeast of the former Power Station site, which flows in a manmade drainage channel westward and passes under the A256.

Flood Zone 3 extends approximately to the mean high water mark, meaning that the subsea cables are within this zone. Flood Zone 3 has a 0.5 per cent (1 in 200) or greater chance of flooding from the sea each year.

Flood Zone 2 covers the application site from the petrol filling station at Cliffsend to the entrance to the Country Park (where land levels rise), and covers part of Stonelees Nature Reserve. Flood Zone represents the extent of an extreme flood, with up to a 0.1 per cent (1 in 1000) chance of occurring each year.

THE PROPOSAL

The majority of the proposed development falls within the administrative boundary of Thanet District Council. Approximately 720m of the onshore cable and a small area at the south east corner of the proposed converter station compound (outdoor hard landscaping and security perimeter fencing) is within the administrative boundary of Dover District Council. Thanet District Council and Dover District Council have received duplicate planning applications, and will each consider the proposal on its merits.

Nemo Link Project

The proposed installation of 3.1 km of cables from mean low water mark at Pegwell Bay to the former Richborough Power Station site, together with the proposed converter and substation at the former Power Station site are part of a wider European project.

The project is a proposed high voltage direct current (HVDC) electrical interconnector with an approximate capacity of 1000 megawatts (MW) that will allow the transfer of electrical power via subsea cables between the UK and Belgium. The power is proposed to be bi-directional so it can flow in either to or from the UK, depending on supply and demand.

The UK on-shore elements for which planning permission is being sought are the cables from mean low water mark at Pegwell Bay to the former Richborough Power Station site, the converter and substation buildings, associated electrical equipment and works compounds. The cables are part of a full planning application, with the proposed development at the former Power Station site being in outline form, with access and landscaping considered as part of this application. Each element will be described in detail below.

Cables

Subsea cables are proposed to be installed to Pegwell Bay, through the intertidal area (between mean low water and high water). The applicant has not yet chosen a single, specific cable installation methodology and the precautionary assumption is that the full corridor for each cable installation will be implemented, which is a worst-case scenario of a 20m working cable corridor being created through the salt marsh and mudflat using an open trench/backfill methodology to install the cable. The applicant has noted that low ground pressure excavators will be used and if required, operated from trackways consisting of bogmats or rolled steel sheeting and that it is estimated that it will take 32 days to complete the works. The intertidal area (salt marsh and mudflats) excavated is predicted to be 0.46ha and within this, about 720m^2 of salt marsh and 3900m^2 of mudflat would be excavated.
An area of approximately 30m x 30m is proposed to be established as a works compound at a suitable point above high water to the south of the petrol filling station at Cliffsend. The onshore cables are proposed join the subsea cables in a Transition Joint Pit, to the southeast of the petrol filling station at Cliffsend. The cables are proposed to be installed underground to the entrance to Pegwell Bay Country Park, and are proposed as overground through the Country Park, and underground within Stonelees Nature Reserve and the BayPoint sports complex.

Within Pegwell Bay Country Park, the cables are proposed to be laid on the existing land surface and chalk will be used to cover them. From the sports complex, the cables are proposed to be installed by horizontal directional drilling (HDD) beneath the A256, Minster Stream, and part of the Hacklinge Marshes Site of Special Scientific Interest. The working width for cable installation is estimated to be 10-15m with a permanent easement of approximately 5m. The cables are proposed to terminate adjacent to the converter station. The overall length of the onshore HVDC cable route is approximately 3.1km.

Converter Station and Substation

Outline planning permission is sought for the converter station and substation, together with associated electrical equipment and work compound, with matters of landscaping and access under consideration as part of this application.

The indicative drawings show the converter station is proposed to occupy a site of approximately 4.85 hectares (ha), which will be enclosed by a 2.4m high palisade fence with a 4m high electrified pulse security fence, installed on the internal side of the palisade fence. The majority of electrical equipment will be housed within the converter station. The converter station will comprise three main components:

1. Main Building: The existing turbine hall frame is proposed to be incorporated into the building, which will comprise three main parts. The tallest part to a maximum height of approximately 30.8m and will be approximately 38.3m long and 93m wide. The remaining two parts will be approximately 25m high, 65.1m long and 93m wide (main extension) and 18m high, 45.7m long and 65.5m wide (transformer extension). The total length of the main building will be approximately 149m. Lightning conductors will be installed approximately 5m higher than the roof of the main building.

2. Service Building: Indicative plans show a service building attached to the eastern extent of the northern face of the main building. This is proposed to house the control room, workshop, auxiliary power supply and cooling system. This building will be approximately 27.4m long, 13.6m wide and 14.5m high.

3. Storage Building: Indicative plans show a storage building attached to the western extent of the northern face of the main building and will be used for the storage of equipment spares and tools. The dimensions are the same as the service building.

The converter station building is shown on indicative plans as being constructed of brick to a height of approximately 3m, with the remaining sections of the buildings will be formed by a steel frame clad with metal panels and insulated. Panels will graduate from dark green to light green to the roofline. The final design of the finish will be subject of a reserved matters application. The converter station has achieved a 'good' preliminary rating from BREEAM.

The applicant advises that the converter station will be manned by approximately six personnel split over three shifts within a 24 hour period.

Indicative plans show a substation in a separately fenced compound immediately west of the proposed converter station. Indicative plans show that the substation will be connected to the converter station by underground high voltage alternating current (HVAC) cables. The proposed substation will occupy a footprint of approximately 2.65 ha. Indicative plans show that this will contain:

- indoor and outdoor electrical equipment,
- a GIS Hall containing the switchgear - shown on indicative plans as approximately 52.2m long, 21.5m wide and 15m high, central to the substation site
- outdoor Gas Insulated Busbars (GIB),
- overhead line gantries,
- two Supergrid Transformers (SGTs) along the southern extent of the site, approximately 22.5m long by 13.3m wide with a height of 10.6m.
- a Mechanically Switched Capacitor (MSC) – approximately 30.2m long, 25m wide and approximately 11.8m for the tallest equipment
- a Static Var Compensator (SVC) compound in the northern part of the substation compound which will contain a transformer and outdoor electrical equipment with a small building for control and operation of the equipment – approximately 52.6m long, 39m wide and 6.3m high for the tallest equipment.
- There are 3 buildings connected to the SVC equipment these would be approximately 12m long, 10.2m wide and 4.4m high
- an amenity building, shown on indicative plans as 16m long, 12m wide and 4.2m high
- a diesel generator building comprised of a single storey pre-fabricated modular unit 8m long, 3m wide and 3.5m in height and;
- a fire water tank 6m in height

The layout of the substation shown on indicative plans includes two overhead line gantries in the south west corner of the site approximately 12.7m in height. Indicative plans show the maximum height of the remaining outdoor electrical equipment required to connect the above equipment together, will be approximately 8m.

It is proposed that all outdoor areas where plant is installed will be surfaced in stone chippings. The substation will be enclosed by a 2.4m high palisade fence with a 4m high electrified pulse security fence installed on the internal side of the palisade fence. Internal surfaced roads will be required to access the buildings, for maintenance and car parking. Thirteen car parking spaces are proposed to be provided.

The applicant advises that the substation would be an unmanned site subject to inspections and maintenance visits whilst in operation. The frequency and duration of maintenance visits will be dependent on the manufacturer's recommendations related to the equipment installed on site.

Works compounds are proposed at:

- Pegwell Bay Country Park – including crane pad, storage of plant, machinery and materials, to be used for approximately 2 months
- BayPoint sports complex HDD receptor pit 30m x 50m – including storage of plant, materials, with require temporary roadways to be constructed to provide access for drilling plant, to be used for approximately 1 week
- Former Richborough Power Station HDD launch pit 25m x 40m – including storage of plant, machinery and materials, to be used for approximately 1 week
- West of converter station and substation site at the former Richborough Power Station, including storage of plant, equipment, materials and welfare cabins, to be used for approximately 36-42

months

Alternatives Considered

Chapter 3 of the applicant's Environmental Statement (reproduced in full at Appendix 3) considered 28 potential converter station sites and 11 locations where an interconnector might be connected to the high voltage national electricity transmission system. These were either adjacent to existing National Grid electricity transmission substations or in areas where a substation could be considered feasible. The Environmental Statement confirms that the potential landfall sites were in locations where there appeared to be sufficient absence of built development to allow cables to be brought ashore and to be routed to the potential connection point.

Of the 28 site options identified, the Environmental Statement details that three sites were short listed based on size, environmental impact, availability of land, feasibility of an appropriate connection to the grid system and the feasibility on an appropriate connection to a suitable subsea cable landfall, together with input from Natural England, Environment Agency, local planning authorities and Kent Wildlife Trust. The three short listed sites were Shellhaven, Kemsley and Richborough. The announcement of the Thames Gateway development in 2007 ruled out Shellhaven as an option. The shortest marine route for the project was between Richborough and West Zeebrugge.

In relation to the Kemsley option, the Environmental Statement identified that there were particular challenges to the landing or onshore routeing of DC cables at Kemsley because of the extensive areas of wetlands designated for nature conservation value, where installation would be difficult and could cause disturbance. Land ownership investigations concluded that there appeared to be no obvious land parcel suitable for the converter station in the Kemsley vicinity.

Richborough was identified in the Environmental Statement as having the advantage of being a ‘brown field’ site allocated for re-use where land was available with a landowner willing to sell, subject to satisfactory commercial negotiation. It was identified as being close to a suitable landfall (at Pegwell Bay) and it supported the most direct, least distance subsea cables connection to West Zeebrugge within acceptable risk parameters. Richborough was therefore selected as the preferred site to progress further.

In addition to the Environmental Statement, the applicant has confirmed in writing that there is not spare capacity in existing overhead lines at Dungeness A and that National Grid Nemo Link would require a new 400kV double circuit overhead line between Lydd and Rowdown if it was constructed at Dungeness.

The Environmental Statement sets out six proposed cable landfall options; Service Station North, Service Station South, Cliffsend Beach, Sandwich Flats, Country Park and the River Stour. Based on a technical and environmental assessment of the alternatives, the Environmental Statement concluded that the cable landfall in the area of the Service Station South was the preferred option.

In terms of the cable route to the former Power Station site, the A256 offered the shortest route and avoided nature designations in Pegwell Bay. However the Environmental Statement sets out as the Thanet Offshore Wind Farm cables are located within the A256, insufficient space to accommodate two HVDC cables was available. The verge on the landward side of the A256 was discounted as a potential route in the Environmental Statement given that there are plans to raise and remodel the golf course as any change to the depth of burial of the cables could affect the capacity or rating of the cables, limiting the effectiveness of the Nemo Link.

The preferred route of the onshore underground cables was therefore set out within the Environmental Statement as running from the Transition Joint Pit, through Pegwell Bay Country Park, then into Stonelees Nature Reserve and BayPoint sports complex, beneath the A256, Minster Stream, and a compartment of Sandwich Bay to Hacklinge Marshes SSSI terminating in the converter station. The Environmental Statement sets out that this route offers a short, technically and environmentally acceptable route which minimises disturbance to local residents, landowners and environmental features.

Alternative cable technology options were also considered within the Environmental Statement, including overhead lines between the subsea cables and the converter station. Whilst the Environmental Statement concludes that overhead lines are generally cheaper, constraints were identified in relation to costs of repairs and

maintenance due to the combinations of salt-laden air and pollution causing insulation problems.

The underground cable option was considered preferable in the Environmental Statement as it would reduce the need for maintenance.

PLANNING HISTORY

FUL/DOV/13/00143 - Application for full planning permission for the installation of 720m of underground high voltage direct current (HVDC), erection of 4 metre high security fencing, construction of access road and hard landscaping, (development falling within the Dover District), being part of a 130km HVDC electrical interconnector with an approximate capacity of 1'000 megawatts (MW), from Zebrugge (Belgium) to Richborough (UK). (This is a duplicate of the application submitted to Thanet District Council which also includes outline planning permission for the erection of a converter station building (max height 30.8 metres), substation building, (max height 15 metres), outdoor electrical equipment for substation (max height 12.7 metres) and converter station (max height 11.8 metres), and application for full planning permission for underground HVDC, fencing, landscaping and internal roads, since the majority of the site falls within the district of Thanet) - Application withdrawn (Associated Thanet District Council reference - F/TH/13/0144).

FUL/DOV/12/01017 - Redevelopment of a 1.22 ha (3.02 acre) part of the Richborough Power Station site to create a 42.4 MW capacity sui generis Peaking Plant Facility with associated areas for parking, access, landscaping and associated works, including 4 x 35 metres high exhaust stacks - Granted (Associated Thanet District Council reference F/TH/12/1015).

FUL/DOV/12/01018 - Creation of an internal road and infrastructure network, weighbridge, estate landscaping, office building, and associated works, part of which falls within the Dover District (duplicate application submitted to Thanet District Council, as the majority of the site falls within the district of Thanet, Thanet District Council reference - F/TH/12/1016).

SITE CONSTRAINTS

- Sandwich Bay Special Area of Conservation (supporting a dune system)
- Thanet Coast & Sandwich Bay RAMSAR Site (designated for migratory birds)
- Thanet Coast & Sandwich Bay Special Protection Area (designated for breeding birds)
- Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest (the most important sand dune system and sandy coastal grassland in SE England)
- Sandwich & Pegwell Bay National Nature Reserve
- Flood Zone 3
- Open Space
- County Demolition Waste
- Channel Tunnel Rail Link Safeguarding

POLICY CONTEXT

Dover District Core Strategy February 2010
DM1 – Settlement Boundaries
DM11 – Location of Development and Managing Travel Demand
DM12 – Road Hierarchy and Development
DM13 – Parking Provision
DM15 – Protection of the Countryside
DM16 – Landscape Character
DM25 – Open Space

Dover District Local Plan 2002 ' Saved' Policies
TR12 – Channel Tunnel Rail Link Safeguarding
AS14 – Ramsgate Road B1/B2/B8 employment uses

Kent Waste Local Plan 1998 Saved Policies

W7 – Reuse – Richborough is considered to be suitable in principle for proposals to prepare Category A waste for re-use
W9 – Waste separation and transfer **-** Richborough is considered to be suitable in principle for proposals for waste separation and transfer
W11 – Waste to Energy - The Stour at Richborough is considered to be suitable in principle for proposals for a waste to energy plant

Kent County Council Minerals and Waste Core Strategy: Strategy and Policy Directions 2011

11B – Possible Options for Strategic Waste Sites - The former Richborough Power Station has been identified as a site that could accommodate a large scale Mechanical Biological Treatment (MBT) plant which could receive household and non-household waste for treatment by rail or water. A Waste biomass fuel can also be delivered to a power/Combined Heat and Power (CHP) station from the site by rail or water.

National Planning Policy Framework
The NPPF sets out a presumption in favour of sustainable development and includes core planning principles which seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policies contained within the following section are also of relevance:

Section 4 - Promoting sustainable transport
Section 7 - Requiring good design
Section 10 - Meeting the challenge of climate change, flooding and coastal change
Section 11 - Conserving and enhancing the natural environment
Section 12 - Conserving and enhancing the historic environment

CONSULTEE AND THIRD PARTY REPRESENTATIONS

Parish/Town Councils and Others

Sandwich Town Council

No objections, the Council recommends approval.

Ash Parish Council

Note the application for information.

Canterbury City Council

Having considered the proposal and the implications of the onward connection on the district, advise that the Council strongly objects to the proposal. The Council believes that confirming the location of the inter-connector will prejudice the proper consideration of high level options for onward connection to the National Grid transmission system and the determination of this application is therefore premature without a full assessment of the impacts of the overall proposal on the wider locality.

The outcome of the recent planning application relating to the Triton Knoll Offshore Wind Farm is noted but given the scale and likely implications of the onward connection, the City Council requests that any decision on the location of the new inter-connector, converter station building and substation building is made in parallel with the decisions on new transmission connection from the inter-connector to the National Grid.

Technical Consultation responses

Environment Agency – No objection subject to safeguarding conditions

Biodiversity – previous concerns have been answered in the new application. New invertebrate surveys are necessary to provide accurate data in respect to the population size and distribution of Lugworms Arenicola marina in the Bay. Subject to this condition the EA consider that the proposed development will be acceptable.

Flood risk – a Flood Risk Assessment and draft drainage strategy have been produced which demonstrate that the risks to/from the development can be appropriately managed. Any excess surface water generated by an event which exceeds the design parameters should be retained on site in pre-determined areas which are well away from any vulnerable property and where the off-site flood risk will not be exacerbated by its presence.

Water quality – the information provided in the Environmental Statement suggests marine water quality impacts will be temporary and not significant at waterbody level, however Water Framework Directive impacts should be assessed for Marine Management Organisation licensing purposes and EA are consultees to that process.

Waste Regulation – the CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standards BS EN 14899:2005 'Characterisation of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.

Site Waste Management Plan – since 6 April 2008, it is a requirement for all new construction projects worth more than £300,000 to have a Site Waste Management Plan (SWMP). Each project should have one SWMP.

Pollution Prevention - the developer should prepare an Incident Management Plan which should cover amongst other things, measures for the prevention of pollution, access to pollution control equipment, Oil and Chemical spills, dust, transfer of demolition wastes, avoidance of cross contamination of hazardous and non-hazardous/inert material, with particular reference to ensure the proposed operations on the site:

- does not disrupt existing sewerage facilities
- does not disrupt and pollute existing drainage systems
- does not impact and pollute surrounding water bodies

The plan should also cover Oil Storage, a map of all drainage (surface & foul) on the site and a Pollution Response Plan to deal with any pollution incidents. The plan should be made known to members of staff on the site and include emergency contact details for who is responsible for Pollution Incident Management.

Fuel, Oil and Chemical Storage – any facilities for the storage of oils, fuels or chemicals shall be provided with secondary containment that is impermeable to both the oil, fuel or chemical and water, for example a bund, details of which shall be submitted to the local planning authority for approval. The minimum volume of the secondary containment should be at least equivalent to the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. Al fill points, vents, gauges and sight gauge must be located within the secondary containment.

The secondary containment shall have no opening used to drain the system. Associated above ground pipework should be protected from accidental damage. Below ground pipework should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.

Main Rivers – the River Stour and Minster Stream are designated ‘main rivers’ and under the jurisdiction of the EA for the purposes of its land drainage functions. The written consent of the Agency is therefore required under the Water Resources Act 1991 and associated Byelaws prior to the carrying out of any works whatsoever:

- in, over, or under the channel of these watercourses,
- on their banks,

- within 15m of the top of their banks,
- within 15m of the landward toe of any flood defence (where one exists).

The EA's formal written Consent will therefore be required for any works on this site within 15m of the River Stour or the Minster Stream (irrespective of any planning permission granted).

Recommended safeguarding conditions:

- detailed surveys of the invertebrate populations of Pegwell Bay to ensure that the biotope present in Pegwell Bay is correctly described
- detailed sustainable surface water drainage scheme for the site based upon drawing D2700.075Aand section 11.2 of the approved FRA to prevent an increased risk of flooding off-site
- a scheme that includes the components to deal with the risks associated with contamination of the site, a site investigation scheme, detailed risk assessment, an options appraisal and remediation strategy with a verification plan to protect the underlying aquifer and nearby watercourse from the potential risk of pollution
- a verification report demonstrating completion of works to protect the underlying aquifer and nearby watercourse from the potential risk of pollution
- previously unidentified contamination discovered
- preventing infiltration of surface water drainage into the ground unless written consent
- Piling or any other foundation designs using penetrative methods not be permitted other than with the express written consent of the Local Planning Authority, where no resultant unacceptable risk to groundwater
- a construction environmental management plan to ensure pollution prevention measures are in place for all potentially polluting activities during construction and to protect sensitive water receptors.

Natural England – no objection subject to securing the mitigation measures and safeguarding conditions

The Conservation of Habitats and Species Regulations 2010 (as amended)

In relation to the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site (Wetland of International Importance under the Ramsar convention), - no objection subject to securing the mitigation measures that are included in the application and detailed below:

- Cable installation work will be completed in the months outside 1 October – 31 March – to avoid disturbance to the overwintering birds, features of the SPA / Ramsar, which use the area from October to March inclusively with February and March being particular importance in terms of when the birds are most sensitive.
- A cable burial management plan is submitted at least 4 months prior to construction. This plan will be discussed and its contents agreed with Natural England prior to commencement of works to confirm the specific details of how the cable will be buried through the intertidal, ensuring no adverse effect on integrity of the designated sites (in line with the Appropriate Assessment to be undertaken); details of how the area will be monitored post construction; a contingency plan to ensure impacts are mitigated should works fall outside of the consented parameters; and a reinstatement (of habitat) plan (see Appendix 1 for further detail) - as outlined in Section 4.1 of the PMSS document entitled 'Review of Intertidal Cable Installation Techniques'.
- Low ground pressure excavators will be used on the saltmarsh and mudflat habitats as a matter of course and where ground bearing conditions are deemed unsatisfactory for the works, bog mats or rolled steel/ aluminium sheeting will be employed to minimise ground disturbance and compaction to the salt marsh and mudflat supporting habitats of the SPA and Ramsar site.
- Post construction saltmarsh monitoring reports will be produced and submitted to Natural England at the end of years 1, 2, 3, 4 and 5 to report on the rate and success of natural re-colonisation of the saltmarsh following the installation of the cable and will identify if there is a requirement for intervention to aid recovery
- Debris and other mobile food sources for invertebrates (e.g. drift wood) will be moved by hand rake or turfs lifted to outside the cables corridor prior to the excavation of the cables trench and jointing pits and compound area, and the placing of weight-bearing mats. During cable installation, excavated material (saltmarsh /mud) will be set to one side of the trench and will not be disturbed by

construction traffic or workers until the trench is backfilled to remove from the proposed excavated area any invertebrates including any Red Data invertebrates to prevent them from being trampled or buried. Setting the excavated material to one side immediately after excavation will reduce the potential for smothering invertebrates and allow for invertebrates to move out of the area if necessary

- Monitoring for invertebrates will be carried out for a period of five years in association with the saltmarsh monitoring to ensure that structure of the salt marsh returns, to enable it to support the same invertebrate assemblage as it did prior to construction
- Targeted investigation works will be undertaken to assess the possibly contamination of hydrocarbons from the petrol stations both at the transition joint pit location and at the site of the horizontal directly drilling site. If contamination is found a robust remediation method statement will be compiled to detail the necessary mitigation measures, to ensure that any existing pollution on site is appropriately dealt with and not spread into the site
- A Construction Environmental Management Plan (CEMP) will be prepared which will set out methods which contractors will be required to undertake as a minimum to ensure pollution control throughout the construction works, to manage the risks of pollutions during construction

The measures will also be confirmed by the Appropriate Assessment, which needs to be completed prior to a decision being made on the application.

Without full implementation of the mitigation measures there is a risk that the application would have significant effects on the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site (Wetland of International Importance under the Ramsar convention). In particular it could affect the following features of these internationally designated site(s):

- Saltmarsh as a supporting habitat for SPA / Ramsar birds.
- Mudflat as a supporting habitat for SPA / Ramsar birds
- Invertebrates notified under the Ramsar citation

Having considered the submitted information, Natural England is of the opinion that all impacts described will be temporary and based on this information and suitably worded conditions being attached and secured in any marine licence or planning application granted, we advise that there will be no adverse effect on integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar site.

The following points comprise Natural England's detailed comments on potential impacts to these European designated sites:

1. Thanet Coast and Sandwich Bay SPA - Impacts on overwintering birds (SPA feature)
Natural England welcome the proposal to time all construction works within the intertidal outside of the important overwintering period to avoid disturbance to SPA. The submitted environmental statement suggests that October – February is a sensitive time for overwintering birds, however Natural England advise that March is also an important month.

Impacts on saltmarsh (SPA supporting habitat)

1. Transition Joint Pit (TJP):
Two options were proposed for the location of the transition joint pit, as a reasonable worst case scenario (section 2.17 of 'Effect on Integrity of European Nature Conservation Interests') within the saltmarsh itself, and as outlined in the minutes of a telephone conversation on 15 October 2013, in the area of rough grassland to the south west of the petrol station. Natural England would advise that installation of the Transition Joint Pit in the area of rough grassland would be the preferred, least damaging option.

Should the Transition Joint Pit be installed within the area of saltmarsh, it is recognised that this will be a temporary disturbance to saltmarsh, as evidence suggests sufficient recolonisation of saltmarsh following disturbance works (TOWF cable installation). However, to avoid cumulative effects on the saltmarsh, taking into account disturbance from the cable installation proposed itself, it would be preferential to locate the TJP outside the saltmarsh.

Following a telephone discussion on 15 October 2013, Natural England is satisfied that once the Transition Joint Pit has been installed, the saltmarsh (should the worst case scenario be realised) will be reinstated and that there is no requirement for routine inspection or maintenance of the joint pit.

2. Lay down area:
The reasonable worst case scenario suggests that the lay down area for construction works will be placed within the area of rough grassland to the south west of the petrol station (section 2.17 of 'Effect on Integrity of European Nature Conservation Interests'). As outlined in the meeting minutes from a telephone conversation on 15 October 2013, it would be preferential for the works lay down area to be located away from the saltmarsh, and located within the car park adjacent to the petrol station.

Impacts on saltmarsh and mudflat (SPA supporting habitats)

· *Cable installation*:
Natural England welcome the submission of the PMMS report 'Review of Intertidal Cable Installation Techniques' which includes the various options for cable installation within the intertidal areas. The following comprises Natural England's comments on each option with our preferred option also identified.

a) Open trench and backfill (identified as the reasonable worst case scenario):

Natural England consider that this option would result in temporary loss of saltmarsh habitat, however given previous evidence for the adjacent Thanet Offshore wind farm cabling, Natural England are satisfied that this area will re-colonise sufficiently following installation of the cable and is acceptable as a reasonable worst case scenario.

Natural England advise that should this option of installation be employed that the use of low ground pressure excavators as a matter of course is secured for works across the mudflat and salt marsh habitat, with the use of bog mats or rolled steel/ aluminium sheeting employed should the ground bearing conditions be deemed unsatisfactory. A temporary access track for operational vehicle access should be defined across the salt marsh. Cable lay and bury should be installed using tracked or skidded plough or chain cutting tool.

This option is identified as Natural England's preferred option for cable installation due to the minimised ground disturbance associated with this method and the previous success of a cable plough solution for installing the adjacent Thanet Offshore wind farm cable. However, Natural England do recognise the more complex issues with using this method for the Nemo Link cable in relation to the bending values of this cable in comparison to those typical to date for offshore wind farms.

Natural England advise that should this option of installation be employed that the use of low ground pressure excavators as a matter of course is secured for works across the mudflat and salt marsh habitat, with the use of bog mats or rolled steel/ aluminium sheeting should the ground bearing conditions be deemed unsatisfactory.

b) Pre-installation of ducts
Natural England advise that this option is least preferable due to its potential for increased ground disturbance in comparison with other suggested methods of cable installation in addition to the risk of ground contamination from bentonite spillage.

c) Horizontally directionally drilled ducts
Although it is acknowledged that 'HDD' is typically a favoured option by Natural England when considering cable burial, particularly through saltmarsh in order to avoid loss of habitat, Natural England concur with the report that suggests that in this instance the pre-installation, investigative geotechnical drilling surveys are likely to cause similar disturbance to the sensitive habitats as cable plough or trenching. Therefore, in this instance, Natural England do not consider this as a preferred option.

2. Cable Burial Management Plan

Natural England have previously been involved with other cable routing projects, specifically the Race Bank Offshore Wind Farm 'Race Bank' and the 'Lincs' 2nd cable installation, for which an approach was agreed whereby

the following documents were submitted prior to cable installation.

- Detailed export cable burial plan
- Detailed contingency plan
- Detailed saltmarsh mitigation and reinstatement plan
- Detailed saltmarsh monitoring plan (also refer to proposed mitigation 4)

Provided the above documents are developed through close discussion with Natural England, Natural England are satisfied that these can be attached as conditions to a licence / consent, subject to the Appropriate Assessment to be undertaken by the competent authority concluding no adverse effect on the integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar site.

Natural England considers that a review of the appropriate assessment and any mitigation measures will be required once full details of the installation tool is available to ensure that all likely significant effects have been fully considered.

Appropriate Assessment

Under regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended), Natural England advised that the competent authority should undertake an Appropriate Assessment of the implications of this proposal against the site's conservation objectives. Natural England notes that your authority, as the competent authority under the provisions of the Habitats Regulations, is to undertake the Appropriate Assessment, in accordance with Regulation 61 of the Regulations.

Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process and has considered the information submitted by the applicant to inform this assessment, including measures proposed to avoid or mitigate for all potential adverse effects on the above sites as a result of the proposal. Earlier in the process we also provided advice about measures to avoid and mitigate adverse effects.

The mitigation measures submitted are comprehensive and need to be secured through appropriately worded conditions or a Section 106 agreement in any permission granted to ensure that the works will not result in an adverse effect on integrity of the internationally protected sites. The Appropriate Assessment, which will be based on advice we have already provided and the information provided by the applicant through their study of effects on European sites, will confirm the mitigation measures that are needed.

Natural England welcome the submission of the additional document entitled 'Effect on Integrity of European Nature Conservation Interests'. Natural England also welcome the submission of the 'reasonable worst case scenarios' in relation to the techniques proposed for the installation of the cables and acknowledge that the applicant will actively seek to deliver more environmentally sensitive solutions where practicable.

As this proposal is covered potential by two competent authorities (Thanet District Council and the Marine Management Organisation (MMO), Natural England draw attention to DEFRA's guidance on competent authority coordination under the Habitat Regulations. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

Site of Special Scientific Interest (SSSI) - Wildlife and Countryside Act 1981 (as amended)

Natural England can confirm that the proposed works are located within the Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI). Natural England advises that the proposal, if undertaken in strict accordance with the details submitted and subject to the conditions listed below being attached to any approval, is not likely to damage the interest features for which the site has been notified.

Recommended safeguarding conditions:

- No construction related activities are to be undertaken in areas of salt marsh used by redshank and oystercatcher during their nesting
- season which begins in mid-April and finishes in mid-July (Area 1 – including 100 meter buffer, Area B and Area C).

- Prior to any vegetation removal works commencing on the salt marsh habitat, a pre-construction walkover survey at the beginning of the breeding season should be conducted to determine whether any birds (specifically of note are SSSI features; redshank and oystercatcher) are nesting in the area proposed for works. A pre-clearance check no more than 48hours prior to the day the clearance works are undertaken should be conducted and if breeding birds are discovered works will be subject to delay. Walkover surveys will also be required on the country park / Stonelees and the site of the convertor station and sub-station if any vegetation clearance is carried out.
- The cables are to be laid in a trough on top of the existing surface within the Pegwell Bay Country Park to the boundary of Stonelees Nature Reserve. The cables trough will then be overburdened with clean inert fill which finishes in a chalk cap. Detailed method statements for cables installation within the Country Park will be provided to the EA, NE and TDC prior to the commencement of works.
- There must be no encroachment, storage of material or machinery on the SSSI Unit 11 adjacent to the converter station and sub-station during construction. The construction lay down area will follow principles sent out in the Construction Environmental Management Plan (CEMP).
- Activities such as piling for the construction of foundations should be restricted to the months outside of October to March or should begin with a soft start.
- Noisy activities with short explosive bursts such as piling are more likely to disturb birds and other wildlife. Construction works on the site of the proposed converter station and sub-station, particularly with regard to the noisiest operations may need to be carried out at times of the year that avoid impacts on the bird interest of the site or use other mitigation measures to reduce the noise or impact.
- A lighting strategy to be agreed with NE, EA and TDC and implemented on the converter station and sub-station site.

Natural England defers to the Environment Agency for advice on foul and surface water systems. However, as outlined, sewage from the converter station and sub-station will be collected within a sealed unit and taken off site. Surface water drainage, will go to the existing drainage system. These should incorporate appropriate oil interceptors to prevent contaminants entering the water system.

Marine and Coastal Access Act 2009

The proposed works, as set out in the information provided, are sited adjacent to a proposed Marine Conservation Zone (pMCZ). Thanet Coast pMCZ has been proposed for designation due to the presence of:

- Moderate energy infralittoral rock
- Moderate energy circalittoral rock
- Subtidal coarse sediment
- Subtidal sand
- Subtidal mixed sediments
- Blue mussel beds
- Peat and clay exposures
- Rossworm (*Sabellaria spinulosa*) reef
- Subtidal chalk
- Subtidal sands and gravels

It should be noted that the Thanet Coast pMCZ is now a material planning consideration in the decision making process. Having reviewed the evidence relating to the site Natural England believe that the works will not hinder the conservation objectives of this site; so long as they are undertaken in strict accordance with the information provided by the applicant and subject to the following. Natural England recommend that conditions to secure the following are attached to any planning permission to reinforce compliance and avoid the potential for damage:

Recommended safeguarding condition:

- The route of the cable path, as outlined in the submitted Environmental Statement, will be strictly followed, to avoid physical damage to any of the above features of the pMCZ.

The England Coastal Path

The Ramsgate to Folkestone section of the England Coast Path is currently proposed to run along Foads Lane to Stonelees Nature Reserve (see Map 1.4 on Natural England's website www.naturalengland.org.uk/coastalaccess from Monday 28th October). In this area the route follows existing access routes and PROW and if approved is due for implementation in 2014. Where possible, Natural England request that existing access is maintained, including promoted routes such as the England Coast Path.

Designated Landscapes

This proposal does not appear to be either located within, or within the setting of, any nationally designated landscape. All proposals however should complement and where possible enhance local distinctiveness and be guided by your Authority's landscape character assessment where available, and the policies protecting landscape character in your local plan or development framework.

European Protected Species Natterjack Toads

On the basis of the information available to us, Natural England's advice is that the proposed development is likely to affect natterjack toads through the disturbance, temporary loss of habitat and potential siltation of breeding ponds. Natural England are satisfied however, that the proposed mitigation is broadly in accordance with the requirements of the natterjack toad's guidelines and should maintain the population identified in the survey report.

Recommended safeguarding conditions:

- Prior to the commencement of any works which may affect natterjack toads and or their habitat, a detailed mitigation and monitoring strategy should be submitted to, and approved in writing by, the local planning authority. All works should then proceed in accordance with the approved strategy with any amendments agreed in writing.
- Storage and maintenance of evacuated material from the trenches dug in the vicinity of the ponds should be stored on the road side of the trench well away from the ponds to ensure that the risk of siltation is reduced and that the replacement of evacuated material back into the trench is performed in a timely way so as not to extend storage time. Siltation and pollution management using standard pollution control measures that are incorporated into a Construction Environment Management Plan must also be applied.
- Natterjack toads are European Protected Species. A licence is required in order to carry out any works that involve certain activities such as capturing the animals, disturbance, or damaging or destroying their resting or breeding places. Note that damage or destruction of a breeding site or resting place is an absolute offence and unless the offences can be avoided through avoidance (e.g. by timing the works appropriately), it should be licensed. In the first instance it is for the developer to decide whether a species licence will be needed. The developer may need to engage specialist advice in making this decision. A licence may be needed to carry out mitigation work as well as for impacts directly connected with a development.

Natural England's view on this application relates to this application only and does not represent confirmation that a species licence (should one be sought) will be issued. It is for the developer to decide, in conjunction with their ecological consultant, whether a species licence is needed.

It is for the local planning authority to consider whether the permission would offend against Article 12(1) of the Habitats Directive, and if so, whether the application would be likely to receive a licence. This should be based on the advice we have provided on likely impacts on favourable conservation status and Natural England's guidance on how to apply the 3 tests (no alternative solutions, imperative reasons of overriding public interest and maintenance of favourable conservation status) when considering licence applications.

Protected Species

Natural England's Standing Advice for Protected Species is available online to help local planning authorities better understand the impact of development on protected or BAP species should they be identified as an issue at particular developments. This also sets out when, following receipt of survey information, the authority should undertake further consultation with Natural England.

Additional Advice 30 October 2013

Natural England is satisfied that a condition in relation to timing works around the important times for SSSI breeding birds is no longer required. This is providing a detailed breeding bird mitigation plan is submitted at least four months prior to cable installation works in the intertidal and saltmarsh areas of Pegwell Bay beginning – something Natural England advises is attached as condition to any planning consent granted

Comments relating to Cumulative Impact and In-combination effects 10 June 2013

This planning application relates to the landing of an offshore cable at Pegwell Bay and its connection and building of a converter station at the former Richborough power station, in addition this project requires related infrastructure that does not form part of this planning application, i.e. the offshore cable and the power line connection to the National Grid. As stated in our scoping letter to both Thanet and Dover cumulative and in-combination effects should be considered.

The marine licence from the Marine Management Organisation (MMO), which includes works regarding both the intertidal and offshore cabling, is currently being assessed by Natural England's Marine Team and a response is due before the end of June; at which stage if Natural England have any concerns regarding significant effects with regard to this proposal, they will be raised.

The ongoing connection from the converter station to the national grid via the substation at North Canterbury is currently an ongoing consultation that Natural England has been involved with. The detail in this ES highlights the potential impact of this route however, more detail has been provided at the scoping stage of the Richborough connection project proposed by National Grid.

The preferred route is north of Stodmarsh SSSI / SPA / Ramsar, which under a proposed scenario 2 the new 400kV cables would follow the route of the current 132kV cable, which would be removed. Power lines can result in impact through direct habitat loss, indirect habitat loss (displacement and barrier effects) and bird mortality (electrocution and collision).

This preferred route does not directly impact on international or national designated habitat (i.e. there is no land take) nor does it over sail any sites. Also as it replaces existing infrastructure the scale of change is not so significant. However, Natural England are still waiting to assess the impacts on the bird species of the SSSIs and SPAs in the area included linked land that may extend several kilometres beyond the site boundary.

Natural England are currently waiting to review the first set of winter surveys for birds in this area and, therefore, Natural England are unable advise that this route has no potential to impact on the birds of these designated sites, particularly if large numbers of birds susceptible to electrocution and collision are using the area; then, of course, we would have strong concerns.

However, in addition to route planning other mitigation measures can be included to reduce these types of impacts such as removing earth wires and modifying earthing methods; modifying line, pole and tower design; installing underground cables; and conspicuous marking of lines, poles and towers. Once the level of risk is determined this would if appropriate necessitate what form of mitigation could be used. However, until all the evidence is available Natural England are unable to conclude that no significant impacts would result from the overhead line.

In order for Natural England to advise the council whether there are any cumulative and / or in-combination effects the impacts (including any mitigation) of this current proposal must firstly be correctly assessed. It can then be considered whether any remaining impacts are likely to result in significant impacts cumulatively or in-combination with the potential impacts of other projects including the two additional proposals related to this application. Until the precise impacts of this current project are established Natural England are unable to advise further.

Comments relating to the national electricity transmission system connection - 07 August 2013

Option 1 (Richborough to Canterbury North) – is the shortest and most direct route and because of the other highly sensitive strategic options, Natural England consider it to be the route with the least potential for significant impacts on the natural environment. However, whilst this strategic option minimises the potential impacts on the Kent Downs AONB it does have the potential to impact on a number of international and national nature conservation sites and potentially on important bird populations that are features of some of those sites. Further assessment and avoidance and / or mitigation will be required as the detailed Route corridor is identified, and may require Appropriate Assessment.

The two onshore options (2 and 3 to Cleve Hill and Kemsley respectively), both have the potential to impact on the same nature conservation designations as option 1 (Richborough to Canterbury North), but also additional sites further north. Therefore, they appear to offer no obvious benefit over option 1 (Richborough to Canterbury North).

Options 4, 5 and 6 are offshore options to Cleve Hill, Sellindge and Kemsley respectively. All these offshore routes require cabling back through Pegwell Bay, (with potential impacts on the Thanet Coast and Sandwich Bay SPA and Ramsar site) in addition to any impacts from the NEMO Link interconnector. Further cabling would then be required through the internationally designated habitat of the Swale (the Swale SPA and Ramsar) for both the Cleve Hill and Kemsley option - with further potential to impact on these designations with any overhead line due to the high number of migratory, overwintering and breeding birds.

The offshore option to Sellindge again requires cabling through Pegwell Bay, the ongoing landward route would then pass through the Kent Downs AONB to Sellindge. An overhead line would not be an acceptable visual or landscape impact and therefore would require undergrounding if feasible. In summary, the offshore options would be likely to pose greater risks for the natural environment than option 1 (Richborough to Canterbury North).

The preferred north Route Corridor (under Scenario 2 with the existing 132kV overhead line being removed), from Richborough to Canterbury North is the shorter and more direct route and, based on current evidence, we consider it also poses less risk to wildlife and AONB than the south Route Corridor. Careful consideration of avoidance and mitigation measures on those impacts will be needed.

Kent Wildlife Trust, National Trust and Royal Society for the Protection of Birds – object
We are extremely pleased to note that additional information has been prepared to support the Environmental Statement and provide information to enable Dover and Thanet District Councils to undertake a Habitats Regulations Assessment. This additional information and the commitments undertaken by the applicant have resolved many of our original objections. Within this response we have suggested further amendments where we still have concerns.

As custodians of the site our role within the planning system is to ensure that the site is protected from deleterious activities and development that could impact on its nature conservation value and ensure any impacts identified are avoided, mitigated or appropriate compensation is provided. We would not permit any development on the site that may lead to impact and would expect any development to result in a net gain for biodiversity in line with the National Planning Policy Framework paragraph 118.

Sandwich and Pegwell Bay is designated under the European Birds and Habitats directives and the Ramsar convention as part of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site and

the Sandwich Bay Special Area of Conservation (SAC). The site is also designated as part of the Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest and Sandwich and Pegwell Bay NNR. The above designations ensure that the habitats and species which the site supports are given the highest level of protection and the site's integrity is assured in the long term. Stonelees also supports a reintroduction programme for natterjack toads. Evidence of good survival and breeding rates has been recorded since introduction commenced.

<u>Summary of previous concerns</u>

Within the original application we had a number of concerns regarding the proposed project. It was, and remains our view that the route selected is not the least environmentally damaging option.

We felt that the baseline information was incomplete and issues such as compaction and contamination had not been considered and the avoidance and mitigation measures recommended at that time could result in significant impacts on the integrity of the site.

Since this time Kent Wildlife Trust has had two meetings with National Grid in which many of these issues have been discussed. Resilient avoidance and mitigation measures have been incorporated within the application which resolves many of our concerns.

Policy Context

In relation to the Conservation of Habitats and Species Regulations 2010 it is our view that Dover and Thanet District Councils, as the determining authorities, should undertake a Habitats Regulations Assessment.

It is our view that an invertebrate baseline surveys following best practice guidelines should be conditioned within the mudflats. These surveys will ensure that any changes in the benthic communities will be identified within the monitoring process.

Having reviewed the evidence submitted, we note that there are uncertainties regarding the impacts of simplification of mudflat habitats, re-colonisation of saltmarsh habitat and siltation. It therefore continues to be our view that impact could occur within the habitats for which the sites are designated, or that support SPA and Ramsar designated species.

We agree that appropriate conditions can be drafted to provide contingencies to mitigate or compensate for these impacts, should they occur, and have suggested possible wording for the conditions. We note that within the new application further avoidance measures and conditions have been recommended which ensure impacts are mitigated for many of our previous concerns.

Natterjack toad, common lizard, grass snake, slow worm and water vole are present within the reserve and receive varying protection under the Wildlife and Countryside Act. Natterjack toads receive protection at a European level and are also protected under Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (as amended). Water vole and reptile species are protected from harm under the Wildlife and Countryside Act.

The Route - Landfall at Pegwell Bay

The National Trust, the RSPB and Kent Wildlife Trust continue to question the selection of the proposed landfall at Pegwell Bay and the connection to the Richborough power station site as it is our view that it has not been proved that this is the least environmentally damaging route.

The Conservation of Habitats and Species Regulations 2010 (as amended) state that, if impact cannot be mitigated, all other alternative solutions should be explored before deleterious development is agreed within a European site. If there are no alternative solutions then development can only be agreed if there are Imperative Reasons of Overriding Public Interest.

It is claimed throughout the ES that this is the least damaging route when compared to the other options. We acknowledge that for the majority of the options there are restrictions due to development, lack of access and international designations. However in the case of site 10.1 we can see no reason for rejection other than that the site is within the open countryside and 1km of the AONB.

As there is an existing converter station adjacent to the site and similar issues would have applied to this development, we cannot understand why landfall could not be within this area, where no international or national designations are present.

Although we understand that open countryside and AONB are important considerations within the planning process, these designations are of national importance. It is our view the disturbance of a site designated internationally should be avoided if there is a less damaging option.

We have been assured by National Grid that open countryside is not the only reason for rejection of any site. We would therefore respectfully request detail of the other factors that led to the exclusion of this site. Until such time

as we are satisfied that there are valid reasons as to why the above site cannot be utilised we **object** to the selected route. We are happy to reconsider our position if there is a valid reason why site 10.1 has been excluded

Petrol Station South

Within our previous response we expressed concerns regarding the route chosen for the cable corridor, through the reserve. We note the comments of the applicant within the document entitled *Representations received compilation* and now accept that the proposed route has been routed as close to the Vattenfall route as is feasible from an operational perspective.

In relation to the routing of the cable within the road we are surprised that there was no room available as we have very recently received an application for a water main to be set within the A256. Our reading of the ES was that there were possible routes identified both through the golf course and on the verge to the landward side of the A256. We understood that these routes had been rejected due to possible future overburdening and golfing uses and that existing permissions exist for ground level changes that exclude the use of the golf course. We would value sight of the permissions for land rising within the golf course.

Simplification of sediments, compaction and impacts on benthic communities

Within our response to the previous application we expressed concerns that simplification of sediments and compaction within the mudflats and saltmarsh could lead to impacts on the habitat structure and alteration in the benthic community structure. We highlighted this issue not only in relation to limitation of food for the SPA species but also as mudflats and saltmarsh are habitats of principal importance in their own right and therefore should be protected within the planning process.

We were concerned that the methodology of the survey undertaken to assess the benthic communities was flawed and did not meet best practice and therefore had little confidence in the results. This was due to the low number of stations and the core depth of 15cm that has been used within the survey.

We continue to have concerns regarding the baseline information collected thus far and are pleased to note the commitment by National Grid for detailed invertebrate surveys to be carried out prior to the commencement of works. We are happy that this work be conditioned, provided the surveys are undertaken before construction.

In relation to compaction and simplification of sediments within the mudflats and saltmarsh, it would appear from the report Review of Intertidal Cable Installation Techniques that cable lay and bury using tracked or skidded plough or chain cutting tool would be the least damaging construction technique from an environmental standpoint. We do not claim to be experts in technology available for cable lay, but it is our understanding that this technique would lead to less disturbance of the sediment and compaction.

We understand that this technique may not be possible due to the cable width, however it is our view that any permission granted should require the least damaging cable laying method, with the applicant submitting a variation in condition if this methodology does not appear to be feasible from a technical standpoint. We request that a condition requiring a tracked or skidded plough or chain cutting tool to be used to lay the cable and if this technique is not feasible from a technical standpoint, a case should be submitted setting out the least environmentally damaging option available.

In relation to the proposed invertebrate monitoring we welcome the commitment to undertake surveys for 5 years to monitor benthic re-colonisation. We wish to ensure that the baseline surveys and monitoring ascertain the species diversity, age structure and community structure of the benthic community. This will enable the data to be analysed for re-colonisation, but will also ascertain whether the community structure and species balance returns to preconstruction levels.

It is our view that monitoring does not provide mitigation in its own right, but would inform whether further mitigation is required. Any condition should require appropriate mitigation and/or compensation if the monitoring shows changes in the benthic communities. We request the a for invertebrate surveys to be undertaken for 5 years post construction, following an agreed methodology, to assess the benthic re-colonisation, community structure and species balance within the mudflats and saltmarsh. If impacts are found to occur, appropriate mitigation and/or compensation will be provided.

Impacts on and Ramsar invertebrates

Within our response to the previous application we were concerned that no investigations had been undertaken regarding the invertebrates present within the saltmarsh which are designated as part of the Ramsar site.

We welcome the additional surveys undertaken in relation to possible Ramsar invertebrate presence within the saltmarsh and identification of areas where they are more likely to occur. We note that the cable route does not contain large areas of appropriate habitat or specific food plants attractive to these species. We welcome the protection measures contained within paragraphs 8.10-8.11 of *Effect on Integrity of European Nature Conservation Interests.*

Saltmarsh habitat loss

Within our response to the previous application we were concerned that evidence had not been provided regarding the regeneration of the Thanet Offshore Windfarm route. We were also concerned that this data may not be comparable to the data required to ensure no impact on the saltmarsh, as the route of the wind farm passed through degraded and damaged saltmarsh, whereas the habitat to be lost in this application is high quality saltmarsh.

We note that the Effect on Integrity of European Nature Conservation Interests report presents evidence from the 2011 survey commissioned by Vattenfall. The 2011 survey indicates that the cable corridor is almost fully vegetated with saltmarsh species. We are pleased that the restoration of the saltmarsh has been so successful in this case.

However in 2011 the vegetation was not at a stage to be comparable with surrounding saltmarsh. We are aware that monitoring of the wind farm route was discontinued and further regeneration was not recorded. Due to the damaged nature of the wind farm route, it is likely that the re-colonisation has improved the saltmarsh in the area. In the case of the Nemo Link project the saltmarsh is of higher quality and monitoring should continue until, either the vegetation returns to current conditions, or it is concluded that current conditions will not be achieved.

We welcome the commitment to monitor the saltmarsh for 5 years and this may enable successful recovery to be recorded, however to ensure no impact on the saltmarsh we recommend that the re-colonisation be reviewed after 5 years with further monitoring or compensation measures being agreed if pre-construction habitat quality and species diversity have not been achieved.

We agree that the corridor should be allowed to naturally recolonize and welcome the thought given to further mitigation if 66% of the route is not vegetated within three years. However we do have some concerns regarding the proposed method of mitigation recommended if natural re-colonisation does not occur at the level anticipated.

Within the Effect on Integrity of European Nature Conservation Interests report seeding is mentioned as a possible solution. We would be concerned regarding seed bought from another location as this could contain alien and invasive species. We would also not be agreeable to turves being cut from any other area of saltmarsh as this would damage a further area of Biodiversity Action Plan habitat.

If natural colonisation does not occur we are happy to discuss further restoration and/or other compensation measures. We request that a condition for NVC surveys to be undertaken for 5 years post construction, following the agreed methodology, to assess the natural flora re-colonisation within the saltmarsh. If vegetation does not cover 66% of the route after 3 years mitigation should be reviewed. If species diversity does not reflect that present pre construction after 5 years monitoring then continued survey or appropriate mitigation and/or compensation will be agreed with Natural England and Kent Wildlife Trust.

Contaminant disturbance

Within the previous application we were concerned that the proposed trenching within the Country Park could disturb contaminants within the landfill, which could in turn impact on the designated habitats and species within Pegwell Bay.

We welcome the proposal to lay the cables over the surface of the Country Park and overburden with chalk within this application as this will ensure no contaminant disturbance within the land fill site as a result of the cable lay. We can confirm we have no further concerns in regards to this issue.

Siltation

Within our response to the previous application we expressed concerns regarding the assessment that there would be a minor adverse impact on the site, after mitigation. We felt that this could lead to an overburden of silt within the water system that feeds Pegwell Bay, causing impacts on the habitats and species for which the site is designated. We also wished to ensure that the natterjack toad ponds within the locality of the route would not be impacted by increases in silt.

We note the Effect on Integrity of European Nature Conservation Interests report commits to the production of a Construction Environment Management Plan. We wish to ensure that the construction Environment Management Plan provides safeguards so risk of siltation into the waterways can be assessed as neutral.

To ensure appropriate safeguards are incorporated into the working practices to preserve the water quality within the SPA, SAC and Ramsar site we recommend a condition for a Construction Environmental Management Plan to be submitted before construction commences, detailing safeguards to be implemented to ensure no increases in siltation within the SPA, SAC, Ramsar site or natterjack ponds as a result of the proposed works.

Bird Disturbance

Within our response to the previous planning application we express concerns regarding the risk of disturbance to wintering birds if the works were to overrun, and the risk of disturbance to feeding, roosting and nesting birds within the summer months. We recommended two conditions to ensure that the SPA and SSSI species are protected from disturbance.

We very much welcome the additional commitments to undertake construction work within the window from mid-July to the end of August and undertake a breeding bird survey before construction commences. However, as stated previously, we would not be satisfied if only a walkover survey were undertaken. We request a full survey is undertaken, following the Common Birds Census methodology or another suitable technique, to ensure all breeding sites are identified and protected from disturbance.

In relation to the construction timing we recommend a condition is placed on any application granted to ensure no slippage in the schedule that all works in the intertidal area shall be undertaken between mid-July and the end of August (inclusive) to avoid the period most sensitive to wintering and nesting birds. No construction within the intertidal habitats will be undertaken outside this period.

In relation to the protection of breeding birds to ensure all possible nesting birds are identified we recommend that the a condition for a full breeding bird survey to be undertaken following The Common Birds Census (CBC) methodology or another suitable technique (refer to RSPB “Bird Monitoring Methods”), with at least 5 well-spaced visits undertaken commencing in late March- early April, in the year construction commences. Timing will be dependent on weather conditions and KWT and the RSPB should be consulted on timing and methodology. Avoidance, mitigation and, if necessary, compensation measures should be agreed with KWT and RSPB before construction commences.

Reptiles and natterjack toads

Within our previous response we expressed concerns regarding the lack of survey effort and mitigation for reptile species present within the Country Park and Stonelees nature reserve in particular. We were also concerned regarding the lack of information relating to direct impacts on natterjack toads, the danger of siltation within the breeding ponds and the lack of mitigation within the application documents to alleviate impacts.

Reptile species are protected from harm under the Wildlife and Countryside Act and mitigation measures should be incorporated into any scheme that may harm these species. We acknowledge the difficulty of surveying for

reptiles on a heavily recreated site; however we would expect appropriate safeguards to be proposed within the final scheme. This is a complex problem due to the differing needs of reptiles and natterjack toads, with unattractive habitat for reptiles, short mown grassland, being likely to attract in natterjack toad, and long grass habitat unattractive to natterjack toads encouraging colonisation by reptile species.

We welcome the analysis of the natterjack toad survey data and the mitigation measures. We understand the reasoning for both methods of exclusion proposed. The establishment of long grass habitat would have the benefit of gradually excluding the natterjack toads from the construction corridor which would ensure as little stress as possible. However we are concerned that this habitat manipulation could attract further reptiles into the area.

As reptiles are known to out compete natterjack toads this could have a deleterious impact on the natterjack toads in the short term. It would also mean that management practices would need to be altered over at least one season and mitigation measures would still be required for reptiles likely to be present within the long grass habitat. We note that the cut is proposed in stages, which is likely to limit harm to reptiles.

The translocation exercise would ensure the safeguarding of both reptiles and natterjack toads and could overcome the differences in species requirements for exclusion. We would request that we are consulted on both the reptile and natterjack toad mitigation strategies for this development. To ensure appropriate mitigation is provided to safeguard reptiles and natterjack toads from direct harm we request a condition that separate natterjack toad and reptile mitigation strategies shall be prepared before construction commences detailing any exclusion or translocation methods and habitat creation and/or enhancement. A licence will be required from Natural England to safeguard the natterjack toad population.

In relation to siltation of the breeding ponds we still have concerns that appropriate safeguards are still not detailed, with this being deferred until after planning permission is granted. To limit impact as much as possible we recommend the excavated material be stored as far as possible from the ponds. We would advise that the excavated material be stored on the side of the trench nearest to the road. We understand that this is likely to result in some scrub and tree felling, however this would fit with the nature conservation aims to reduce scrub and tree cover within the site.

We feel that further measures are likely to be required within the Construction Environmental Management Plan, but appropriate storage would alleviate some of our concerns. We would value the opportunity to discuss this with National Grid and recommend a condition that excavated material should be stored on the landward side of the cycle path as far away from the natterjack breeding ponds as is technically feasible. The Construction Environmental Management Plan should contain measures to ensure no silt spillage into the breeding ponds within the locality of the route.

Water voles

Within the original application we expressed concerns regarding the lack of survey effort and mitigation for water voles. We can now confirm that, despite the condition of the ditch adjacent to the proposed works; water voles have been sighted using the ditch. We welcome the water vole surveys proposed and would expect the Construction Environmental Management Plan to incorporate avoidance measures to ensure no siltation or other impacts on the ditch system.

There are opportunities to enhance this ditch by clearing the detritus and providing habitat enhancement for water voles. We request a condition that a water vole survey should be undertaken before construction commences. Any mitigation required will be incorporated within either the Construction Environmental Management Plan or a bespoke water vole mitigation strategy.

Monitoring of created calcareous habitat within the Country Park

Within the previous application we expressed concerns regarding the maintenance and monitoring of the proposed calcareous grassland along the cable route. We welcome the commitment to provide monitoring to ensure establishment of this habitat and recommend a condition that a monitoring schedule be submitted with funding provided to ensure the calcareous grassland colonisation can be monitored. Further measures may be required if colonisation does not occur.

In combination impacts

We were originally concerned regarding the lack of assessment undertaken of the overall impacts of the whole project, including the onward connections required to ensure energy exchange within the national grid. We have since had sight of information for both the marine project and the Richborough connection.

In relation to the marine project we agree with the assessment that there are no in-combination impacts on the designated features as a result of the project. In relation to the Richborough connection we believe that supporting bird habitat at DO21 Ash Level and South Richborough Pasture Local Wildlife Site and CA56 Chislet Marshes, Sarre Penn and Preston Marshes Local Wildlife Site is likely to be impacted due to pylon collision risk. However due to the commitment to complete the work between mid-July and the end of August, impacts of the NEMO project on the SPA bird populations should be limited and in-combination impacts are unlikely to occur.

Conclusion

In conclusion, in relation to the overall route we have maintained our objection from the previous application as we require further information regarding why site 10.1 has been excluded from assessment as the landfall site. We are happy to reconsider our position if there is a reason why this site cannot be accessed.

We welcome the additional information provided as part of the new application and the commitments made to conditions and post application work to ensure the designated sites and protected species are conserved.

In relation to all other concerns detailed within the original application, either appropriate information has been provided or we have requested conditions to ensure protection of the biodiversity present within Pegwell Bay and Stonelees. Providing these or similar conditions are attached to any permission granted and further work is undertaken pre and post construction as recommended, we feel that impacts are likely to be avoided, mitigated or compensated.

DDC Principal Ecologist

Screening for Appropriate Assessment (Regulation 61, The Conservation of Habitats and Species Regulations 2010 (as amended)).

The following screening is based on correspondence between the Joint Nature Conservation Committee (JNCC)/Natural England and between the Environment Agency and Thanet District Council.

The area of mudflat with Dover amounts to approximately 13 Ha and is situated at the boundary of the Mean Low Water Mark. It is understood that JNCC and NE advise that the Marine Management Organisation (MMO), as statutory planning authority for marine waters to Mean High Water Mark should, prior to issuing a licence for the works, undertake an appropriate assessment of the implications of the proposal with respect to:

1. Saltmarsh as a supporting habitat for SPA birds (not applicable to Dover)
2. Mudflat as a supporting habitat for SPA birds

In respect of this advice, it is considered that subject to a licence being obtained from the MMO and the compliance by the applicant with any conditions contained therin, including the conditions proposed by JNCC/NE and Condition 1 proposed by the Environment Agency to Thanet District Council, the proposal will not give rise to a significant impact on the integrity of that affected area of the Thanet Coast and Powell Bay SPA and Ramsar site that lies within the Dover District.

It is further considered that the above approach will not give rise to any in-combination impacts on mudflat areas of the SPA and Ramsar site outside Dover district.

Compound at Baypoint & Access to Disused Power Station

The proposed compound lies adjacent to an area identified on the Kent Habitat Survey 2012 as being scrub

woodland with a broadleaved woodland margin. Extending to the south of this woodland is a line of trees. Biodiversity interests that may be associated with these features are nresting birds and a potential flight line for bats. Recommends conditions:

1. That no disturbance to the woodland area is undertaken during bird breeding season (February to July, unless supervised by a competent person.
2. That any lighting requirements for the compound are directed away from the woodland and tree line.

The red line appears to run through a tree belt to the north of the existing access, but there appears to be no rationale for this. Given the screening function of this and its category (B) I would recommend that the Tree Officer evaluates this with respect to a TPO.

DDC Senior Environmental Protection Officer

Construction Noise

The construction phase will have no adverse impact on the residential dwellings within the Dover district. There will be issues with noise from the proposed horizontal direct drilling (HDD) from the converter station to Baypoint Sports Club, particularly as this will include night time operation. Mitigation will be put in place to protect the nearest residential properties in the Thanet District from HDD noise, with screening of noise-emission points. In addition a Construction Management Plan will be developed to detail the mitigation to be put in place during construction.

Operational Noise

The predicted noise levels from the site in operation shows that noise will have an adverse affect on residential properties. At Receptor R3 within the Dover District the predicted noise levels are very low and will have no adverse effect. However, the predicted noise levels at closer residential properties within the Thanet District show that mitigation is required. There are several mitigation measures shown at 12.52 and 12.53 of the Environmental Statement which would reduce operational noise to acceptable levels.

The Environmental Statement explores the cumulative effect of this proposal and several other existing and proposed potentially noisy sites, namely Richborough Energy Peaking Plant, Thanet Waste Recycling Plant and the Combined Heat and Power Plant at Ebbsfleet. Within the Dover district the cumulative effect of all of these noisy sources will not adversely affect the current noise regime. However, there will be an adverse effect at night on two residential receptors within the Thanet District, resulting from the proposed Combined Heat and Power Plant at Ebbsfleet. This should be addressed by officers from Thanet District Council.

Electric and Magnetic Radiation

Note that the Environmental Statement Volume 1 also assesses the impact of electric and magnetic fields from the Nemo development from both the converter station and onshore high voltage dc and ac cables. Magnetic field strengths have been calculated to demonstrate fields at residential properties and concludes that all are below the precautionary level at all locations where there may be exposure. Additionally, the report states that the potential cumulativ effects of EMF produced from the substation and converter station will be designed to conform to ICNIRP guidelines. EH have no observations on this issue.

Air Quality

Note that the report includes an air quality assessment that considers the impact of the development in terms of NO2 and PM10. It is accepted that the development will not cause breach of AQ National Objectives "with development". This conclusion is accepted. In respect of impact from the construction phase, the potential for dust levels to cause short term problems has been considered. Mitigation proposals to minimize disturbance from elevated dust levels is considered sufficient.

Kent County Council Highways & Transportation

The number of HGV movements anticipated during construction is acceptable and the Abnormal Indivisible Loads required to deliver the transformers will be controlled by a separate approval process, although details of access arrangements to/from the highway at the site access will need to be resolved by condition. During operation the site is expected to generate only minimal traffic. The following should be secured by condition:

· Provision and implementation of a Construction Management Plan to include the following:
(i) Timing/programme of works for each phase of construction
(ii) Loading/unloading and turning facilities for delivery vehicles
(iii) Parking for site personnel and visitors
(iv) Wheel washing facilities
(v) Access arrangements to/from the highway for Abnormal Indivisibile Loads
(vi) Traffic management measures as appropriate

· Provision and permanent retention of the vehicle parking spaces shown on the submitted plans prior to the use of the site commencing.

Kent County Council

KCC understands that the Interconnector will require a further connection to the National Grid and this will be proposed through a further planning application to be submitted to the Planning Inspectorate as a Nationally Significant Infrastructure Project at a later date. The potential cumulative effects of the Nemo Link onshore infrastructure in combination with the grid connection required for its operation are described in Chapter 17 of the ES. KCC therefore comments on the planning applications as submitted, but in conclusion cannot separate the principle of the proposals at Richborough from the need for a further connection to the National Grid at an existing sub station at Canterbury or further west.

Planning Policy
The Richborough Power Station site has an established use for electricity generation.

Sustainable Development & Renewable Energy

The overarching National Policy Statement for Energy (EN-1) notes that it is critical that the UK continues to have secure and reliable supplies of electricity as the transition is made to a low carbon economy.

The site of the proposed converter station and substation is adjacent to the substation installed for the energy from the Thanet Offshore Wind Farm to which KCC has not previously objected. KCC agrees with the principle of continuing to use the former Richborough Power Station site for energy generation, and its use for the interconnector would be consistent with national planning policy for energy.

Minerals and Waste

The application sites come within two areas which are covered by existing minerals and waste local plans and for which there are saved policies still in effect. The proposed development, whilst, not in accordance with the intentions of these plans, do not present any conflict with the wording of the saved policies.

The current applications, therefore, do not conflict with the wording of the saved policies of Kent Minerals Local Plan Construction Aggregated (Adopted December 1993). The current applications, do not conflict with the wording of the saved policies of Kent Waste Local Plan (Adopted March 1998).

KCC can advise that the proposed does not present any conflict with the emerging strategies for minerals or waste as the application sites do not fall within any policy areas in the emerging minerals strategy and the application site does not fall within an area to be safeguarded for development for energy from waste

This site is important to the overall waste strategy as it is the only site in the east of Kent which has been identified for the development of energy from waste facility. However, the landowners agents have confirmed that there is still approximately 6 hectares of the former Richborough Power Station site that will be unaffected by the current proposed development and which will be reserved for energy from waste developments and there will. Therefore, be no conflict between the proposed development and the emerging waste strategy.

Landscape

The scale of other development proposals nearby will be smaller than the converter station and substation buildings. In view of the proposed use of the existing derelict turbine hall, KCC accepts that the additional landscape and visual effects will be limited and does not raise a landscape objection to the current planning applications.

Heritage

Previous advice has been provided by KCC during the compilation of the Baseline Report and to some extent account has been taken of that advice. For below ground archaeology and the direct impacts of the schemes through the construction of the facilities at the former Power Station and the excavation of the cable trench, the provision of a watching brief as is appropriate.

Table 9.7 of the ES indicates that the WWII sites and the medieval sea walls will not be affected although it is not clear whether a detailed walkover has been carried out since KCC's advice in June 2012 to ascertain whether further remains are present which should be avoided by the cable route. The initial site walk was of a preliminary nature and further inspection was advised. An initial inspection should be included in the mitigation of the impacts on archaeology, and any important remains such as WWII defences or medieval earthworks should be avoided by the route if feasible.

Consideration should be given to a geoarchaeological assessment of the works on the Richborough Power Station site that are likely to include piling on areas of the former Wantsum Channel, although it is recognised that prior disturbance from the former power station may be significant.

Archaeological mitigation can be covered through an archaeological condition for a programme of archaeological works. Proposed draft condition 12 would be appropriate if the word 'evaluation' is removed. Draft condition 13 for a programme of post excavation works should be amended to refer to a programme of post excavation works to be agreed with the LPA.

A second issue identified in the previous consultation was the potential visual affects on Richborough Castle. English Heritage should take the lead on advising whether there is a significant impact on the Scheduled Monument arising from the proposals. However KCC is concerned that there is some inconsistency in the ES with respect to the assessment of visual impacts.

In the Cultural Heritage assessment it is recognised that the views from the Castle are important to its significance, yet the construction of a 30m high building results in a 'No Change' in terms of the magnitude of effect (Table 9.8). It is clear that the site will fall within the visual field of the Castle and the justification for the above appears to be that the proposed structure will be on the site of the former towers and turbine hall and the baseline should be taken as what was formerly present. Although the principal building which will re-use the derelict steel frame structure of the existing former turbine hall, KCC would question whether 'No Change' is a correct assessment against what is presently visible.

In the Landscape and Visual Assessment chapter, Table 10.6 indicates the view from Richborough as of 'Moderate Importance'. Views from the nationally important heritage site which is a significant visitor attraction in the area are of greater importance, particularly as it is recognised in Chapter 9 that the views contribute to the significance of the site, which is positioned to look out over the mouth of the former Wantsum Sea Channel in which the former Power Station site lies.

Highways & Transportation

Kent Highways and Transportation provided comments to Thanet District Council on 5th March, and subject to the conditions outlined in their letter being adhered to did not wish to recommend the application for refusal.

Kent Highways and Transportation also wrote to Dover District Council on 21st March seeking clarification on a number of matters concerning access for abnormal loads and HGV, and will comment further when the additional information is available.

Public Rights of Way

Mrs Nicky Biddal of KCC's *Public Rights of Way & Access Service* wrote to you on 26th March re TH13/0144 & DOV/13/0143 and objected to the proposals. In summary KCC asks that the applicant submits compensatory measures to provide a link across the River Stour, and extend PROW TE26 to the highway. This could be by a planning condition imposed on the grant of planning permission, in accordance with the TCPA (1990), to state that the applicant will dedicate a public right of way across the River Stour and dedicate an extension to public right of way TE26 to reach the public highway. This could be obtained by means of a planning obligation under Section 106 TCPA (1990) to mitigate the impacts of development.

Biodiversity

When determining the planning application DDC and TDC will need to ensure that the planning application has adequately considered the impact the proposed development will have on protected species.

European Designated sites will be directly impacted by the proposed development. DDC and TDC should ensure that they consider the impact on the designated sites from the construction of the proposed works. As detailed in article 6.3 of the EC Habitats Directive, DDC and TDC should only agree to the development after having ascertained that the proposal will not adversely affect the integrity of the site concerned.

Additional information has been submitted by the applicant assessing the impacts on the designated sites and suggesting mitigation to minimise or avoid impacts. TDC and DDC should ensure that this information is sufficient to ensure that the proposed development will not result in any Likely Significant Effects on the SPA or SAC. If the submitted information is not sufficient, the determining authority will have to carry out an Appropriate Assessment.

KCC's Ecological Advice Service will provide Thanet District Council with more detailed views directly by the 7th October. A copy of these comments will also be sent to Dover District Council for their consideration.

Drainage

The FRA and EIA sections on Water Resources and Flood Risk are sufficiently detailed to the described risks and mitigations. There are no further comments that KCC can make with respect to drainage, which will be addressed by the EA and IDB in this instance.

Conclusion

KCC's comments on the current planning applications, without regard to a further connection to the National Grid, are set out above. However, KCC suggests that the proposals cannot be accepted at this stage given the known consequential requirement for a new 400kV connection, the location and implications of which are not known.

The ES summarises the examination of 28 options for land fall and a connection to the UK grid, and the conclusion of the Nemo Consortium to take forward the shortlisted sites of Shellhaven, Kemsley and Richborough (para. 3.13).
The ES justifies the choice of the Richborough power station. However, the ES recognises that the existing 132kV overhead line between Richborough and Canterbury would not offer sufficient capacity for the Nemo Link, so a new 400kV connection would be required (para. 3.20). It also recognises that there are a number of ecological constraints in the area which would have to be taken into account in developing a new connection (para. 3.22). A connection by overhead line could also have impacts on the setting of important heritage assets, including the World Heritage Site of Canterbury and the Scheduled Monument of Richborough Castle (para. 3.23).

The potential cumulative effects of the Nemo Link onshore infrastructure in combination with the grid connection required for the operation of the Nemo Link are described in Chapter 17 of the ES which states "As the…connection project is in the early stages of development … it is not possible to assess specific potential effects in detail" (ES 17.68).

KCC therefore seeks further examination of alternative locations before a decision is made on the proposals, and clarification of the implications of a new 400kV connection. In particular it is not clear whether the examination of

potential locations for landfall and connection to the grid included the Dungeness Power station site. This location offers an established brown field site that is used for energy generation, but with the strong advantage of existing overhead transmission lines with spare capacity following the decommissioning of the 'Dungeness A' nuclear power plant.

KCC Public Rights of Way and Access Service

Confirm that their comments on application DOV/13/00143 still stand and that they have nothing further to add. These comments confirm that they object to the application in view of the negative impacts on the amenity of public footpath EE42. The mitigation measures including the noise reduction fence and the landscaping do not remove the moderate adverse impact on users of the right of way and therefore compensatory measures to provie a link across the Stour and extend footpath TE26 to the highway are requested. This could be by condition to state that the applicant will dedicate a public right of way across the Stour and dedicate an extension to public right of way TE26 to reach the public highway.

English Heritage

Conclude that the proposed development is to a large measure very similar to the earlier proposal and therefore does not have any more harmful effects on the historic environment that would lead to a change in the advice previously provided.

The main issue relates to the effect on the significance of Richborough Roman Fort by virtue of the development being within its setting. English Heritage confirm that the development and specifically the re-use and extension of the former turbine hall of Richborough Power Station does not in our opinion amount to additional serious harm to the Roman site.

In principle the reduction in excavation as a result of the overgrounding of cables of cables within the country park has the potential to be less harmful to any buried and undesignated archaeological remains that might exist.

Previous advice from 13/0143: - **Do not wish to comment in detail**

- Retain advice set out within scoping report:
- EH has not identified any designated heritage assets that are directly affected by the proposal and so effects on the setting of such assets and upon non-designated heritage assets will be the main focus for environmental assessment.
- The potential for offshore historic environmental issues i.e. from the electrical cable laid between the Continent and Kent will need to be considered. EH's remit extends offshore and have a maritime team that should be consulted with, and will need to be updated about the MMO licence. Close attention should be paid to the inter-tidal zone where the cable would make its landfall.
- Removal of much of the former power station from the setting of this monument might logically imply a degree of enhancement even if the site is to remain developed for energy related uses.
- Historic environmental issues primarily the potential for harm to buried and undesignated archaeological remains and visual impacts including the setting of designated heritage assets
- Endorse the need for archaeological provision by way of a watching brief
- Baseline position is that the power station has a history of energy related industrial development, which has had some negative impact on views out from Richborough and the Wantsum Channel Landscape – former Pfizer site has had similar impacts
- With the removal of the former cooling towers, EH do not think that the combined visual effects of the proposed development upon the setting of Richborough Roman site are significant and do not constitute serious harm
- Allowing for as yet to be determined pylons and connections to the National Grid, this advice will hold true

Internal Drainage Board – the Board's consent will be required for any works directly affecting any ordinary watercourse. It will be extremely important that surface water runoff, particularly to the north of the site, is restricted to Greenfield rates. I would therefore be grateful to receive further details of drainage proposals when they have been developed.

Previous comments from 13/0143 still applicable:

- The redevelopment of Brownfield sites such as this offers the opportunity to help address previous inappropriate development
- The applicant should be urged to develop a drainage plan which mimics that of the pre-developed site as much as practicably possible
- Discharges to the northern ordinary watercourses, which drain to the Minster Stream, must be properly attenuated (to Greenfield rates)
- Whilst the practical difficulties of restricting discharges to less than 5l/s are acknowledged, this must not be used to increase discharges to the Minster Stream (small areas should be linked to a single discharge point) – require further details
- Maintenance of the drainage system must also be ensured for the lifetime of the development
- The Board strongly opposes any land-raising within the functional floodplain. All potential effects on the floodplain, including details of any land-raising and appropriate compensatory storage, and overland flow-routes, should be discussed and agreed with the Environment Agency.

Manston Airport – no objection to this proposed development on statutory safeguarding grounds on condition that significant a condition restricting crane activity is imposed:

Prior to any crane activity taking place, full details of the permits issued during the construction phase including grid reference, dates of operation and maximum height must be notified to the Airport Operations Manager prior to work commencing on this development.

Southern Water

Comments from previous application remain unchanged:

- Need to identify location of foul rising main and water mains before finalizing layout of development
- Recommend details be submitted of measures to protect water and sewage apparatus
- Request details of maintenance and management details of SUDs facilities

DISCUSSION

The application

This is a hybrid application with full planning permission being sought for all the development relating to the installation of the cables and outline planning permission for the works relating to the converter station and the development of the former Richborough Power Station. Details of access and landscaping have been provided with matters of layout, scale and appearance reserved for future consideration.

Two identical applications have been submitted to Thanet (TDC) and Dover District Council's (DDC) however whilst the whole site has been shown on the drawings and considered in all the information submitted, DDC can only consider development that fall within its boundary and as such this only relates to a small area of the overall application site.

This development includes the installation of 720m of underground high voltage direct current (HVDC) cable, a temporary construction compound at Baypoint Sports complex, erection of security fencing, construction of access road and hard landscaping. The discussion section of this report will therefore focus on those aspects of development solely within Dover District and will cross-reference with the Committee Report to TDC attached to Appendix A.

The principle

The site lies within the open countryside, outside of any settlement boundaries, where policy DM1 applies. This states that new development will not be permitted unless justified by other development plan policies or it functionally requires such a location, or it is ancillary to existing development or uses.

The National Policy Statement for Energy (EN-1) sets out that the interconnection of large-scale, centralised electricity generating facilities via a high voltage transmission system enables the pooling of both generation and demand, and offers additional economic and other benefits, such as more efficient bulk transfer of power and enabling surplus generation capacity in one area to be used to cover shortfalls elsewhere. The Government therefore expects that interconnection will play an important role in a low carbon electricity system, though back

up capacity will still be necessary to ensure security of supply until other storage technologies reach maturity.

The National Policy Statement for Energy confirms that the British electricity system is largely isolated from other systems. At present there is a 2GW link with France, a 1.4 GW interconnector with the Netherlands and a 450 MW link between Great Britain and Northern Ireland. There are a number of potential projects to build additional interconnection which could increase capacity to over 10GW by around 2020, including this proposed link to Belgium.

The National Policy Statement for Energy confirms that interconnection can be used to help compensate for the intermittency of renewable generation without building additional generation capacity, and confirms that Government believes that the interconnection of electricity systems should and will be actively pursued. However it acknowledges that their effect on the need for new large scale energy infrastructure will be limited as there is likely to be an increase in need for electricity for domestic and industrial heating and transport.

The European Commission's strategy (Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth) proposes that Europe's [energy] networks be upgraded, working towards a European supergrid, 'smart grids' and interconnections. These interconnections allow power to flow between member states. In 2002 the EU Council set a target for all member states to have electricity interconnections equivalent to at least 10% of their installed production capacity by 2005.

The applicant (National Grid Nemo Link Ltd) advises that the current UK interconnection capacity represents approximately 4% of this capacity. Interconnection between countries is necessary to achieve the North Sea Countries Offshore Grid Initiative (the objective of which is to coordinate offshore wind and infrastructure developments in the North Sea) and the wider EU aim of creating a European 'super grid'. This proposed interconnector would increase the UK's interconnection capacity to 7.5%.

The applicant advises that the proposed interconnector supports the increased use of renewable energy sources, such as wind energy, by responding to and managing the fluctuations in supply and demand. When supply exceeds demand, energy can be exported to other energy markets, and when demand outstrips supply, it will be possible to import energy from elsewhere in Europe.

Belgium has been chosen by the applicant for a new interconnector due to its proximity to the UK and its electricity transmission system, which is connected to Central Europe. There is no current connection between the UK and Belgium. The applicant advises that locating the interconnector in South East England offers the shortest route between the two countries.

Kent County Council agrees with the principle of continuing to use the former Richborough Power Station site for energy generation, and its use for the interconnector is considered to be consistent with national planning policy for energy.

The application site falls within two areas covered by existing minerals and waste local plans and for which saved policies apply. Kent County Council consider that this site is important to the overall waste strategy as it is the only site in the east of Kent which has been identified for the development of energy from waste facility. However, approximately 6 hectares of the former Richborough Power Station site remain unaffected by the current proposed development and would remain available for energy from waste developments. Kent County Council therefore considers that there will be no conflict between the proposed development and the emerging waste strategy. It is therefore considered that there is no conflict with the existing or emerging minerals and waste plans.

It is considered that the role that this interconnector is envisaged to play in the development of the UK's energy infrastructure and its contribution towards EU energy strategy outweighs the need to protect the countryside in this instance. I therefore consider that the principle of development is acceptable in accordance with Local Plan policy DM1 subject to detailed consideration of the impacts of the development.

Character and appearance

Cable installation

The cable route in Dover District extends to approximately 720m running through the mudflats at Pegwell Bay and they would be primarily underground, with only a temporary landscape disturbance likely during their laying on the site. I do not consider that they would have an adverse impact upon the natural beauty of the landscape as a result and that the character and appearance of the area would not be affected. Whilst land within Baypoint Sports Complex would be used as a temporary construction compound for approximately a week, provided an appropriate scheme of restoration is provided I do not consider that this would have an adverse impact upon the character and appearance of the area.

Convertor and Substation

The access into the Former Richborough Power Station is located within Dover District, as is part of the eastern site boundary. The proposal involves the use of an existing access with an internal access road, previously approved, being provided. A small area for abnormal loads was also previously approved and serves as an emergency access for the site. Landscaping is also proposed on the edge of the site with indicative planting shown on the drawings. A detailed landscaping management plan, including details of trees to be removed and retained, would be provided by details to be required by condition. Matters of the overall site layout would be reserved for future consideration. Overall I do not consider that the access and landscape proposals submitted in association with the converter and substation would have an adverse impact upon the character and appearance of the area.

The impact of the development of the remainder of the site within TDC boundaries has been considered by their Officer's in their report to the Planning Committee. They conclude that the whilst the impact upon the landscape would be significant locally, the industrial scale and type of development proposed would be consistent with that of adjacent industrial uses and with the site's future energy and waste uses. I concur with this conclusion and am satisfied that whilst the converter station and the other associated buildings would be prominent from outside the site, that the impact of this development upon the DDC area would be acceptable given the reuse of the existing derelict turbine hall and the limited additional landscape impact. Matters of scale and appearance will be reserved for consideration by TDC and DDC will be given the opportunity to comment accordingly.

Contamination

The Environment Agency requests that a scheme to deal with the risks associated with contamination of the site to be submitted to the council before development begins. This will include a site investigation and detailed risk assessment and remediation strategy. Upon completion of each phase of development a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted. This is considered necessary to protect the underlying aquifer and nearby watercourse from the potential risk of pollution in accordance with National Planning Policy Framework paragraph 109.

Drainage

Surface water run off is proposed to discharge to the River Stour, which the Environment Agency define as a sensitive watercourse, with runoff requiring at least three levels of treatment prior to discharge into the river. The applicant proposes that this can be achieved by the provision of an infiltration trench, settlement or containment lagoon and an oil interceptor before discharge to the Stour. The drainage design also incorporates water attenuation areas on site, so that discharge to the River Stour will be at a rate no greater than the existing.

The Environment Agency require a detailed sustainable surface water drainage scheme for the site to be submitted before development begins, which should be based upon the preliminary drainage concept plan and the submitted Flood Risk Assessment within the Environmental Statement. This is considered necessary to prevent an increased risk of flooding off-site.

Natural England advise that as surface water drainage will go to the existing drainage system and sewage from the converter station and sub-station will be collected within a sealed unit and taken off site, appropriate oil interceptors should be incorporated to prevent contaminants entering the water system.

The Environment Agency consider that there should be no infiltration of surface water drainage into the ground other than with the express written consent of the local planning authority, where it has been demonstrated that

there is no resultant unacceptable risk to controlled waters.

No piling or other foundation designs using penetrative methods will be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. These measures are considered necessary to protect the adjacent SSSI and associated watercourses from pollution via foul water and surface water in accordance with National Planning Policy Framework (NPPF) paragraph 109

Southern Water request details of maintenance and management details of SUDs facilities and recommend details be submitted of measures to protect water and sewage apparatus. It is considered reasonable and necessary to secure these details by way of planning condition, prior to the commencement of development on site.

Flood Risk and Water Quality

The substation site is proposed to be raised to ensure that it is above the 1 in 200 year rainfall event level plus allowing for climate change levels. At the former Power Station site, the applicant proposes to incorporate filter strips and infiltration trenches to accommodate the 1 in 100 year rainfall event plus climate change levels to contain the flow.

The Environment Agency confirms that the Flood Risk Assessment and draft drainage strategy that have been submitted with the planning application demonstrate that the risks to and from the development can be appropriately managed.

Given the proposed storage facilities and the raising of the substation site, the proposed development is not considered to increase the risk of flooding on the site or in the local area, in accordance with the advice contained within the NPPF.

The Environment Agency advises that the information provided in the Environmental Statement demonstrates that marine water quality impacts will be temporary and not significant at waterbody level. The Environment Agency confirm that Water Framework Directive impacts will be assessed through the Marine Management Organisation licensing purposes.

Noise and Vibration

The construction phase will have no adverse impact on the residential dwellings within the Dover District. There will be issues with noise from the proposed horizontal direct drilling (HDD) from the converter station to Baypoint Sports Club, particularly as this will include night time operation. Mitigation will be put in place to protect the nearest residential properties in the Thanet District from HDD noise, with screening of noise-emission points. In addition a Construction Management Plan will be developed to detail the mitigation to be put in place during construction.

In terms of construction, a Construction Environmental Management Plan will set out mitigation for each construction phase for the development. This will include details of the screening of the noise emission points during the Horizontal Directional Drilling process and pre- and post-construction building surveying in relation to vibration. The applicant advises that this will demonstrate that no adverse impact has occurred or would inform any future assessments in the unlikely situation for making good any damage caused by vibration.

The predicted noise levels from the site in operation shows that noise will have an adverse affect on residential properties. At Receptor R3 within the Dover District the predicted noise levels are very low and will have no adverse effect. However, the predicted noise levels at closer residential properties within the Thanet District show the mitigation is required. There are several mitigation measures shown at 12.52 and 12.53 of the Environmental Statement which would reduce operation noise to acceptable levels.

The Environmental Statement explores the cumulative effect of this proposal and several other existing and proposed potentially noisy sites, namely Richborough Energy Peaking Plant, Thanet Waste Recycling Plant and the Combined Heat and Power Plant at Ebbsfleet. Within the Dover district the cumulative effect of all of these noisy sources will not adversely affect the current noise regime. However, there will be an adverse effect at night on two residential receptors within the Thanet District, resulting from the proposed Combined Heat and Power Plant at Ebbsfleet. This should be addressed by officers from Thanet District Council.

Air Quality

The Environmental Statement includes an air quality assessment that considers the impact of the development with regards to Nitrogen Oxide and Particulate emissions. It is accepted that the development will not cause breach of AQ National Objectives "with development". This conclusion is accepted. In respect of impact from the construction phase, the potential for dust levels to cause short term problems has been considered. Mitigation proposals to minimize disturbance from elevated dust levels is considered sufficient. Mitigation measures include restriction of site vehicle speeds to minimise on site dust generation, wetting very fine materials or dry materials to minimise dust generation from loading trucks, covering lorries carrying potentially dust generating materials, vehicle wheel washes.

These measures will be confirmed within the Construction and Environment Management Plan, which will be required to be submitted to the council prior to the commencement of development. This is considered sufficient so as to protect the living conditions of neighbouring property occupiers.

Waste

During the construction phase of the proposed development the production of waste is likely to be significant. To minimise waste, re-use of materials is proposed, including the frame of the former Turbine Hall of the Power Station, and re-use of material used in the excavation of the trench for the underground cables.

Any waste produced during the construction phase would be managed through the Site Waste Management Plan, which should contain details including the types of waste removed from the site, the identity of the person who removed the waste and their waste carrier registration number, a description of the waste, the site that the waste is taken to and the environmental permit or exemption held by the site where the material is taken. It is considered reasonable and necessary to require a Site Waste Management Plan to be submitted to the council prior to the commencement of development.

Highways

The existing access to the A256 will serve the former Power Station site, although an additional cut through is proposed for abnormal loads, which was approved as part of the internal road network planning application in June 2013. This additional access also serves as an emergency access for the site.

Given the proximity to existing junctions at the roundabout, this cut through would not be suitable as an access for all site traffic. I therefore consider it appropriate to limit its use to abnormal load or as an emergency access by condition, including measures to prevent unauthorised access. A Construction Management Plan would be secured by condition to ensure that access arrangements to and from the site are satisfactory. Further, a condition requiring the provision and retention of the parking as shown on the submitted drawings is required.

The applicant has confirmed that the data used to form the traffic flows was taken from the Department for Transport website and is from 2011. The data for Sandwich Road was collected manually in December 2012 and factored in. Highway accident data has been requested from Kent County Council for the new East Kent Access Road. Kent County Council are satisfied that the correct data and traffic flow assessment has been undertaken and raise no objections to the proposed development on highway grounds.

Construction Phase

The applicant anticipates that the Horizontal Directional Drilling works to lay the cable from BayPoint sports complex to the former Power Station will take approximately 1 week to complete. This will require an Abnormal Indivisible Loads route to be finalised and details of the proposed modifications to the highway from the site entrance to be submitted for consideration prior to the commencement of the development.

Kent County Council Highways and Transportation confirm that the transport work demonstrates that impacts would not be severe and a construction management plan will assist in regulating the trips to and from the site.

Operational Phase

In relation to traffic movements in the operational phase of the development the applicant has confirmed that the converter station is likely to operate with approximately 6 personnel per day divided between 3 shifts over a 24 hour period. The substation will operate unmanned with only occasional inspection and maintenance required and no frequent HGV trips will be generated by the development once operational.

In addition, a small number of footpaths (approximately five) will have to be temporally closed for approximately one month while a section of the cable is laid. Pedestrians would use existing alternative routes to travel through the park It is anticipated that the development will take approximately 36-42 months to complete and the converter station and substation will be operational by October 2018.

Public Rights of Way

The proposed development affects public right of way EE42 which is part of the Saxon Shore Way and the Stour Valley Way, with a more limited impact upon public right of way TE26. Kent County Council asks that the applicant submits compensatory measures to provide a link across the River Stour, and extend PROW TE26 to the highway with the applicant dedicating a public right of way across the River Stour and an extension to public right of way TE26 to reach the public highway.

The applicant advises that the suggested footpath link is on land outside their control and was suggested in a similar representation to the application for a 'peaking plant' on land nearby. That development was approved without the suggested footpath link.

The site has been used as a Power Station in the past, and is considered suitable within the existing and emerging Kent Waste and Minerals Plan for waste and energy from waste development. I consider that the outlook from the public footpaths has been associated with industrial development on this site and wider area, and I do not consider that the visual impact from the proposed converter station, substation, electrical equipment or working compounds is not so severe as to warrant a refusal of planning permission.

It is therefore not considered that either the provision of an additional footpath, or a financial contribution towards footpaths would be necessary to make the development acceptable in planning terms, directly related to the development, or fairly and reasonably related to the scale and kind of the development. As such the request for a planning obligation is not considered to meet the requirements of the CIL Regulations.

Archaeology

The proposed converter station and substation are within an archaeologically and historically significant part of the East Kent coastline. Kent County Council advises that a detailed walkover of the WWII sites and the medieval sea walls should be included in the mitigation of the impacts on archaeology.

The applicant has proposed to undertake a watching brief during the construction process, followed by a programme of analysis and reporting of any finds. This will be secured by condition and Kent County Council consider this sufficient to preserve features of archaeological interest within the application site. English Heritage endorse the need for archaeological provision by way of a watching brief.

Ecology and Biodiversity

Pegwell Bay is an environmentally sensitive site, designated as a Site of Special Scientific Interest (nationally designated - with the most important sand dune system and sandy coastal grassland in SE England), Sandwich Bay Special Area of Conservation (with the UK's longest stretch of coastal chalk and supporting a dune system) and is part of the Special Protection Area (internationally designated for breeding birds), and Ramsar site of the same name (designated for migratory birds), and as a National Nature Reserve.

The National Planning Policy Framework sets out that in determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. The National Planning Policy

Framework states that development on land within or outside a Site of Special Scientific Interest which is likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other projects) should not normally be permitted.

Furthermore, under the Habitats Regulations, the council cannot agree to the proposed development without having first ascertained that it will not adversely affect the integrity of the designated European sites. In considering whether the proposed development will adversely affect the integrity of the European sites, the council must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose the permission should be given.

In considering the proposed development it is therefore appropriate to take account of mitigation proposed and whether it would be sufficient to preserve the integrity of the designated sites. The applicant has therefore been required to consider and propose appropriate mitigation, including for that European site area within Dover District, the potential impacts on the mudflats.

The proposed cable installation at Pegwell Bay has the potential to cause harm to the mudflat, which is a supporting habitat for overwintering Turnstones for which the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar site are designated. Loss of feeding habitat due to damage to the mudflat fauna upon which the Turnstones feed may be caused by heavy plant equipment and infrastructure, and damage from the cable installation process (e.g. trenching).

As the applicant has not yet chosen a single methodology the Environmental Statement considers a 'realistic worst case scenario' with the assumption that the full corridor for each cable installation will be implemented, which measures 20m as a working cable corridor through the mudflat using an open trench/backfill methodology to install the cable. The cable installation method of 'open trench and backfill' is Natural England and Kent Wildlife Trust's preferred option. The intertidal area (saltmarsh and mudflat) excavated will be 0.46ha and within this, about 3900m2 of mudflat would be excavated.

Natural England advises that a detailed cable management burial plan be submitted to the council, and set out the exact methodology to be used for the installation of the cable. It will show consideration of the use of all the techniques/methods to minimise the impacts and the techniques/methods to be used for each section as set out in the Environmental Statement. The techniques and methods will need to include the use of tracked or skidded plough or chain cutting tool, use of low ground pressure vehicles, use of bogmatts/steel chains and minimisation of vehicle activity on the nearby salt marsh. A detailed contingency plan and saltmarsh monitoring, mitigation and reinstatement plan are also considered necessary so as to avoid adverse impacts on the integrity of the designated sites.

There could be an adverse effect on Turnstones and Golden Plover resulting from noise and vibration associated with the cable installation process, and these bird species may be temporarily displaced by the use of bird deterrents in addition to construction personnel, vehicles, the trackway for vehicles and noise during the cable installation process.

Given the potential disturbance to habitats and bird species within Pegwell Bay, Natural England advises that is necessary to ensure that the cable installation works take place outside the important overwintering period 01 October to 31 March within the intertidal area. It is considered that this timing restriction, together with the submission of a detailed breeding bird mitigation strategy, is necessary to minimise disturbance to the interest features for which the sites have been notified.

Invertebrates

Saltmarsh and mudflats support habitat for 15 British Red Data Book Wetland invertebrates and the proposed development may result in the temporary loss of habitat. Prior to the commencement of development for the cable installation it is considered necessary to remove any invertebrates including any Red Data invertebrates from the proposed excavated area to prevent them from being trampled or buried. This will be implemented by removing debris and other mobile food sources for invertebrates (e.g. drift wood) by hand rake to outside the cables corridor prior to the excavation of the cables trench and jointing pits and compound area.

During cable installation, excavated mud will be set to one side of the trench and will not be disturbed by construction traffic or workers until the trench is backfilled. These measures are considered reasonable and necessary so as to avoid adverse impacts on the integrity of the designated sites.

In relation to the invertebrate populations of Pegwell Bay, the Environment Agency advises that no development should take place until detailed surveys of the invertebrate populations of Pegwell Bay have been completed to ensure that the biotope present in Pegwell Bay is correctly described. This information is considered necessary to assess the success of restoration of the affected foreshore. It is therefore considered reasonable and necessary to require an updated survey to be undertaken prior to commencement of development.

Proposed Marine Conservation Zone

There is the potential for the cable installation to have an impact upon the proposed Marine Conservation Zone, which is sited adjacent to the proposed development. Natural England considers that the works will not hinder the conservation objectives of this site; so long as they are undertaken in strict accordance with the information provided by the applicant and the route of the cable path as outlined in the submitted Environmental Statement, will be strictly followed. It is therefore considered that the proposed development will not have an adverse impact upon the interest features of the proposed Marine Conservation Zone.

Subject to the mitigation measures set out in this report being implemented, the conclusion drawn, having regard to the advice of statutory consultees, is that the proposed development would have no unacceptable harmful effect on the ecology of the area and therefore complies with the National Planning Policy Framework.

Appropriate Assessment

In accordance with 'Habitats Directive – Guidance on competent authority coordination under the Habitats Regulations', DEFRA, July 2012 it has been accepted that Thanet District Council is the lead competent authority, and deference is made to Thanet District Council's Habitats Regulations Screening Report. This concluded that some activities associated with this project were likely to have a significant effect on features within the designated sites and therefore an appropriate assessment was required. Additional environmental information was requested, and as part of the Appropriate Assessment process the applicant has submitted an additional document entitled 'Effect on Integrity of European Nature Conservation Interests' and a 'realistic worst case scenario' assessment in relation to the techniques proposed for the installation of the cables.

Natural England have considered the submitted information and are of the opinion that all impacts described will be temporary and based on this information and suitably worded conditions, there will be no adverse effect on integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar site. These measures have been confirmed by the appropriate assessment carried out by the council. It is recommended that Members adopt the Appropriate Assessment Report (as appended at A) and take account of it's conclusions in the determination of this planning application.

Consideration of Alternatives

The Habitats Regulations includes an obligation to consider whether there are alternative solutions if the outcome of the appropriate assessment is 'negative' - i.e. if the conclusion drawn from the appropriate assessment is that the proposed development will (notwithstanding any conditions/mitigation etc) adversely affect the integrity of the European site(s) in question.

It has been determined through the appropriate assessment that in this case the proposed development will not adversely affect the integrity of the European sites. There is therefore no obligation on the council under the Habitats Regulations to have regard to alternative proposals.

Notwithstanding the above, the council is required to have regard to alternative proposals under the Environmental Impact Assessment Regulations. The council cannot grant planning permission to an Environmental Impact Assessment application unless it has first 'taken the environmental information into consideration'.

This 'environmental information' includes the Environmental Statement, which must contain 'an outline of the

main alternatives studied by theapplicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects'. The submitted Environmental Statement includes this environmental information.

Kent Wildlife Trust objects to the selected route and the proposed landfall at Pegwell Bay. It is their view that it has not been proved that this is the least environmentally damaging route. They also question whether the cable could have been routed within the road or through the golf course or verge to the western side of the A256. Similar concerns have been raised by Cliffsend Parish Council.

Kent County Council seeks further examination of alternative locations before a decision is made on the proposals. In particular it is not clear whether the examination of potential locations for landfall and connection to the grid included the Dungeness Power station site. This location offers an established brown field site that is used for energy generation, but with the strong advantage of existing overhead transmission lines with spare capacity following the decommissioning of the 'Dungeness A' nuclear power plant.

It is considered that the Environmental Statement sufficiently considers the options for the converter station, landfall and cable technology options, and provides a satisfactory assessment of the alternatives considered.

In considering this application, the availability of alternative sites for a proposed development is capable of being a material consideration. The courts have held that consideration of alternative sites would only be relevant to a planning application in exceptional circumstances and where there are clear planning objections to a development or where the development is bound to have significant adverse effects upon a particular site then it may be relevant to consider whether there is a more appropriate site elsewhere.

In this case there are no such adverse effects or planning objections to the proposed development and there would be no grounds to refuse planning permission on this basis. Furthermore, there is no restriction under the Environmental Impact Assessment Regulations to the effect that proposed development may only be consented if no less environmentally damaging alternatives exist.

Cumulative Impact and In-combination Effects

A connection is required to enable the proposed development to the existing national electricity transmission system. There is no existing infrastructure in the area surrounding Richborough that would enable a connection to be made. There is therefore a requirement for a high voltage connection from the proposed substation to the existing national electricity transmission system.

The form and route of the national electricity transmission system connection are not yet known, and do not form part of this planning application. The Environmental Statement considers three options for a connection from the proposed development to existing high voltage substations on the national electricity transmission system – at Canterbury North, Cleve Hill or Kemsley. The applicant confirms that these substations offer appropriate capacity for the required connection and should any additional reinforcement work be required that this would be limited to localised works.

The form (type of technology) proposed to be used in the national electricity transmission system connection is not yet known, and the Environmental Statement considers three technology options – AC overhead line, AC underground cable and AC gas insulated line. The national electricity transmission system connection could be made using one option, or a combination of two or three technology options.

The Environmental Statement assesses the likely significant environmental effects and cumulative impacts associated with the three technology options and three route options.

National Grid has recently announced their preferred connection and route corridor option for connecting the Nemo Link to the existing high voltage electricity network in Canterbury. National Grid has decided to progress with plans to build an overhead connection from Richborough to Canterbury through the 'North Corridor' and will include the removal of the existing lower voltage line between Richborough and Canterbury.

There are a number of other developments within Dover District which have been screened in respect of

in-combination effects, including those at Discovery Park and the proposed Peaking Load Generator at Richborough. It is considered that for these there is no significant combined impact pathway affecting the European and Ramsar interest.

A screening opinion for a 5 MW solar farm on a site adjoining Richborough Power Station (DOV/12/00907) considers that the use of the site for overwintering golden plovers needs to be assessed and the findings would then need to consider cumulation with the Nemo Link proposal.

Ecology

With regard to the cumulative effects on ecology, the Environmental Statement sets out that although the sites are generally designated for different habitats and species, Thanet Coast and Sandwich Bay, Stodmarsh and The Swale European designated sites all support important populations of breeding and overwintering birds. There is therefore potential for habitat loss and disturbance impacts at multiple sites (from any of the potential connection options) resulting in a greater cumulative impact on birds using these sites and moving between them.

The Environmental Statement concludes that these effects could be mitigated by careful routeing of the national electricity transmission system connection to avoid such direct and indirect effects. Installation works could also be timed to be undertaken outside of the main migratory periods. Subject to mitigation, the Environmental Statement concludes that there are no anticipated cumulative effects on European designated sites.

Natural England advise that their preferred option is the route from Richborough to Canterbury North substation (known as the 'North Corridor'), as the other potential routes have the potential to have a likely significant environmental effect upon the Swale Special Protection Area, and could involve additional subsea cabling around the coast. They consider that the route to Canterbury North offers the shortest, most direct route and poses the least harm to the natural environment, and negatively affects the fewest number of designated nature sites. However Natural England advise that this route could impact upon national and international conservation sites. Natural England advise that this preferred route does not directly impact on international or national designated habitat (i.e. there is no land take) nor does it over sail any sites. Also as it replaces existing infrastructure the scale of change is not so significant. However, power lines can result in impact through direct habitat loss, indirect habitat loss (displacement and barrier effects) and bird mortality (electrocution and collision).

In addition to route planning Natural England consider that other mitigation measures can be included to reduce these types of impacts such as removing earth wires and modifying earthing methods; modifying line, pole and tower design; installing underground cables; and conspicuous marking of lines, poles and towers. Once the level of risk is determined this would if appropriate necessitate what form of mitigation could be used.

Kent Wildlife Trust consider that in relation to the onward connection the supporting bird habitat at Ash Level and South Richborough Pasture Local Wildlife Site and Chislet Marshes, Sarre Penn and Preston Marshes Local Wildlife Site is likely to be impacted due to pylon collision risk. However they consider that if the works are complete within the period between mid-July and the end of August, the impacts of the proposed development on the SPA bird populations should be limited and in-combination impacts are unlikely to occur.

If the National Grid Electricity Transmission development is carefully routed and the work is carried out outside the main over wintering period (01 October to 31 March), the submitted information has assessed that there are no in-combination effects anticipated on European designated sites.

Character and Appearance

The Environmental Statement sets out that adverse effects on landscape and views could be mitigated by the careful siting of towers and overhead lines at the detailed design stage. The Environmental Statement sets out that if the connection were to be provided by an overhead line, there would be cumulative landscape and visual effects in combination with the proposed converter station and substation. Cumulative impact from an underground cable is not considered to be a likely significant effect subject to the avoidance of significant tree and hedgerow clearance.

The Environmental Statement sets out that cumulative effects on the landscape will only occur where effects of

the proposed substation and converter station overlap with the effects of the overhead line (relevant for all overhead line connection options), which is considered to be within 3km of the proposed development. There are three existing 132kV overhead lines in this area, and the addition of a 400kV (20m taller) overhead line is considered within the Environmental Statement to have a moderately adverse visual impact.

The Environmental Statement confirms that in relation to impacts upon archaeology and cultural heritage that careful route alignment (both overhead line and underground) and the siting of towers would minimise effects to the extent that significant effects on archaeology and cultural heritage could likely be avoided.

In relation to the cumulative effects on archaeology and cultural heritage, the Environmental Statement considers that for all connection options, it is assumed that an overhead connection would leave Richborough and head west. The Environmental Statement considers that the potential for cumulative effects on the setting of heritage assets will only occur where effects of the substation and converter station overlap with the effects of the overhead line.

English Heritage is satisfied that the potential routes to Canterbury North substation would not cause significant harm to the historic environment and confirm that it is likely that the majority of impacts in terms of the moderate impact on landscape character can be mitigated by careful siting and placement of pylons. It is therefore considered that there will be no significant cumulative environmental effect of the national electricity transmission system connection in relation to archaeology and heritage assets, with appropriate mitigation in place.

Marine Development

The Marine Management Organisation is the appropriate licensing authority for the laying of the cable in UK waters up to the mean high water mark and the Environment Agency and Natural England are the principal consultees in relation to this.

The necessary licence has yet to be granted but the Council is unaware of any significant objections from the Environment Agency and Natural England due to the mitigation measures proposed by the developer. The Marine Management Organisation confirms that mitigation will be secured through conditions of the marine licence. The marine licence for the offshore element does not impact on any designated site or Annex 1 habitat. It is therefore considered that there will be no significant cumulative environmental effect of the national electricity transmission system connection in relation to marine issues, with appropriate mitigation in place.

Thanet Offshore Wind Farm

The proposed development will result in a third cable being laid through the mud flats and salt marsh, in addition to that laid for the Thanet Offshore Wind Farm. Natural England is satisfied that the area of salt marsh impacted by the Thanet Offshore Wind Farm cable will restore to its previous quality, although this may take up to ten years to return to a climax salt marsh community. Natural England advises that there will be no permanent cumulative impact as a result of the proposed development. However, whilst both cable corridors are recovering, salt marsh communities will not be considered to be in their optimal condition.

Conclusion

It is therefore considered that a connection to the national electricity transmission system from Richborough is possible, and whilst the decision on the onward connection is likely to be taken through different consent regime it is likely that any significant environmental effects can be successfully mitigated. It is therefore considered that there will be no significant cumulative or in-combination environmental effects arising from the proposed development, subject to appropriate mitigation.

Onward Grid Connection

Canterbury City Council strongly objects to the proposal and considers that confirming the location of the interconnector will prejudice the proper consideration of high level options for onward connection to the national electricity transmission system. They consider that the determination of this application is therefore premature without a full assessment of the impacts of the overall proposal on the wider locality. Canterbury City Council

requests that any decision on the location of the new inter-connector, converter station building and substation building is made in parallel with the decisions on new transmission connection from the interconnector to the National Grid.

Kent County Council considers that the proposals cannot be accepted at this stage given the known consequential requirement for a new 400kV connection, the location and implications of which are not known.

Overarching National Policy Statement for Energy states that an applicant can proceed with a proposal without a firm grid connection offer, whilst noting that the commercial risks associated with taking such a step rests with the applicant alone. In such circumstances the applicant must provide sufficient information to comply with Environmental Impact Assessment Directive, including indirect, secondary and cumulative effects, encompassing information on grid connections.

The National Policy Statement for Energy sets out that whilst the preference is for there to be either a single application (or separate applications submitted in tandem) which have been prepared in an integrated way this may not always be possible, nor the best course in terms of delivery of the project in a timely way.

The National Policy Statement for Energy confirms that this is because different aspects may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks and the level of information available on the different elements may vary. In some cases applicants may therefore decide to put in an application that seeks consent only for one element but contains some information on the second.

The National Policy Statement for Energy is a material consideration in the determination of this planning application, though does not directly apply to the proposed development as it is not a Nationally Significant Infrastructure Project. Counsel has confirmed that it would be appropriate to adopt a similarly 'sequential' approach in this case. As such, it is not considered that it would be premature for the council to determine the planning application for the proposed development in advance of a decision in relation to the route of the national electricity transmission system connection.

Other Matters

The site is covered by Local Plan policy TR12, which safeguards an area of land for the Channel Tunnel Rail Link project. The Secretary of State for Transport was consulted by TDC as part of this application, and HS1 Ltd have confirmed that they have no interest. It is therefore considered that the proposed development will not impact upon any required land for works or development associated with the Channel Tunnel Rail Link project.

Conclusion

The proposed interconnector accords with European and national energy policy and provides wider sustainability benefits in terms of supporting renewable energy generation and energy security. The need for this development is therefore considered to outweigh any harm to the character and appearance of the area.

It is essential that the development is carried out in accordance with the submitted details and mitigation measures proposed so as to ensure no significant adverse effect upon the integrity of the Thanet Coast and Sandwich Bay Special Protection Area, Ramsar site, Sandwich Bay Special Areas of Conservation, Thanet Coast Special Areas of Conservation, Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest or the Thanet Coast Site of Special Scientific Interest. Subject to mitigation and appropriate safeguarding conditions, the development is considered to comply with the Habitats Regulations, Environmental Impact Assessment Regulations and the National Planning Policy Framework.

RECOMMENDATION

Is it therefore recommended that the Appropriate Assessment is adopted and the application approved subject to safeguarding conditions.

CASE OFFICER - Ben Young

DATE - 19/12/13

APPENDICES

Appendix 1 - Legal Advice

Appendix 2 - Appropriate Assessment

Appendix 3 - Thanet District Council report to the Planning Committee (F/TH/13/0760)

Appendix 4 - Environmental Statement Chapter 3

Appendix 5 - Environmental Statement Chapter 17

EUROPEAN COMMISSION

Brussels, 17.11.2010
COM(2010) 677 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

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1. INTRODUCTION

Europe's energy infrastructure is the central nervous system of our economy. EU energy policy goals, as well as the Europe 2020 economic aims, will not be achievable without a major shift in the way European infrastructure is developed. Rebuilding our energy system for a low-carbon future is not just a task for the energy industry. Technological improvements, greater efficiencies, resilience to a changing climate and new flexibility will be necessary. This is not a task which a single Member State can achieve on its own. A European strategy, and funding, will be necessary.

The Energy Policy for Europe, agreed by the European Council in March 2007[1], establishes **the Union's core energy policy objectives of competitiveness, sustainability and security of supply**. The internal energy market has to be completed in the coming years and by 2020 renewable sources have to contribute 20% to our final energy consumption, greenhouse gas emissions have to fall by 20%[2] and energy efficiency gains have to deliver 20% savings in energy consumption. The EU has to assure security of supply to its 500 million citizens at competitive prices against a background of increasing international competition for the world's resources. The relative importance of energy sources will change. For fossil fuels, notably gas and oil, the EU will become even more dependent on imports. For electricity, demand is set to increase significantly.

The **Energy 2020**[3] Communication, adopted on 10 November 2010, called for a step change in the way we plan, construct and operate our energy infrastructures and networks. Energy infrastructures are at the forefront of the flagship initiative[4] "Resource efficient Europe".

Adequate, integrated and reliable energy networks are a crucial prerequisite not only for EU energy policy goals, but also for the EU's economic strategy. Developing our energy infrastructure will not only enable the EU to deliver a properly functioning internal energy market, it will also enhance security of supply, enable the integration of renewable energy sources, increase energy efficiency and enable consumers to benefit from new technologies and intelligent energy use.

The EU pays the price for its outdated and poorly interconnected energy infrastructure. In January 2009, solutions to the gas disruptions in Eastern Europe were hindered by a lack of reverse flow options and inadequate interconnection and storage infrastructures. Rapid development of offshore wind electricity generation in the North and Baltic Sea regions is hampered by insufficient grid connections both off- and onshore. Developing the huge renewables potential in Southern Europe and North Africa will be impossible without additional interconnections within the EU and with neighbouring countries. The risk and cost of disruptions and wastage will become much higher unless the EU invests as a matter of urgency in smart, effective and competitive energy networks, and exploits its potential for energy efficiency improvements.

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1 Presidency conclusions, European Council, March 2007.
2 30% if the conditions are right.
3 COM(2010) 639.
4 Europe 2020 strategy - COM(2010) 2020.

In the longer term, these issues are compounded by the EU decarbonisation goal to reduce our greenhouse gas emissions by 80-95% by 2050, and raise the need for further developments, such as an infrastructure for large-scale electricity storage, charging of electric vehicles, CO_2 and hydrogen transport and storage. The infrastructures built in the next decade will largely still be in use around 2050. It is therefore crucial to keep in mind **the longer term objective**. In 2011, the Commission plans to present a comprehensive roadmap towards 2050. The roadmap will present energy mix scenarios, describing ways to achieve Europe's long-term decarbonisation goal and the implications for energy policy decisions. This Communication identifies the energy infrastructure map which will be needed to meet our 2020 energy objectives. The 2050 low carbon economy and energy roadmaps will further inform and guide EU energy infrastructure implementation by offering a long term vision.

The energy infrastructures planned today must be compatible with the longer term policy choices.

A new EU energy infrastructure policy is needed to coordinate and optimise network development on a continental scale. This will enable the EU to reap the full benefits of an integrated European grid, which goes well beyond the value of its single components. A European strategy for fully integrated energy infrastructures based on smart and low-carbon technologies will reduce the costs of making the low-carbon shift through economies of scale for individual Member States. A fully interconnected European market will also improve security of supply and help stabilise consumer prices by ensuring that electricity and gas goes to where it is needed. European networks including, as appropriate, with neighbouring countries, will also facilitate competition in the EU's single energy market and build up solidarity among Member States. Above all, integrated European infrastructure will ensure that European citizens and buinesses have access to affordable energy sources. This in turn will positively contribute to Europe's 2020 policy objective of maintaining a strong, diversified and competitive industrial base in Europe.

Two specific issues that need to be addressed are project authorisation and financing. Permitting and cross-border cooperation must become more efficient and transparent to increase public acceptance and speed up delivery. Financial solutions must be found to meet investment needs– estimated at about one trillion euros for the coming decade of which half will be needed for energy networks alone. Regulated tariffs and congestion charges will have to pay the bulk of these grid investments. However, under the current regulatory framework, **all necessary investments will not take place or not as quickly as needed**, notably due to the non-commercial positive externalities or the regional or European value-added of some projects, whose direct benefits at national or local level is limited. The slowdown in investment in infrastructure has been further compounded by the recession.

Moves for a new energy strategy for the EU have the full support of Europe's heads of state and government. In March 2009, the European Council[5] called for a thorough review of the trans-European Networks for Energy framework (TEN-E)[6] by adapting it to both the challenges outlined above and the new responsibilities conferred to the Union by Article 194 of the Treaty of Lisbon.

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5 European Council Presidency Conclusions of 19/20 March 2009, 7880/09.

6 The TEN-E Guidelines and TEN Financial Regulation. See the TEN-E implementation report 2007-2009 - COM(2010) 203.

This Communication outlines a Blueprint which aims to provide the EU with a vision of what is needed for making our networks efficient. . It puts forward a new method of strategic planning to map out necessary infrastructures, qualify which ones are of European interest on the basis of a clear and transparent methodology, and provide a toolbox to ensure their timely implementation, including ways to speed up authorisations, improve cost allocation and target finance to leverage private investment.

2. INFRASTRUCTURE CHALLENGES CALL FOR URGENT ACTION

The challenge of interconnecting and adapting our energy infrastructure to the new needs is significant, urgent, and concerns all sectors[7].

2.1. Electricity grids and storage

Electricity grids must be upgraded and modernised to meet **increasing demand** due to a major shift in the overall energy value chain and mix but also because of the multiplication of applications and technologies relying on electricity as an energy source (heat pumps, electric vehicles, hydrogen and fuel cells[8], information and communication devices etc.). The grids must also be urgently extended and upgraded to foster market integration and maintain the existing levels of system's security, but especially to transport and balance **electricity generated from renewable sources**, which is expected to more than double in the period 2007-2020[9]. A significant share of generation capacities will be concentrated in locations further away from the major centres of consumption or storage. Up to 12% of renewable generation in 2020 is expected to come from offshore installations, notably in the Northern Seas. Significant shares will also come from ground-mounted solar and wind parks in Southern Europe or biomass installations in Central and Eastern Europe, while decentralised generation will also gain ground throughout the continent. Through a well **interconnected and smart grid including large-scale storage** the cost of renewable deployment can be brought down, as the greatest efficiencies can be made on a pan-European scale. Beyond these short-term requirements, electricity grids will have to evolve more fundamentally to enable the shift to a decarbonised electricity system in the 2050 horizon, supported by new **high-voltage long distance** and **new electricity storage** technologies which can accommodate ever-increasing shares of renewable energy, from the EU and beyond.

At the same time the grids must also become smarter. Reaching the EU's 2020 energy efficiency and renewable targets will not be possible without more **innovation and intelligence** in the networks at both transmission and distribution level, in particular through information and communication technologies. These will be essential in the take up of demand side management and other **smart grid** services. Smart electricity grids will facilitate transparency and enable consumers to control appliances at their homes to save energy, facilitate domestic generation and reduce cost. Such technologies will also help boost the competitiveness and worldwide technological leadership of EU industry, including SMEs.

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7 For more detailed analysis, see the Annex and the Impact assessment, accompanying this Communication.

8 Large scale roll-out will require the development of a substantial hydrogen trasnport and storgae infrastructure.

9 Based on the national renewable energy action plans notified by 23 Member states to the Commission.

2.2. Natural gas grids and storage

Natural gas will continue, provided its supply is secure, to play a key role in the EU's energy mix in the coming decades and will gain importance as the **back-up fuel** for variable electricity generation. Although in the long run unconventional and biogas resources may contribute to reducing the EU's import dependency, in the medium term depleting indigenous conventional natural gas resources call for additional, diversified **imports**. Gas networks face additional flexibility requirements in the system, the need for bi-directional pipelines, enhanced storage capacities and flexible supply, including liquefied (LNG) and compressed natural gas (CNG). At the same time, markets are still fragmented and monopolistic, with various barriers to open and fair competition. **Single-source dependency**, compounded by a lack of infrastructure, prevails in Eastern Europe. A diversified portfolio of physical gas sources and routes and a fully interconnected and bidirectional gas network, where appropriate[10,] within the EU are needed already by 2020. This development should be closely linked with the EU's strategy towards third countries, in particular as regards our suppliers and transit countries.

2.3 District heating and cooling networks

Thermal power generation often leads to conversion losses while at the same time natural resources are consumed nearby to produce heating or cooling in separate systems. This is both inefficient and costly. Similarly, natural sources, such as sea- or groundwater, are seldom used for cooling despite the cost savings involved. The development and modernisation of district heating and cooling networks should therefore be promoted as a matter of priority in all larger agglomerations where local or regional conditions can justify it in terms of, notably heating or cooling needs, existing or planned infrastructures and generation mix etc. This will be addressed in the Energy Efficiency Plan and the 'Smart Cities' innovation partnership, to be launched early 2011.

2.4. CO_2 capture, transport and storage (CCS)

CCS technologies would reduce CO_2 emissions on a large scale while allowing the use of fossil fuels, which will remain an important source for electricity generation over the next decades. The technology, its risks and benefits, are still being tested through pilot plants which will come on line in 2015CCS commercial rollout in electricity generation and industrial applications is expected to start after 2020 followed by a global rollout around 2030. Due to the fact that potential CO_2 storage sites are not evenly distributed across Europe and the fact that some Member States, considering their significant levels of CO_2 emissions, have only limited potential storage within their national boundaries, construction of European pipeline infrastructure spanning across State borders and in the maritime environment could become necessary.

2.5. Oil and olefin transport and refining infrastructure

If climate, transport and energy efficiency policies remain as they stand today, oil would be expected to represent 30% of primary energy, and a significant part of transport fuels are likely to remain oil based in 2030. Security of supply depends on the integrity and flexibility of the entire **supply chain**, from the crude oil supplied to refineries to the final product

[10] See the regulation on security of gas supply, (EC) No 994/2010

distributed to consumers. At the same time, the future shape of crude oil and petroleum product transport infrastructure will also be determined by developments in the European refining sector, which is currently facing a number of challenges as outlined in the Commission Staff Working Document accompanying this Communication.

2.6. The market will deliver most of the investments but obstacles remain

The policy and legislative measures the EU has adopted since 2009 have provided a powerful and sound foundation for European infrastructure planning. The **third internal energy market package**[11] laid the basis for European network planning and investment by creating the requirement for Transmission System Operators (TSOs) to co-operate and elaborate regional and European 10-year network development plans (TYNDP) for electricity and gas in the framework of the European Network of TSOs (ENTSO) and by establishing rules of cooperation for national regulators on cross-border investments in the framework of the Agency for the Cooperation of Energy Regulators (ACER).

The third package creates an obligation for regulators to take into account the impact of their decisions on the EU internal market as a whole. This means they should not evaluate investments solely on the basis of benefits in their Member State, but on the basis of EU-wide benefits. Still, **tariff setting** remains nationally focussed and key decisions on infrastructure interconnection projects are taken at national level. National regulatory authorities traditionally have aimed mainly at minimising tariffs, and thus tend not to approve the necessary rate of return for projects with higher regional benefit or difficult cost-allocation across borders, projects applying innovative technologies or projects fulfilling only security of supply purposes.

In addition, with the strengthened and extended **Emission Trading System** (ETS) there will be a unified European carbon market. ETS carbon prices influence already and will increasingly shift the optimal electricity supply mix and location towards low carbon supply sources.

The **regulation on security of gas supply**[12] will enhance the EU's capacity to react to crisis situations, through increased network resilience and common standards for security of supply and additional equipments. It also identifies clear obligations for investments in networks.

Long and uncertain **permitting procedures** were indicated by industry as well as TSOs and regulators, as one of the main reasons for delays in the implementation of infrastructure projects, notably in electricity[13]. The time between the start of planning and final commissioning of a power line is frequently more than 10 years[14]. Cross-border projects often face additional opposition, as they are frequently perceived as mere "transit lines" without local benefits. In electricity, the resulting delays are assumed to prevent about 50% of commercially viable projects from being realised by 2020[15]. This would seriously hamper the EU’s transformation into a resource efficient and low carbon economy and threaten its

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11 Directives 2009/72/EC and 2009/73/EC, Regulations (EC) No 713, (EC) No 714 and (EC) No 715/2009.

12 Regulation (EC) No 994/2010

13 Public consultation on the Green Paper Towards a secure, sustainable and competitive European energy network - COM(2008) 737.

14 ENTSO-E 10-year network development plan, June 2010.

15 See accompanying impact assessment.

competitiveness. In offshore areas, lack of coordination, strategic planning and alignment of national regulatory frameworks often slow down the process and increase the risk of conflicts with other sea-uses later on.

2.7. Investment needs and financing gap

Around one trillion euros must be invested in our energy system between today and 2020[16] in order to meet energy policy objectives and climate goals. About half of it will be required for networks, including electricity and gas distribution and transmission, storage, and smart grids.

Out of these investments **about 200 bn € are needed for energy transmission networks alone.** However, only about 50% of the required investments for transmission networks will be taken up by the market by 2020. This leaves a gap of about 100 bn €. Part of this gap is caused by delays in obtaining the necessary environmental and construction permits, but also by difficult access to finance and lack of adequate risk mitigating instruments, especially for projects with positive externalities and wider European benefits, but no sufficientcommercial justification[17]. Our efforts also need to focus on further developing the internal energy market, which is essential to boosting private sector investment in energy infrastructure, which in turn will help to reduce the financial gap in the coming years.

The cost of not realising these investments or not doing them under EU-wide coordination would be huge, as demonstrated by offshore wind development, where national solutions could be 20% more expensive. Realising all needed investments in transmission infrastructure would create an additional 775,000 jobs during the period 2011-2020 and add 19 bn € to our GDP by 2020[18], compared to growth under a business-as-usual scenario. Moreover, such investments will help promote the diffusion of EU technologies. EU industry, including SMEs, is a key producer of energy infrastructure technologies. Upgrading EU energy infrastructure provides an opportunity to boost EU competitiveness and worldwide technological leadership.

3. ENERGY INFRASTRUCTURE BLUEPRINT: A NEW METHOD FOR STRATEGIC PLANNING

Delivering the energy infrastructures that Europe needs in the next two decades requires a completely new infrastructure policy based on a European vision. This also means changing the current practice of the TEN-E with long predefined and inflexible projects lists. The Commission proposes a new method which includes the following steps:

– Identify the energy infrastructure map leading towards a European smart supergrid interconnecting networks at continental level.

– Focus on a limited number of **European priorities** which must be implemented by 2020 to meet the long-term objectives and where European action is most warranted.

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16 PRIMES model calculations.

17 See accompanying impact assessment.

18 See accompanying impact assessment.

– Based on an agreed methodology, identification of **concrete projects** necessary to implement these priorities – declared as projects of European interest – in a flexible manner and building on regional cooperation so as to respond to changing market conditions and technology development.

– Supporting the implementation of projects of European interest through **new tools**, such as improved regional cooperation, permitting procedures, better methods and information for decision makers and citizens and innovative financial instruments.

4. EUROPEAN INFRASTRUCTURE PRIORITIES 2020 AND BEYOND

The Commission proposes the following short term and longer term priorities to make our energy infrastructure suitable for the 21st century.

4.1. Priority corridors for electricity, gas and oil

4.1.1. Making Europe's electricity grid fit for 2020

The first 10-year network development plan (TYNDP) [19] forms a solid basis to identify priorities in the electricity infrastructure sector. However, the plan does not take full account of infrastructure investment triggered by important new offshore generation capacities, mainly wind in the Northern Seas[20] and does not ensure timely implementation, notably for cross-border interconnections. To ensure timely integration of **renewables** generation capacities in Northern and Southern Europe and further **market integration**, the European Commission proposes to focus attention on the following priority corridors, which will make Europe's electricity grids fit for 2020:

1. **Offshore grid in the Northern Seas and connection to Northern as well as Central Europe** – to integrate and connect energy production capacities in the Northern Seas[21] with consumption centres in Northern and Central Europe and hydro storage facilities in the Alpine region and in Nordic countries.

2. **Interconnections in South Western Europe** to accommodate wind, hydro and solar, in particular between the Iberian Peninsula and France, and further connecting with Central Europe, to make best use of Northern African renewable energy sources and the existing infrastructure between North Africa and Europe.

3. **Connections in Central Eastern and South Eastern Europe** – strengthening of the regional network in North-South and East-West power flow directions, in order to assist market and renewables integration, including connections to storage capacities and integration of energy islands.

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19 The 500 projects identified by national TSOs cover the whole of the EU, Norway, Switzerland and Western Balkans. The list does not include local, regional or national projects, which were not considered to be of European significance.

20 It is expected that the next edition of the TYNDP planned for 2012 will take a more top-down approach, assuming the achievement of the 2020 legal obligations concerning integration of renewables and emissions reductions with a view beyond 2020, and address these shortcomings.

21 This includes the North Sea and North-Western Seas.

4. **Completion of the BEMIP** (Baltic Energy Market Interconnection Plan) – integration of the Baltic States into the European market through reinforcement of their internal networks and strengthening of interconnections with Finland, Sweden and Poland and through reinforcement of the Polish internal grid and interconnections east and westward.

4.1.2. Diversified gas supplies to a fully interconnected and flexible EU gas network

The aim of this priority area is to build the infrastructure needed to allow gas from any source to be bought and sold anywhere in the EU, regardless of national boundaries. This would also ensure security of demand by providing for more choice and a bigger market for gas producers to sell their products. A number of positive examples in Member States demonstrate that diversification is key to increased competition and enhanced **security of supply**. Whilst on an EU level, supplies are diversified along three corridors - Northern Corridor from Norway, Eastern corridor from Russia, Mediterranean Corridor from Africa – and through LNG, single source dependency still prevails in some regions. Every European region should implement infrastructure allowing physical **access to at least two different sources**. At the same time, the balancing role of gas for variable electricity generation and the infrastructure standards introduced in the Security of Gas Supply Regulation impose additional flexibility requirements and increase the need for bi-directional pipelines, enhanced storage capacities and flexible supply, such as LNG/CNG. In order to achieve these objectives, the following priority corridors have been identified:

1. **Southern Corridor** to further diversify sources at the EU level and to bring gas from the Caspian Basin, Central Asia and the Middle East to the EU.

2. Linking the Baltic, Black, Adriatic and Aegean Seas through in particular:

   – the implementation of **BEMIP** and

   – the **North-South Corridor** in Central Eastern and South-East Europe.

3. North-South Corridor in Western Europe to **remove internal bottlenecks** and increase short-term deliverability, thus making full use of possible alternative external supplies, including from Africa, and optimising the existing infrastructure, notably existing LNG plants and storage facilities. .

4.1.3. Ensuring the security of oil supply

The aim of this priority is to ensure uninterrupted crude-oil supplies to land-locked EU countries in Central-Eastern Europe, currently dependent on limited supply routes, in case of lasting supply disruptions in the conventional routes. Diversification of oil supplies and interconnected pipeline networks would also help not to increase further oil transport by vessels, thus reducing the risk of environmental hazards in the particularly sensitive and busy Baltic Sea and Turkish Straits. This can be largely achieved within the existing infrastructure by reinforcing the interoperability of the **Central-Eastern European pipeline network** by means of interconnecting the different systems and removing capacity bottlenecks and/or enabling reverse flows.

4.1.4. Roll-out of smart grid technologies

The aim of this priority is to provide the necessary framework and **initial incentives for rapid investments** in a new "intelligent" network infrastructure to support i) a competitive retail market, ii) a well-functioning energy services market which gives real choices for energy savings and efficiency and iii) the integration of renewable and distributed generation, as well as iv) to accommodate new types of demand, such as from electric vehicles.

The Commission will also **assess the need for further legislation** to keep smart grid implementation on track. In particular, promoting investment in smart grids and smart meters will require a thorough assessment of what aspects of smart grids and meters need to be regulated or standardised and what can be left to the market. The Commission will also consider further measures to ensure that smart grids and meters bring the desired benefits for consumers, producers, operators and in terms of energy efficiency. The results of this assessment and possible further measures will be published in the course of 2011.

In addition, the Commission will set up **a smart grids transparency and information platform** to enable dissemination of the most up-to-date experiences and good practice concerning deployment across Europe, create synergies between the different approaches and facilitate the development of an appropriate regulatory framework. The timely establishment of technical standards and adequate data protection will be key to this process. To that end, focus on smart grid technologies under the SET-Plan should be intensified.

4.2. Preparing the longer term networks

In the context of the longer term perspective due to be presented in the 2050 Roadmap, the EU must start today designing, planning and building the energy networks of the future, which will be necessary to allow the EU to further reduce greenhouse gas emissions. There is only a **limited window of opportunity**. It is only through a coordinated approach towards an optimised European infrastructure that costly approaches at Member State or project level and sub-optimal solutions in the longer run can be avoided.

4.2.1. European Electricity Highways

Future '**Electricity Highways**' must be capable of: i) accommodating ever-increasing wind surplus generation in and around the Northern and Baltic Seas and increasing renewable generation in the East and South of Europe and also North Africa; ii) connecting these new generation hubs with major storage capacities in Nordic countries and the Alps and with the major consumption centres in Central Europe and iii) coping with an increasingly flexible and decentralised electricity demand and supply[22].

The European Commission therefore proposes to immediately launch work to establish **a modular development plan** which would allow the commissioning of first Highways by 2020. The plan would also prepare for their extension with the aim of facilitating the development of large-scale renewable generation capacities, including beyond EU borders and with a view to potential developments in new generation technologies, such as wave, wind and tidal energy. The work would be best carried out in the framework of the Florence

[22] Whilst it is likely that such a grid would ultimately be based on DC technology, it needs to be built stepwise, ensuring compatibility with the current AC grid.

Forum, organised by the European Commission and ENTSO-E, and building on the SET-Plan European Electricity Grid Initiative (EEGI) and European Industrial Wind Initiative.

4.2.2. European CO_2 transport infrastructure

This priority area includes the examination and agreement on the **technical and practical modalities of a future CO_2 transport infrastructure.** Further research, coordinated by the European Industrial Initiative for carbon capture and storage launched under the SET-Plan, will allow a timely start of infrastructure planning and development at European level, in line with the foreseen commercial roll-out of the technology after 2020. Regional cooperation will also be supported in order to stimulate the development of focal points for future European infrastructure.

4.3. From priorities to projects

The above mentioned priorities should translate into concrete projects and lead to the establishment of a **rolling programme**. First project lists should be ready in the course of 2012 and be subsequently updated every two years, so as to provide input to the regular updating of the TYNDPs.

Projects should be identified and ranked according to **agreed and transparent criteria** leading to a limited number of projects. The Commission proposes to base the work on the following criteria, which should be refined and agreed upon with all relevant stakeholders, notably ACER:

– *Electricity*: contribution to security of electricity supply; capacity to connect renewable generation and transmit it to major consumption/storage centres; increase of market integration and competition; contribution to energy efficiency and smart electricity use.

– *Gas*: diversification, giving priority to diversification of sources, diversification of supplying counterparts and diversification of routes; as well as increase in competition through increase in interconnection level, increase of market integration and reduction of market concentration.

The projects identified would be examined at EU level to ensure **consistency across the priorities and regions** and ranked in terms of their urgency with regard to their contribution to the achievement of the priorities and Treaty objectives. Projects meeting the criteria would be awarded a '**Project of European Interest**' label. This label would form the basis for further assessment[23] and consideration under the actions described in the following chapters. The label would confer political priority to the respective projects.

[23] The economic, social and environmental impacts of the projects will be assessed according to the common method referred to in the next chapter.

5. TOOLBOX TO SPEED UP IMPLEMENTATION

5.1. Regional clusters

Regional cooperation as developed for the Baltic Energy Market Interconnection Plan (BEMIP) or for the North Seas Countries' Offshore Grid Initiative (NSCOGI) has been instrumental in reaching agreement on regional priorities and their implementation. The mandatory regional cooperation set up under the internal energy market will help to speed up market integration, while the regional approach has been beneficial for the first electricity TYNDP.

The Commission considers that such **dedicated regional platforms** would be useful to facilitate the planning, implementation and monitoring of the identified priorities and the drawing up of investment plans and concrete projects. The role of the existing **Regional Initiatives**, established in the context of the internal energy market, should be reinforced, where relevant, with tasks related to infrastructure planning, whilst *ad hoc* regional structures could also be proposed where needed. In this regard, the EU strategies for so called macro-regions (such as the Baltic Sea or the Danube Region) can be used as cooperation platforms to agree on transnational projects across sectors.

In this context, to kick start the new regional planning method in the short term, the Commission intends to set up a **High Level Group** based on cooperation of the countries in Central Eastern Europe, e.g. in the Visegrad group[24], with the mandate to devise an action plan, in the course of 2011, for North-South and East-West connections in gas and oil as well as electricity.

5.2. Faster and more transparent permit granting procedures

In March 2007, the European Council invited the Commission "to table proposals aiming at streamlining approval procedures" as a response to the frequent calls of the industry for EU measures to facilitate permitting procedures.

Responding to this necessity, the Commission will propose, in line with the principle of subsidiarity, to introduce permitting measures applying to projects of "European interest" **to streamline, better coordinate and improve** the current process while respecting safety and security standards and ensuring full compliance with the EU environmental legislation[25]. The streamlined and improved procedures should ensure the timely implementation of the identified infrastructure projects, without which the EU would fail to meet its energy and climate objectives. Moreover, they should provide for transparency for all stakeholders involved and facilitate **participation of the public** in the decision-making process by ensuring open and transparent debates at local, regional and national level to enhance public trust and acceptance of the installations.

Improved decision-making could be addressed through the following:

1. The establishment of a contact authority ("**one-stop shop**") per project of European interest, serving as a single interface between project developers and the competent authorities involved at national, regional, and/or local level, without prejudice to

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[24] See Declaration of the Budapest V4+ Energy Security Summit of 24 February, 2010.

[25] See accompanying impact assessment.

their competence. This authority would be in charge of coordinating the entire permitting process for a given project and of disseminating the necessary information about administrative procedures and the decision-making process to stakeholders. Within this framework, Member States would have full competence to allocate decision-making power to the various parts of the administration and levels of government. For cross-border projects, the possibility of coordinated or joint procedures[26] should be explored in order to improve project design and expedite their final authorisation.

2. The introduction of a **time limit** for a final positive or negative decision to be taken by the competent authority will be explored. Given the fact that delays often occur due to poor administrative practice, it should be ensured that each of the necessary steps in the process is completed within a specific time limit, while fully respecting Member States' applicable legal regimes and EU law. The proposed schedule should provide for an early and effective involvement of the public in the decision-making process, and citizens' rights to appeal the authorities' decision should be clarified and strengthened, while being clearly integrated in the overall timeframe. It will further be explored whether, in case a decision has still not been taken after the expiry of the fixed time limit, special powers to adopt a final positive or negative decision within a set timeframe could be given to an authority designated by the concerned Member States.

3. The development of **guidelines to increase the transparency and predictability** of the process for all parties involved (ministries, local and regional authorities, project developers and affected populations). They would aim at improving communication with citizens to ensure that the environmental, security of supply, social and economic costs and benefits of a project are correctly understood, and to engage all stakeholders in a transparent and open debate at an early stage of the process. Minimum requirements regarding the compensation of affected populations could be included. More specifically, for offshore cross-border energy installations maritime spatial planning should be applied to ensure a straight-forward, coherent but also a more informed planning process.

4. In order to enhance the conditions for timely construction of necessary infrastructure, the possibility of providing rewards and incentives, including of a financial nature, to regions or Member States that facilitate timely authorisation of projects of European interest should be explored. Other mechanisms for benefit sharing inspired by best practice in the renewable energy field could also be considered.[27]

5.3. Better methods and information for decision makers and citizens

In order to assist the regions and the stakeholders in identifying and implementing projects of European interest, the Commission will develop a **dedicated policy and project support tool** to accompany infrastructure planning and project development activities at EU or regional level. Such a tool would inter alia elaborate energy-system wide and joint electricity-gas modelling and forecasting and a common method for project assessment[28] appropriate to

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[26] Including in particular the relevant EU environmental legislation

[27] See e.g. www.reshare.nu

[28] See e.g. "Guide to cost-benefit analysis of investment projects", July 2008: http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide2008_en.pdf

reflect short and long term challenges, covering notably climate proofing, to facilitate prioritisation of projects. The Commission will also encourage Member States to better coordinate existing EU environmental assessment procedures already at an early stage. Moreover, tools will be developed to better explain the benefits of a specific project to the wider public and associate them with the process. These tools should be complemented by communication on the benefits of infrastructure development and smart grids for consumers and citizens, in terms of security of supply, decarbonisation of the energy sector and energy efficiency.

5.4. Creating a stable framework for financing

Even if all permitting issues are resolved, an **investment gap estimated at about 60 bn €** is likely to remain by 2020, mainly due to the non-commercial positive externalities of projects with a regional or European interest and the risks inherent to new technologies. Filling this gap is a significant challenge, but a prerequisite if infrastructure priorities are to be built on time. Therefore, further internal energy market integration is needed to boost infrastructure development and EU coordinated action is required to alleviate investment constraints and mitigate project risks.

The Commission proposes to work on two fronts; further improving the cost allocation rules and optimising the European Union's leverage of public and private funding.

5.4.1. Leveraging private sources through improved cost allocation

Electricity and gas infrastructure in Europe are regulated sectors, whose business model is based on regulated tariffs collected from the users, which allow recovering the investments made ("**user pays principle**"). This should remain the main principle also in the future.

The third package asks regulators to provide appropriate tariff incentives, both short and long term, for network operators to increase efficiencies, foster market integration and security of supply and support the related research activities[29]. However, while this new rule could cover some innovative aspects in new infrastructure projects, it is not designed to address the major technological changes, notably in the electricity sector, concerning offshore or smart grids.

Moreover, tariff setting remains national and hence not always conducive to advance European priorities. Regulation should recognise that sometimes the most efficient approach for a TSO to address customer needs is to invest in a network outside its territory. Establishing such principles for cost-allocation across borders is key for fully integrating European energy networks.

In the absence of agreed principles on European level, this will be difficult to do, particularly as long term consistency is required. The Commission envisages to put forward, in 2011, **guidelines or a legislative proposal to address cost allocation** of major technologically complex or cross-border projects, through tariff and investment rules.

Regulators have to agree on common principles in relation to cost-allocation of interconnection investments and related tariffs. In electricity, the need for the development of long term forward markets for cross-border transmission capacity should be explored, whereas in the gas sector, investment costs could be allocated to TSOs in neighbouring

[29] Cf. Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC.

countries, both for normal (based on market-demand) investments, as well as those motivated by security of supply reasons.

5.4.2. Optimising the leverage of public and private sources by mitigating investors risks

In the Budget Review, the Commission emphasised the need to maximise the impact of European financial intervention by playing a catalytic role in mobilising, pooling and leveraging public and private financial resources for infrastructures of European interest. It requires maximising societal returns in view of scarce resources, alleviating constraints faced by investors, mitigating project risks, reducing cost of financing and increasing access to capital. A "two-front" approach is proposed:

Firstly, the Commission will continue strengthening EU's partnerships with International Financial Institutions (IFI) and **build on existing joint financial and technical assistance's initiatives**[30]. The Commission will pay particular attention at developing synergies with these instruments and for some of them, will examine the possibility to adjust their concepts to the energy infrastructure sector.

Secondly, without prejudice to the Commission's proposal for the next multi-annual financial framework post 2013, due in June 2011, and taking into account the results of the Budget Review[31], as regards the mainstreaming of energy priorities into different programmes, the Commission intends to propose a new set of tools. These tools should combine existing and innovative financial mechanisms that are **different, flexible and tailored towards the specific financial risks and needs faced by projects at the various stages of their development**. Beyond the traditional support forms (grants, interest rate subsidies), innovative market-based solutions addressing the shortfall in equity and debt financing may be proposed. The following options will notably be examined: equity participation and support to infrastructure funds, targeted facilities for project bonds, test option for advanced network related capacity payments mechanism, risk sharing facilities (notably for new technological risks) and public private partnerships loan guarantees. Particular attention will be paid to foster investments in projects which contribute to meeting the 2020 targets or cross EU borders, in projects enabling the roll-out of new technologies such as smart grids, and in other projects where EU-wide benefits cannot be achieved by the market alone.

6. CONCLUSIONS AND WAY FORWARD

The constraints on public and private funding possibilities over the coming years should not be an excuse to postpone building of the identified infrastructure and making the corresponding investments. Indeed, today's investments are a necessary condition for future savings, thereby reducing the overall cost of achieving our policy goals.

Based on the views expressed by the institutions and stakeholders on this blueprint, the Commission intends to prepare, in 2011, as part of its proposals for the next multiannual financial framework, appropriate initiatives. These proposals will address the regulatory and financial aspects identified in the Communication, notably through an Energy Security and

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30 Notably Marguerite, Loan Guarantee Instrument for TEN-T, Risk Sharing Finance Facility, Jessica, Jaspers.

31 EU Budget Review, adopted on 19 October 2010.

Infrastructure Instrument and mainstreaming of energy priorities in different programmes.

ANNEX

Proposed energy infrastructure priorities for 2020 and beyond

1. INTRODUCTION

This annex provides technical information on the European infrastructures priorities, put forward in chapter 4 of the Communication, on progress of their implementation and the next steps needed. The priorities chosen grow out of the major changes and challenges, which Europe's energy sector will face in the coming decades, independently of the uncertainties surrounding supply and demand of certain energy sources.

Section 2 presents the expected evolutions of supply and demand for each energy sector covered under this communication. The scenarios are based on the "Energy Trends for 2030 – update 2009"[32], which rely on the PRIMES modelling framework, but do also take into account scenario exercises done by other stakeholders. While the PRIMES Reference scenario for 2020 is based on a set of agreed EU policies, notably two legally binding targets (20% renewables share in final energy consumption and 20% greenhouse gas emission reductions compared to 1990 in 2020, PRIMES baseline is based only on the continuation of already implemented policies, whereby these targets are not achieved. For the period between 2020 and 2030, PRIMES assumes that no new policy measures are taken. These evolutions allow identifying major trends, which will drive infrastructure development over the coming decades[33].

In sections 3 and 4, the infrastructure priorities (Map) identified in the Communication are presented by looking at the situation and challenges faced in each case and by providing, as relevant, technical explanations on the recommendations made in the Communication. It is understood that the presentations of the priorities vary in terms of:

– nature and maturity: Certain priorities concern very specific infrastructure projects, which can be, for some, very advanced in terms of project preparation and development. Others cover broader and often also newer concepts, which will need considerable additional work before being translated into concrete projects.

– scope: Most priorities focus on a certain geographic region, both electricity highways and CO_2 networks covering potentially many if not all EU Member States. Smart grids however are a thematic, EU -wide priority.

– level of engagement proposed in the recommendations: Depending on the nature and maturity of the priorities, the recommendations concentrate on concrete developments or address a broader range of issues, including aspects of regional cooperation, planning and regulation, standardisation and market design or research and development.

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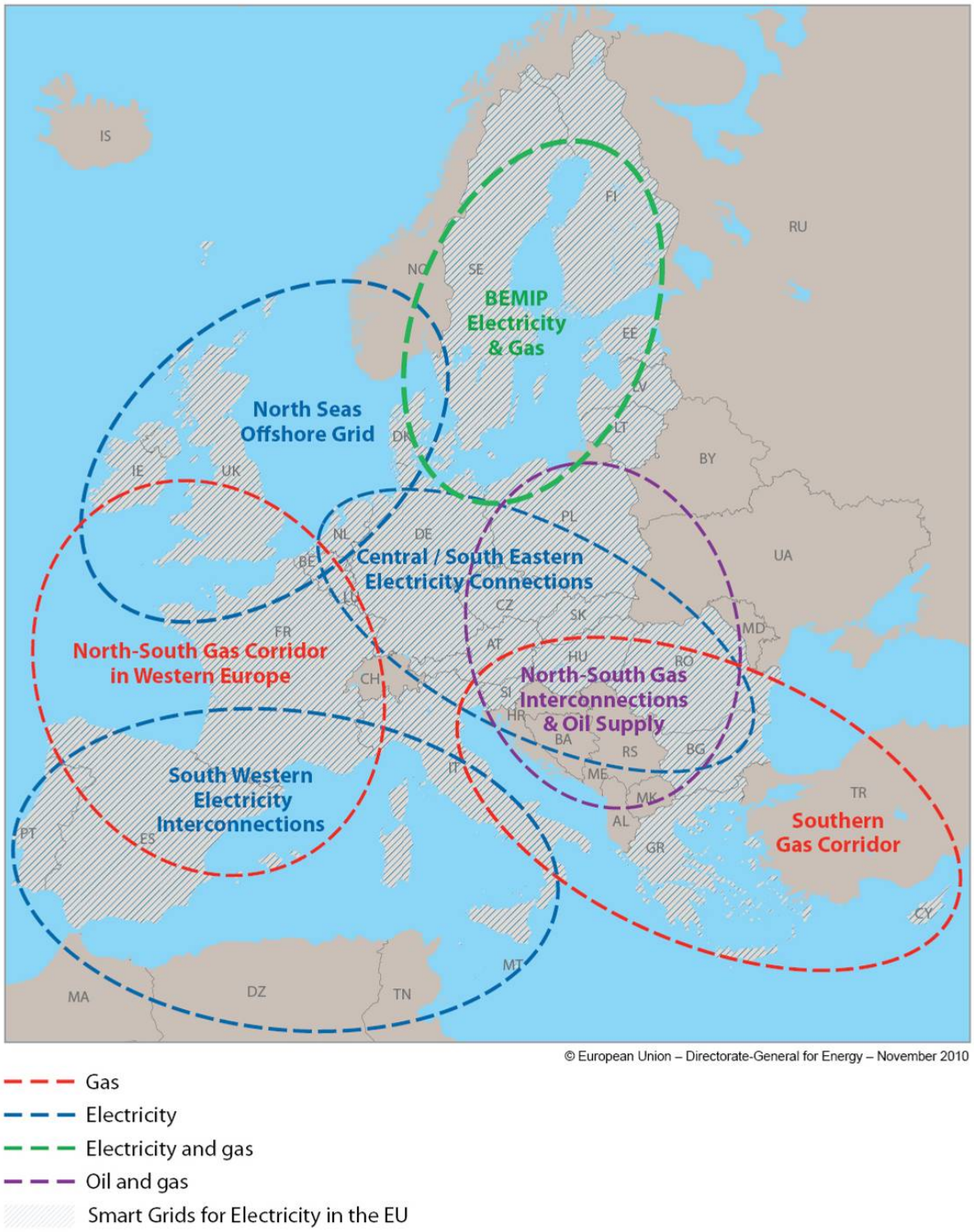
32 http://ec.europa.eu/energy/observatory/trends_2030/doc/trends_to_2030_update_2009.pdf

33 In the absence of further policy measures and under certain assumptions



Map 1: Priority corridors for electricity, gas and oil

2. EVOLUTION OF ENERGY DEMAND AND SUPPLY

The latest update of the "Energy Trends for 2030 – update 2009"[34] based on the PRIMES modelling framework foresees slight growth of primary energy consumption between today

[34] http://ec.europa.eu/energy/observatory/trends_2030/doc/trends_to_2030_update_2009.pdf

and 2030 according to the so-called Baseline scenario (Figure 1), while growth is set to remain largely stable according to the Reference scenario[35] (Figure 2). It should be noted that these projections do not include energy efficiency policies to be implemented from 2010 onwards, a possible step-up of the emission reduction target to -30% by 2020[36] or additional transport policies beyond CO_2 and cars emissions regulation. They should therefore rather be seen as upper limits for the expected energy demand.

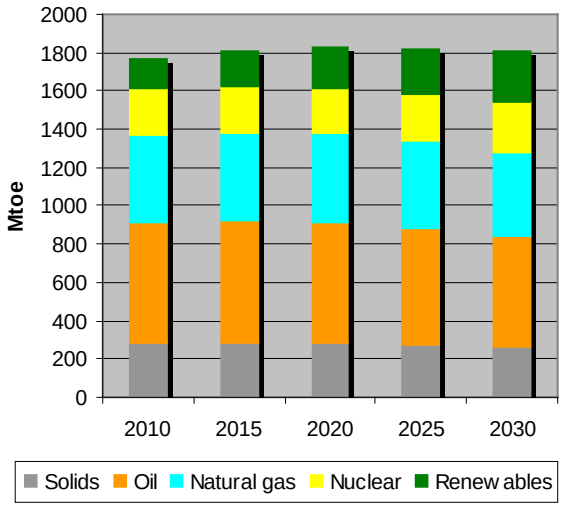


Figure 1: Primary energy consumption by fuel (Mtoe), PRIMES baseline

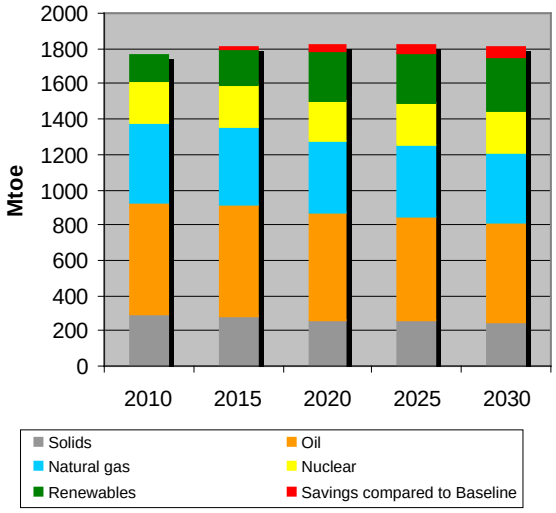


Figure 2: Primary energy consumption by fuel (Mtoe), PRIMES Reference scenario

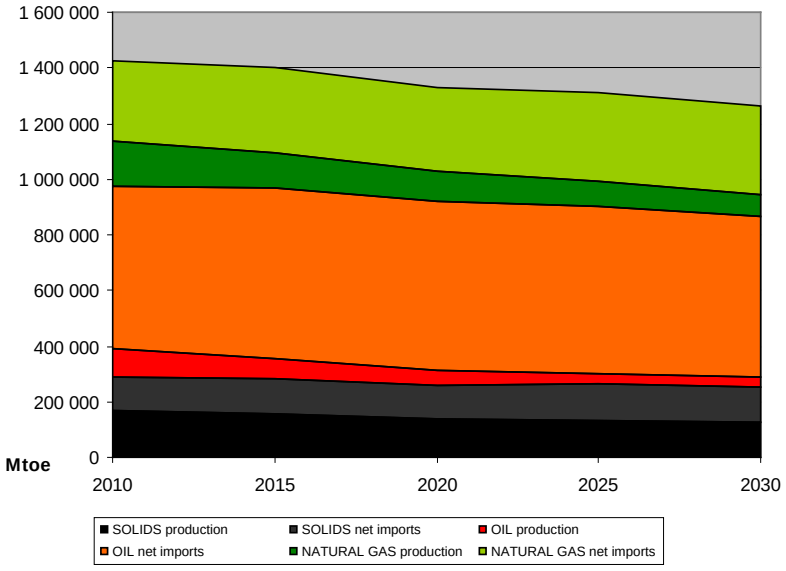


Figure 3: EU-27 fossil fuel consumption by origin in Mtoe (including bunker fuels), PRIMES reference scenario

35 Under this scenario, it is assumed that the two binding targets for renewables and emission reduction are achieved. In the PRIMES baseline, based only on continuation of already implemented policies, these targets are not achieved.

36 For a more detailed analysis of its implications see Commission Staff Working Document accompanying the Commission Communication "Analysis of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage" - COM(2010) 265. Background information and analysis Part II - SEC(2010) 650.

In these scenarios, the share of coal and oil in the overall energy mix declines between today and 2030, while gas demand remains largely stable until 2030. The share of renewables is set to increase significantly, both in primary and final energy consumption, while the contribution of nuclear, at about 14% of primary energy consumption, is set to remain stable. The EU's dependency on imported fossil fuels will continue to be high for oil and coal and will increase for gas, as shown in Figure 3.

As regards **gas**, the dependency on imports is already high and will be growing further, to reach about 73-79% of consumption by 2020 and 81-89%[37] by 2030, mainly due to the depletion of indigenous resources. Based on the different scenarios, the additional import need ranges from 44 Mtoe to 148 Mtoe by 2020 and from 61 to 221 Mtoe by 2030 (compared to 2005).

Increased flexibility will be required due to the increasing role of gas as primary back-up for variable electricity generation. This means a more flexible use of the pipeline systems, need for additional storage capacities, both in terms of working volumes, as also withdrawal and injection capacities and need for flexible supplies, such as LNG/CNG.

The recently adopted regulation on security of supply requires investing in infrastructures to increase the resilience and robustness of the gas system in the event of a supply disruption. Member States should fulfil two infrastructure standards: N-1 and reverse flow. The N-1 formula describes the ability of the technical capacity of the gas infrastructure to satisfy total gas demand in the event of disruption of the single largest gas supply infrastructure, during a day of exceptionally high gas demand occurring with a statistical probability of once every 20 years. The N-1 can be fulfilled at national or regional level and a Member State may use also production and demand-side measures. The Regulation also requires that permanent physical bi-directional capacity is available on all cross-border interconnection between Member States (except for connections to LNG, production or distribution).

Currently five countries do not meet the N-1 criterion (Bulgaria, Slovenia, Lithuania, Ireland and Finland), taking into account the projects underway under the European Energy Programme for Recovery but excluding demand side measures[38]. Regarding investments on reverse flow, according to Gas Transmission Europe's study on reverse flow (July 2009), 45 projects have been identified in Europe as vital for enhancing reverse flows within and between Member States and providing a greater flexibility in transporting gas where it is needed. The main challenge is to finance projects to fulfil the infrastructure obligations, notably when the infrastructures are not required by the market.

Oil demand is expected to see two different developments in parallel: decline in the EU-15 countries and constant growth in new Member States, where demand is expected to grow by 7.8% between 2010 and 2020.

The main challenges for **electricity** infrastructure is growing demand and increasing shares of generation from renewable sources, in addition to additional needs for market integration and security of supply. EU-27 gross electricity generation is projected to grow by at least 20% from about 3,362 TWh in 2007 to 4,073 TWh in 2030 under the PRIMES reference scenario

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[37] All lower figures refer to the PRIMES reference scenario, while the higher figures are derived from the Eurogas Environmental Scenario published in May 2010, based on a bottom-up collection of Eurogas members' estimates.

[38] See the impact assessment at http://ec.europa.eu/energy/security/gas/new_proposals_en.htm

and to 4,192 TWh under PRIMES baseline, even without taking into account the possible effects of strong electro-mobility development. The share of renewables in gross electricity generation is expected to be around 33% in 2020 according to the Reference scenario, out of which variable sources (wind and solar) could represent around 16%[39].

Figure 4 shows the evolution of gross electricity generation by source according to the PRIMES Reference scenario for the 2010-2030 period:

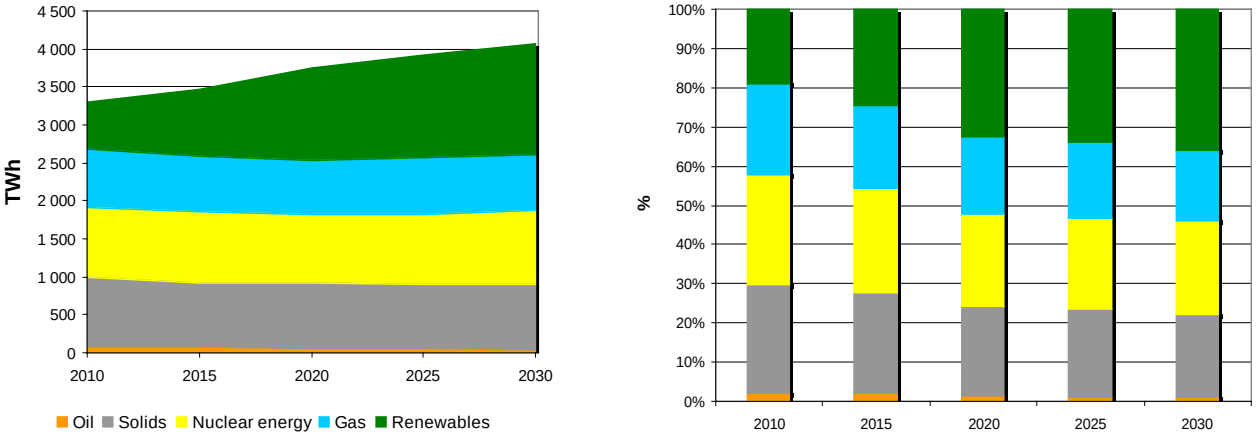


Figure 4: Gross power generation mix 2000-2030 by source in TWh (left) and corresponding shares of sources in % (right), PRIMES reference scenario

More detailed information for the horizon up to 2020 is provided by the national renewable energy action plans (NREAP) that Member States have to notify to the Commission according to article 4 of directive 2009/28/EC. Based on the first 23 national renewable energy action plans and largely in line with PRIMES reference scenario results for 2020, there will be about 460 GW of renewable electricity installed capacity that year in the 23 Member States covered[40], against only about 244 GW today[41]. Approximately 63% out of this total would be related to the variable energy sources wind (200 GW, or 43%) and solar (90 GW, out of which about 7 GW concentrated solar power, or 20%) (Table 1).

RES type	Installed capacity 2010 (GW)	Installed capacity 2020 (GW)	Share 2020 (%)	Variation 2010-2020 (%)
Hydro	116.9	134.2	29%	15%
Wind	82.6	201	43%	143%
Solar	25.8	90	19%	249%

39 The respective figures for 2030 are 36% and 20%. Note that the 2030 Reference scenario does not take into account potential future renewable energy policies in the EU or in individual Member States after 2020.

40 Austria, Bulgaria, Czech Republic, Cyprus, Germany, Denmark, Greece, Spain, Finland, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Sweden, Slovakia, Slovenia and the United Kingdom.

41 "Renewable Energy Projections as Published in the National Renewable Energy Action Plans of the European Member States", update for 19 countries. L.W.M. Beurskens, M. Hekkenberg. Energy Research Centre of the Netherlands, European Environment Agency. 10 September 2010. Available at: http://www.ecn.nl/docs/library/report/2010/e10069.pdf

RES type	Installed capacity 2010 (GW)	Installed capacity 2020 (GW)	Share 2020 (%)	Variation 2010-2020 (%)
Biomass	21.2	37.7	8%	78%
Other	1	3.6	1%	260%
TOTAL	**247.5**	**466.5**	**100%**	**88%**

Table 1: Projected evolution of installed renewables capacities in GW, 2010-2020

Renewables in the 23 Member States are projected to account for over 1150 TWh of electricity generation, with about 50% of it from variable sources (Table 2).

RES type	Generation 2010 (TWh)	Generation 2020 (TWh)	Share 2020 (%)	Variation 2010-2020 (%)
Hydro	342.1	364.7	32%	7%
Wind	160.2	465.8	40%	191%
Biomass	103.1	203	18%	97%
Solar	21	102	9%	386%
Other	6.5	16.4	1%	152%
TOTAL	**632.9**	**1151.9**	**100%**	**82%**

Table 2: Projected evolution of renewables electricity generation in GW, 2010-2020

Most of the growth in wind capacities and generation will be concentrated in Germany, the United Kingdom, Spain, France, Italy and the Netherlands, while solar capacities and generation growth will be even more concentrated in Germany and Spain and to a lesser extent Italy and France.

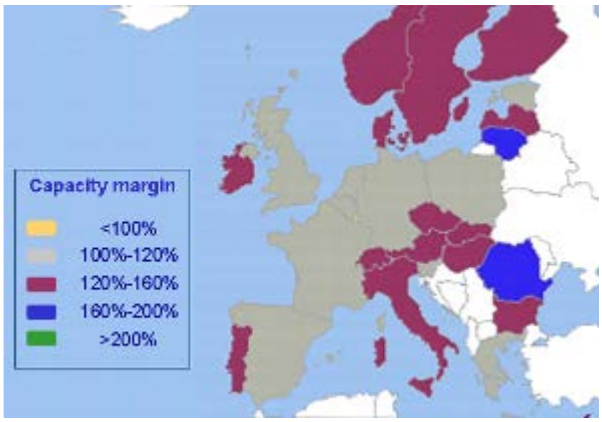
Alongside renewables, fossil fuels will continue to play a role in the electricity sector. Ensuring compatibility with climate change mitigation requirements of fossil fuel use in the electricity and industrial sectors may therefore require the application of **CO_2 capture and storage (CCS)** on a large and trans-European scale. PRIMES scenarios envisage the transport of about 36 million tons (Mt) of CO_2 by 2020, on the basis existing policies, and 50-272 Mt[42] by 2030 as CCS becomes more widely deployed.

According to the analysis carried out by KEMA and Imperial College London based on the PRIMES reference scenario, electricity generation capacity in 2020 should be sufficient to meet peak demand in virtually all Member States, despite the development of variable generation from renewable energies (Map 2 and Map 3[43]). However, while imports should

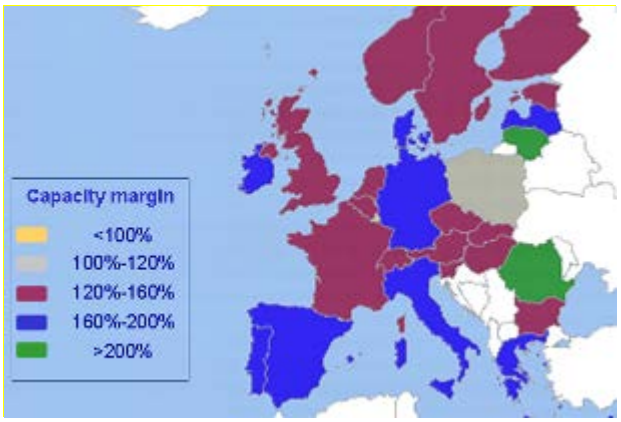
[42] 50 Mt according to the PRIMES reference scenario and 272 Mt according to PRIMES baseline, given the higher CO2 price.

[43] The maps show the capacity margins, i.e. the ratio of firm capacity (excluding variable renewables) / all capacity (including variable renewables) vs. peak electricity demand, as modelled by KEMA and Imperial College London for all EU Member States plus Norway and Switzerland in 2020, on the basis of the PRIMES reference scenario (source: KEMA and Imperial College London).

therefore not be necessary for Member States to ensure their security of supply, more integration of the 27 European electricity systems could significantly reduce prices and increase overall efficiency by lowering the cost of balancing supply and demand at any given moment in time.



Map 2: Firm capacity vs. peak demand in 2020, PRIMES reference scenario



Map 3: All capacity vs. peak demand in 2020, PRIMES reference scenario

The evolution of electricity trade across borders is shown on Map 4 and Map 5[44]. Under the PRIMES Reference scenario, today's general pattern of electricity exports and imports is likely to remain as such until 2020 for most Member States.

Map 4: Net import/export situation in winter (October to March) 2020, PRIMES reference scenario

Map 5: Net import/export situation in summer (April to September) 2020, PRIMES reference scenario

This would result in the following interconnection capacity requirements between Member States, based on the optimisation of the existing European electricity grid as described in ENTSO-E's pilot Ten-Year Network Development Plan[45] (Map 6). It should however be noted that these requirements have been calculated on the basis of simplifying assumptions[46] and should be seen as indicative only. Results could also be significantly different, if the

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44 Source: KEMA and Imperial College London

45 https://www.entsoe.eu/index.php?id=282

46 The grid modelling done by Imperial College London and KEMA uses a "centre of gravity" approach, according to which each Member State's electricity grid is represented by a single node, from and to which transmission capacity is calculated. The associated investment model compares the costs of network expansion between Member States with the costs of additional generation capacity investments, based on certain input cost assumptions and evaluates the cost-optimal interconnection level between Member States on this basis.

European energy system was optimised on the basis of a newly designed, fully integrated European grid, instead of existing nationally centred electricity networks.

Map 6: Interconnection capacity requirements 2020 in MW[47], PRIMES Reference scenario (source: KEMA, Imperial College London)

3. PRIORITY CORRIDORS FOR ELECTRICITY, GAS AND OIL

3.1. Making Europe's electricity grid fit for 2020

3.1.1. Offshore grid in the Northern Seas

The 2008 Second Strategic Energy Review identified the need for a coordinated strategy concerning the offshore grid development: "*(…) a Blueprint for a North Sea offshore grid should be developed to interconnect national electricity grids in North-West Europe together and plug-in the numerous planned offshore wind project*"[48]. In December 2009, nine EU Member States and Norway[49] signed a political declaration on the North Seas Countries Offshore Grid Initiative (NSCOGI) with the objective to coordinate the offshore wind and

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47 The following interconnection capacities are not shown on the map for the sake of clarity: Austria-Switzerland (470 MW); Belgium-Luxemburg (1000 MW); Germany-Luxemburg (980 MW); Norway-Germany (1400 MW); Switzerland-Austria (1200 MW).

48 COM(2008) 781. The communication also underlined that "[the North Sea Offshore Grid] should become, (…) one of the building blocks of a future European supergrid. The Blueprint should identify the steps and timetable that need to be taken and any specific actions that need to be adopted. It should be developed by the Member States and regional actors involved and facilitated where necessary by action at Community level." In the Conclusions of the Energy Council on 19 February 2009, it was clarified that the blueprint should cover the North Sea (including the Channel region) and the Irish Sea.

49 Countries participating in the NSCOGI are Belgium, the Netherlands, Luxembourg, Germany, France, Denmark, Sweden, the United Kingdom, Ireland and Norway.

infrastructure developments in the North Seas. The nine EU members will concentrate about 90% of all EU offshore wind development. According to the information contained in their NREAPs, installed capacity is projected at 38.2 GW (1.7 GW other marine renewable energies) and production at 132 TWh in 2020[50]. Offshore wind could represent 18% of the renewable electricity generation in these nine countries.

Applied research shows that planning and development of offshore grid infrastructure in the North Seas can only be optimised through a strong regional approach. Clustering of wind farms in hubs could become an attractive solution compared to individual radial connections, when distance from the shore increases and installations are concentrated in the same area[51]. For countries where these conditions are met, such as Germany, the connection costs of offshore wind farms could thereby be reduced by up to 30%. For the North Sea area as a whole, cost reduction could reach almost 20% by 2030[52]. In order to realise such cost reductions, a more coordinated, planned and geographically more concentrated offshore wind development with cross-border coordination is absolutely necessary. This would also allow reaping the combined benefits of wind farm connection and cross-border interconnections[53], if the connection capacity is well dimensioned and hence results in a positive net benefit. Offshore development will strongly influence the need for reinforcements and expansion of onshore networks, notably in Central Eastern Europe, as highlighted in the priority 3. Map 7 is an illustration of a possible offshore grid concept as developed by the OffshoreGrid study[54].

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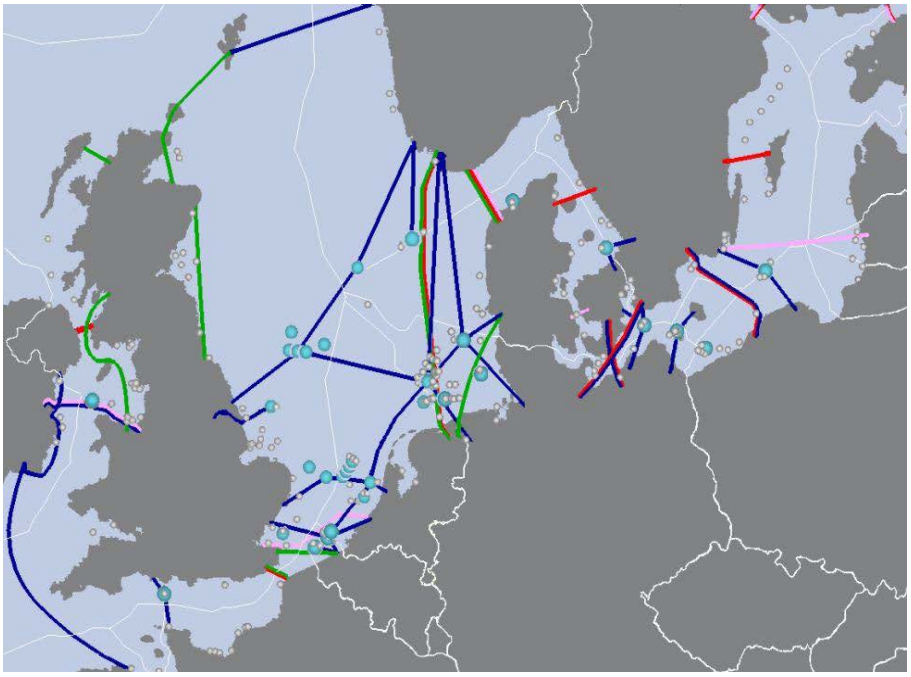
50 Ireland has also prepared a baseline and a more ambitious export scenario. According to this latter scenario, the respective figures would be: over 40 GW offshore wind, 2.1 GW other marine renewables generating 139 TWh in 2020. For the EU as a whole (taking into account the baseline for Ireland), offshore wind installed capacity is estimated to be over 42 GW in 2020, with a possible yearly electricity generation of over 137 TWh.

51 Based on a cost-benefit analysis, the OffshoreGrid study, carried out by 3E and partners and financed by the Intelligent Energy Europe Programme, finds that radial grid connections make sense up to 50 km distance from their connection points onshore. For larger distances (in the range of 50 to 150 km) from the onshore connection point, the concentration of the wind farms is a determining factor for the benefits of clustering. If the installed capacity is in a radius of 20 km (in certain cases 40 km) around the hub, and if it is in the order of the largest available rating for high voltage direct current cables, a cluster through a hub connection would be beneficial. Above 150 km distance, offshore grid hubs are considered as typical solutions. More information is available at: www.offshoregrid.eu. These results seem to be corroborated at the Member State level: The benefits of clustering or a more modular design were considered in the Netherlands for its second phase of offshore wind development. Given the small size of the wind farms and their short distance from shore, the assessment however showed that clustering is not the most cost effective approach in this phase.

52 According to the OffshoreGrid study, strong offshore grid infrastructure development would cost 32 billion euros until 2020 and up to 90 billion euros until 2030 considering radial connections. In case of clustering, the infrastructure cost could be reduced to 75 billion euros by 2030.

53 Integrated development could follow two main drivers. In case an interconnector is developed first, wind farms could be connected later. If connections for wind farms are developed first, interconnectors could be developed later between hubs, instead of building new interconnectors from shore to shore.

54 Work package D4.2 "Four Offshore Grid scenarios for the North and Baltic Sea" (OffshoreGrid study, July 2010). More information is available at http://www.offshoregrid.eu/images/pdf/pr_pr100978_d4%202_20100728_final_secured.pdf.



Map 7: Illustration of a possible offshore grid concept for the North Seas and the Baltic Sea ("mixed approach" scenario showing existing (red), planned (green) and commissioned (pink) transmission lines as well as additional lines (blue) necessary according to OffshoreGrid calculations)

Existing offshore development plans in certain Member States show that significant development in the North Seas will take place along or even across the borders of territorial waters of several Member States, raising planning and regulatory issues of European dimension[55]. Onshore reinforcements of the European network will be needed to transmit electricity to the major consumption centres further inland. However, ENTSO-E's pilot Ten Year Network Development Plan (TYNDP) does not include an adequate assessment of the infrastructure needed to connect upcoming new offshore wind capacities. ENTSO-E has committed to addressing this urgent issue more in detail in the second edition of it's TYNDP to be published in 2012.

Member States have adopted or are planning to adopt different approaches concerning offshore grid development. Most Member States (Germany, Denmark, France, Sweden, Ireland) have assigned the offshore extension of their onshore grid to national TSOs. The UK has so far chosen to tender the connection of each new offshore wind farm separately[56]. In Belgium and the Netherlands, grid development is currently the responsibility of the wind farm developer. In addition, current national regulatory frameworks encourage exclusively point-to-point solutions connecting wind farms with an onshore connection point, with the aim to minimise the connection cost for each project. Connection of wind farm clusters via a hub, with the associated advanced capacity provision and technology risk, is not covered under current national regulation. Finally, optimisation across borders, in order to facilitate electricity trade between two or several Member States, does not take place.

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55 Integrated solutions combining offshore wind power plant connections and trade interconnections to another country, or cross-border connections of a wind power plant (sitting in the territorial waters of one country, but connected to the grid of another country) need to be developed.

56 Any company can participate in these tenders, which creates a competitive environment for the development and operation of the new network.

As a consequence, the opportunities offered by a regional approach for integrated offshore and onshore infrastructure development as well as the synergies with international electricity trade are missed. This might lead to suboptimal and more expensive solutions in the longer term.

Other challenges for the development of an offshore grid are related to permitting and market design. As for other infrastructure projects, authorisation procedures are frequently fragmented even in the same country. When a project crosses the territory of different Member States, this can considerably complicate the overall process, resulting in very long lead times. Furthermore, the insufficient integration of electricity markets, the insufficient adaptation of connection regimes and national support schemes to offshore renewable energy generation and the absence of market rules adapted to electricity systems based on more variable renewable energy sources can impede the development of offshore projects and of a truly European offshore grid.

Planning offshore wind development and the necessary offshore and onshore grid infrastructure requires coordination between Member States, national regulatory authorities, transmission system operators and the European Commission. Maritime spatial planning and definition of offshore wind and ocean energy development zones can enhance development and ease investment decisions in this sector.

Recommendations

Structured regional cooperation has been set up by the Member States in the NSCOGI[57]. While the commitment of the Member States to develop the grid in a coordinated way is very important, it should now be turned into concrete actions for it to become the major driving force for the development of a North Seas offshore grid. The initiative should, in line with the strategy presented in the Communication, establish a working structure with adequate stakeholder participation and set a work plan with concrete timeframe and objectives concerning grid configuration and integration, market and regulatory issues and planning and authorisation procedures.

Under the guidance of the NSCOGI, different options should be prepared on grid configuration by national TSOs and ENTSO-E in its next TYNDP. The design options should consider planning, construction and operational aspects, the costs associated to the infrastructure and the benefits or constraints of the different design options. TSOs should in particular review planned wind farm development in order to identify possibilities for hub connections and interconnections for electricity trade, also taking into account possible future wind development. Regulators should consider overall development strategies and regional and longer-term benefits when approving new offshore transmission lines. Options to revise the regulatory framework and make it compatible should be examined, covering inter alia operation of offshore transmission assets, access to and charging of transmission, balancing rules and ancillary services.

[57] The NSCOGI has a regional approach, is driven by the participating Member States and builds on existing works and other initiatives. Its members intend to agree on a strategic work plan by means of a memorandum of understanding to be signed by end 2010.

3.1.2. Interconnections in South Western Europe

France, Italy, Portugal and Spain will host significant future developments of variable renewable electricity generations capacities over the coming decade. At the same time, the Iberian Peninsula is almost an electric island. Interconnections between France and Spain suffer already today from insufficient capacity, with only four tie-lines (2 of 220 kV and 2 of 400 kV) between the countries, the last one having been built in 1982. All face continuous congestions[58]. A new 400 kV line in the Eastern Pyrenees should be ready by 2014, increasing the current interconnection capacity from 1,400 MW to about 2,800 MW, but some congestion might remain even afterwards[59].

Moreover, these countries play a key role in connecting to Northern Africa, which could become increasingly important because of its huge potential for solar energy.

By 2020, about 10 GW of new renewables generation could be built in the countries East and South of the Mediterranean, out of which almost 60% solar and 40% wind capacities[60]. However, as of today, there is only one interconnection between the African and the European continent (Morocco-Spain) with about 1,400 MW capacity, which could be increased to 2,100 MW in the coming years. A direct current submarine 1,000 MW power line is being planned between Tunisia and Italy, to be operational by 2017. The use of these existing and new interconnections will create new challenges in the medium term (after 2020) with regard to their consistency with the evolutions of the European and North African network, both as regards their capacity and the corresponding regulatory framework. Any further interconnection must be accompanied by safeguards to prevent risks of carbon leakage through power imports to increase.

Recommendations

To ensure the adequate integration of new capacities, mainly from renewables, in South Western Europe and their transmission to other parts of the continent, the following key actions are necessary up to 2020:

– the adequate development of the interconnections in the region and the accommodation of the existing national networks to those new projects. An interconnection capacity of at least 4,000 MW between the Iberian Peninsula and France will be needed by 2020. Corresponding projects will have to be developed with the utmost attention to public acceptance and consultation of all relevant stakeholders.

– concerning connections with third countries, the development of Italy's connections with countries of the Energy Community (notably Montenegro, but also Albania and Croatia), the realisation of the Tunisia-Italy interconnection, the expansion of the Spain-Morocco interconnector, the reinforcement, where necessary, of South-South interconnections in North African neighbour countries (including as regards the efficient management of these

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58 ENTSO-E pilot TYNDP.

59 During the merger procedure for the acquisition of Hidrocantábrico in 2002, EDF-RTE and EDF had offered to increase the commercial interconnection capacity of then 1,100 MW by a minimum of 2,700 MW (Case No COMP/M.2684 - EnBW / EDP / CAJASTUR / HIDROCANTÁBRICO – decision dated 19 March 2002).

60 "Study on the Financing of Renewable Energy Investment in the Southern and Eastern Mediterranean Region", Draft Final Report by MWH, August 2010. The countries included in this study are Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, West Bank / Gaza.

infrastructures)and preparatory studies for additional North-South interconnections to be developed after 2020.

3.1.3. Connections in Central Eastern and South Eastern Europe

The connection of new generation is a major challenge in Central and Eastern Europe. For example, in Poland alone about 3.5 GW are foreseen until 2015 and up to 8 GW until 2020[61].

At the same time, power flow patterns have recently changed significantly in Germany. Onshore wind power capacities, summing up to about 25 GW at the end of 2009, and offshore development, together with new conventional power plants, concentrate in the Northern and North-Eastern parts of the country; demand however rises mostly in the Southern part, increasing distances between generation and load centres or balancing equipment (e.g. pump storage). Huge North-South transit capacities are therefore needed, taking fully into account the grid development in and around the Northern Seas under priority 3.1.1. Given the impact of the current interconnection insufficiencies on the neighbouring grids especially in Eastern Europe, a coordinated regional approach is vital to solve this issue.

In South Eastern Europe, the transmission grid is rather sparse compared to the grid of the rest of the continent. At the same time, the whole region (including the countries of the Energy Community) has a lot of potential for further hydro generation. There is a need for additional generation connection and interconnection capacities in order to increase power flows between South East European countries and with Central Europe. The extension of the synchronous zone from Greece (and later Bulgaria) to Turkey will create additional needs for reinforcement of the grids in these countries. Ukraine and the Republic of Moldova having expressed their interest to join the European continental interconnected electricity networks, further extensions will have to be examined in the longer term.

Recommendations

To ensure adequate connection and transmission of generation, notably in Northern Germany and better integration of South-Eastern European electricity networks, the following key actions are necessary up to 2020 and should notably be supported by the countries of Central Eastern Europe, by extending the already existing cooperation in the gas sector:

– the development of adequate interconnections, notably within Germany and Poland, to connect new, including renewable, generation capacities in or close to the North Sea, to the demand centres in Southern Germany and to pumped storage power plants to be developed in Austria and Switzerland, while also accommodating new generation in Eastern countries. New tie-lines between Germany and Poland will become important, once new interconnections are developed with the Baltic States (in particular the Poland-Lithuania interconnection, see below). Due to increasing North-to-South parallel flows, cross-border capacity expansion will be necessary between Slovakia, Hungary and Austria in the medium term (after 2020). Internal relief of congestion through investments is needed to increase cross-border capacity in Central Europe.

– the increase of transfer capacities between South East European countries, including those of the Energy Community Treaty, in view of their further integration with Central European electricity markets.

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61 ENTSO-E pilot TYNDP.

This cooperation should be covered under the Central Eastern European cooperation already existing in the gas sector.

3.1.4. Completion of the Baltic Energy Market Interconnection Plan in electricity

In October 2008, following the agreement of the Member States of the Baltic Sea Region, a High Level Group (HLG) chaired by the Commission was set up on Baltic Interconnections. Participating countries are Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden and, as an observer, Norway. The HLG delivered the Baltic Energy Market Interconnection Plan (BEMIP), a comprehensive Action Plan on energy interconnections and market improvement in the Baltic Sea Region, both for electricity and gas, in June 2009. The main objective is to end the relative "energy isolation" of the Baltic States and integrate them into the wider EU energy market. The BEMIP provides an important example of successful regional cooperation. The lessons learnt from this initiative will be taken into account for other regional cooperation structures.

Internal market barriers had to be cleared in order to make investments viable and attractive. This involved aligning regulatory frameworks to lay the foundation for the calculation of fair allocation of costs and benefits, thus moving towards the "beneficiaries pay" principle. The European Energy Programme for Recovery (EEPR) was a clear driver for timely implementation of infrastructure projects. It provided an incentive to quickly agree on outstanding issues. The EU's Strategy for the Baltic Sea Region has also provided a bigger framework for the energy infrastructure priority. The strategy already proposed a framework to focus existing financing from structural and other funds into the areas identified by the strategy as priority areas.

Several factors have led to this initiative being seen by stakeholders around the Baltic Sea as a success: (1) the political support towards the initiative, its projects and actions; (2) the high-level involvement of the Commission as a facilitator and even driving force; (3) the involvement of all relevant stakeholders in the region from inception to implementation (ministries, regulators and TSOs) to implement the defined infrastructure priorities.

Despite the progress achieved so far, further efforts are still necessary to fully implement the BEMIP: continuous monitoring of the Plan's implementation by the Commission and the High Level Group will be necessary in order keep to the agreed actions and timeline.

In particular support is necessary for the key but also more complex cross-border projects, namely the LitPolLink between Poland and Lithuania, which is essential for integration of the Baltic market into the EU, and for which an EU coordinator was assigned.

3.2. Diversified gas supplies to a fully interconnected and flexible EU gas network

3.2.1. Southern Corridor

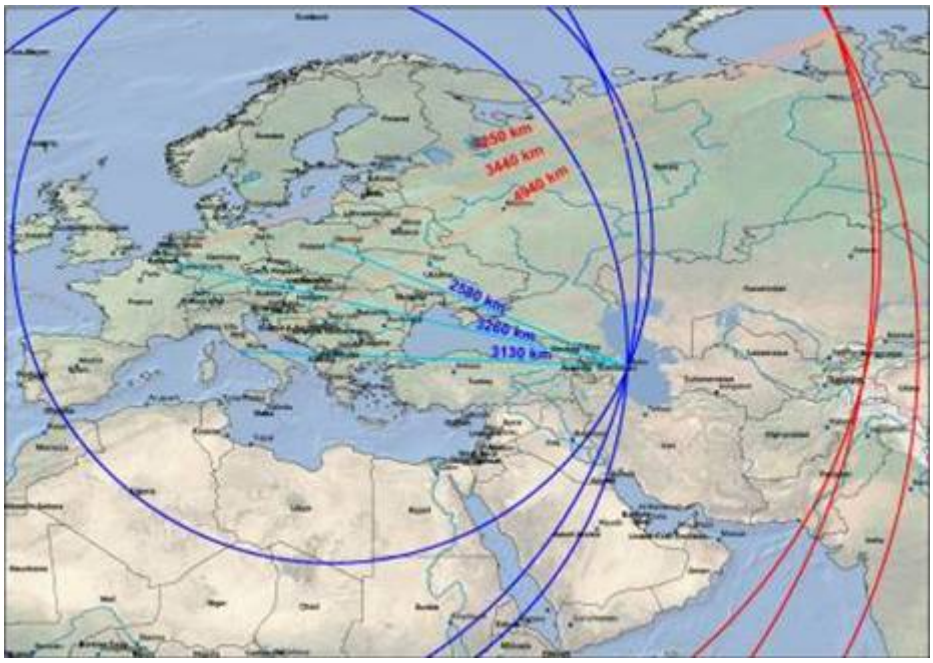
Europe's growing dependence on imported fuels is evident in the gas sector. The Southern Corridor would be – after the Northern Corridor from Norway, the Eastern corridor from Russia, the Mediterranean Corridor from Africa and besides LNG – the fourth big axis for diversification of gas supplies in Europe. Diversification of sources generally improves competition and thus contributes to market development. At the same time, it enhances security of supply: as seen also in the January 2009 gas crisis, the most severely affected countries were those relying on one single import sources. However, often the defensive

attitude of gas producers and incumbent players in monopolistic markets hampers diversification. The implementation of the Southern Corridor requires close co-operation between several Member States and at European level, as no country individually requires the incremental gas volumes (new gas) sufficient to underpin the investment in pipeline infrastructure. Therefore, the European Union must act to promote diversification and provide for the public good of security of supply by bringing Member States and companies together in order to reach a critical mass. This is the underlying principle for the EU Southern Gas Corridor strategy. Its importance was underlined in the Commission's Second Strategic Energy Review of November 2008, which was endorsed by the European Council of March 2009.

The aim of the Southern Corridor is to directly link the EU gas market to the largest deposit of gas in the world (the Caspian / Middle East basin) estimated at 90.6 trillion cubic meters (for comparison, Russian proven reserves amount to 44.2 tcm[62]). Furthermore, the gas fields are geographically even closer than the main Russian deposits (Map 8).

The key potential individual supplier states are Azerbaijan, Turkmenistan and Iraq; yet, if political conditions permit, supplies from other countries in the region could represent a further significant supply source for the EU. The key transit state is Turkey, with other transit routes being through the Black Sea and the Eastern Mediterranean. The strategic objective of the corridor is to achieve a supply route to the EU of roughly 10-20% of EU gas demand by 2020, equivalent roughly to 45-90 billion cubic meters of gas per year (bcma).

The operational objective for the development of the Southern Corridor strategy is that the Commission and Member States work with gas producing countries, as well as those countries which are key for transporting hydrocarbons to the EU, with the joint objective of rapidly securing firm commitments for the supply of gas and the construction of gas transportation infrastructures (pipelines, Liquefied/Compressed Natural Gas shipping) necessary at all stages of its development.



62 BP Statistical Review of World Energy, June 2009.

Map 8: Comparison of distances of main Eastern gas supplies to main EU consumption hubs

The major challenge for the success of the Southern Corridor is to ensure that all elements of the corridor (gas resources, infrastructure for transport and underlying agreements) are available both at the right time and with significant scope. To date, substantial progress has been made to this end. With the financial support from the Commission (EEPR and/or TEN-E programmes) and great effort of pipeline companies, concrete transportation projects, namely Nabucco, ITGI, TAP and White Stream, are already in development stage and other possibly options are being studied. Nabucco as well as Poseidon, the Italy-Greece subsea interconnector which is part of ITGI, have received partial exemption from Third Party Access (so called "Article 22 exemption"). Moreover, the Nabucco Intergovernmental Agreement, signed in July 2009, has provided Nabucco with legal certainty and terms for transporting gas through Turkey and created a precedent for further extension of transportation regimes.

The key challenge for the future is to ensure that gas producing countries become ready to open towards exporting gas directly to Europe, which for them may often imply accepting high political risk linked to their geopolitical situation. The Commission, in cooperation with the Member States involved in the Southern Corridor, needs to further emphasize its engagement to build long term relations with gas producing countries in this region and provide them with a stronger link to the EU.

The Southern Gas Corridor pipeline components are also reinforced by preparation of options for delivering substantial additional quantities of Liquefied Natural Gas (LNG) to Europe in particular from the Middle East (Persian Gulf and Egypt). In the first phase it encompasses the development of LNG reception points in Europe (and connecting them to the wider network). Furthermore, cooperation with producer countries on developing energy policies and long-term investment plans which are conducive to LNG, is expected to be gradually built.

3.2.2. North-South gas interconnections in Eastern Europe

The strategic concept of the North-South natural gas interconnection is to link the Baltic Sea area (including Poland) to the Adriatic and Aegean Seas and further to the Black Sea, covering the following EU Member States (Poland, the Czech Republic, Slovakia, Hungary, Romania, and possibly Austria) and Croatia. This would provide the overall flexibility for the entire Central East European (CEE) region to create a robust, well-functioning internal market and promote competition. In the longer term, this integration process will have to be extended to the non EU member countries of the Energy Community Treaty. An integrated market would provide the necessary security of demand[63] and attract suppliers to make the best use of existing and new import infrastructures, such as new LNG regasification plants and projects of the Southern Corridor. The CEE region thus would become less vulnerable to a supply cut through the Russia/Ukraine/Belarus route.

There is one main supplier in the CEE region; the current linear (from East to West) and isolated networks are the heritage of the past. While the proportion of gas imported from Russia constitutes 18% of the EU-15 consumption, in the new Member States this indicator is

[63] The net import demand of the biggest market (Hungary) among the eight countries was 8.56 Mtoe in 2007 (Eurostat), while the demand of all seven markets together was 41 Mtoe, compared to German imports of about 62 Mtoe.

60% (2008). Gazprom deliveries are the overwhelming bulk of gas imports in the region (Poland: 70%, Slovakia: 100%, Hungary: 80%, certain Western Balkan countries: 100%).

Due inter alia to monopolistic, isolated and small markets, long-term supply contracts and regulatory failures, the region is not attractive for investors or producers. The lack of regulatory coordination and of a common approach towards missing interconnections jeopardises new investments and hinders the entrance of new competitors on the market. Moreover, security of supply constitutes a concern and the investments needed to comply with the infrastructure standards imposed by the Security of Gas Supply Regulation are concentrated in this region. Finally, a considerable share of the population spends a relatively high share of their income on energy, leading to energy poverty.

The declaration of the extended Visegrad group[64] expresses already a clear commitment within the region to tackle these challenges. Based on the BEMIP experience and work already concluded by the signatories of the declaration, the High Level Group (HLG) proposed in the Communication should provide a comprehensive action plan to build interconnections and to complete market integration. The HLG should be assisted by working groups focusing on concrete projects, network access and tariffs. The work should include the experiences gained through the New Europe Transmission System (NETS) initiative[65].

3.2.3. Completion of the Baltic Energy Market Interconnection Plan in gas

While implementation of electricity projects within the BEMIP is well underway, little progress has been achieved in gas since the Action Plan was endorsed by the eight EU Member State Heads of State and President Barroso in June 2009. The HLG managed only to define a long list of projects with overall investment costs too high compared to the size of the gas markets in the region. Internal market actions were not agreed at all. The gas sector now enjoys the strong focus of the BEMIP work on two fronts: East-Baltic and West-Baltic areas.

The Eastern Baltic Sea region (Lithuania, Latvia, Estonia and Finland) requires urgent action to ensure security of supply through connection to the rest of the EU. At the same time Finland, Estonian and Latvia enjoy derogations from market opening under the third internal market package as long as their markets are isolated. The derogation will end once their infrastructure is integrated with the rest of the EU, for example through the Lithuania-Poland gas interconnection. Even though the annual gas consumption of the three Baltic States and Finland together is only about 10 bcm, all the gas they consume comes from Russia. As a share of total primary energy supply, Russian gas amounts to 13% for Finland, 15% for Estonia and to about 30% for Latvia and Lithuania, while the EU average is around 6.5%. The main supplier also has decisive stakes in the TSOs of all four countries. Moreover, also Poland is very reliant on Russian gas. Therefore there is little market interest to invest in new infrastructure. The minimum necessary infrastructure has been agreed and a major breakthrough in this area is the now ongoing dialogue – politically supported by both sides –

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64 See the Declaration of the Budapest V4+ Energy Security Summit of 24 February, 2010 (http://www.visegradgroup.eu/). V4+ countries, in the sense of the Declaration, are: the Czech Republic, the Republic of Hungary, the Slovak Republic and the Republic of Poland (as Member States of the Visegrad Group), the Republic of Austria, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Serbia, the Republic of Slovenia and Romania.

65 The New Europe Transmission System (NETS) aims to facilitate the development of a competitive, efficient and liquid regional gas market that also reinforces security of supply, by creating a unified infrastructure platform to increase the level of cooperation/integration between the regional TSOs.

between the companies on the Polish-Lithuanian gas link. Discussions on a regional LNG terminal are also ongoing within an LNG task force.

In the West Baltic, the task force's objective are to find ways to replace supply from depleting Danish gas fields expected from 2015 onwards, as well as to enhance security of supply in Denmark, Sweden and Poland. An action plan will be delivered at the end of 2010. Both task forces also focus on regulatory obstacles and the identification of common principles that would allow regional investments to take place.

As a key action, regional cooperation needs to be kept strong to establish the following projects: PL-LT, regional LNG terminal and a pipeline connecting Norway and Denmark and possibly Sweden and Poland. The objectives of market opening and improved security of gas supply can be achieved more cost-effectively on a regional level than a national scale. Commission's support is also continuously requested by the Member States in order to steer the BEMIP process. Finally, solutions must be found to break the vicious circle of "If there's no market, there is no incentive to invest in infrastructure; and without infrastructure, market will not develop".

3.2.4. North-South Corridor in Western Europe

The strategic concept of the North-South natural gas interconnections in Western Europe, that is from the Iberian peninsula and Italy to North-west Europe is to better interconnect the Mediterranean area and thus supplies from Africa and the Northern supply Corridor with supplies from Norway and Russia. There are still infrastructure bottlenecks in the internal market which prevent free gas flows in this region, such as for example the low interconnection level to the Iberian peninsula, preventing the use of the well-developed Iberian gas import infrastructure to its best. The Spain-France axis has been a priority for over a decade, but is still not completed. However, progress has been achieved in recent years, thanks to the better co-ordination of the national regulatory frameworks – taken up also as a priority by the South-West Gas Regional Initiative – and the active involvement of the European Commission. Another indication for imperfect market functioning and the lack of interconnectors are the systematically higher prices on the Italian wholesale market compared to other neighbouring markets.

At the same time, as the development of electricity from variable sources is expected to be particularly prominent in this corridor, the general short-term deliverability of the gas system needs to be enhanced to respond to the additional flexibility challenges to balance electricity supply.

The main infrastructure bottlenecks preventing the correct functioning of the internal market and competition need to be identified in this corridor and stakeholders, Member States, NRAs and TSOs, shall work together to facilitate their implementation. Secondly, an integrated analysis between the electricity and gas system – taking into account both generation and transmission aspects – should lead to the assessment of the gas flexibility needs and the identification of projects with the objective to back-up variable electricity generation.

3.3. Ensuring the security of oil supply

Contrary to gas and electricity, oil transport is not regulated. This means that there are no rules, e.g. on rates of return or third party access for new infrastructure investments. Oil companies are primarily responsible for ensuring continuous supply. Nonetheless, there are

certain aspects, mainly concerning the free access to pipelines supplying the EU, but lying in countries outside the EU (in Belarus, Croatia and Ukraine in particular), which cannot be addressed through commercial arrangements only and need political attention.

The Eastern European crude oil pipeline network (an extension of the Druzhba pipeline) was conceived and built during the Cold War period and had, at that time, no pipeline link with the Western network. As a result, insufficient connections between the Western European pipeline network and Eastern infrastructures exist. Hence alternative pipeline supply possibilities of crude oil or petroleum products from Western Member States to CEE countries are limited. In case of an enduring supply disruption in the Druzhba system (currently used capacity: 64 million tons/year), these limitations would lead to a big increase in tanker traffic in the environmentally sensitive Baltic area[66], in the Black Sea and in the extremely busy Turkish Straits[67], increasing the risks of accidents and oil spills. In case of the Lithuanian Mažeikiai refinery[68] the alternative supply requires shipping approximately 5.5 to 9.5 million tons/year through the Baltic Sea to the Lithuanian Butinge oil terminal.

According to a recent study[69], the potential responses to supply disruptions include: (1) the creation of the Schwechat-Bratislava pipeline between Austria and Slovakia; (2) the upgrade of the Adria pipeline (linking the Omisalj oil terminal in on the Croatian Adriatic coast to Hungary and Slovakia); and (3) the upgrade of the Odessa-Brody pipeline in Ukraine (connecting the Black Sea oil terminal to the Southern branch of Druzhba at Brody) and its planned extension to Poland (Brody-Adamowo). These routes represent an alternative supply capacity of at least 3.5, 13.5, and 33 million tons/year respectively. An additional improvement would be the creation of the Pan-European Oil Pipeline to link the Black Sea supply with the Transalpine Pipeline with an envisaged capacity between 1.2 million and 1.8 million barrels per day.

For the above reasons, political support for mobilising private investment in possible alternative infrastructures is a priority, in order to ensure the security of oil supply of land-locked EU countries, but also to reduce oil transport by sea, thereby reducing environmental risks. This does not necessarily require the building of new pipeline infrastructure. Removing capacity bottlenecks and/or enabling reverse flows can also contribute to security of supply.

3.4. Roll-out of smart grid technologies

Smart grids[70] are energy networks that can cost efficiently integrate the behaviour and actions of all users connected to it. They are changing the way, in which the electricity grid is

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66 The Baltic Sea is one of the busiest seas in the world, accounting for more than 15% of the world's cargo transport (3,500-5,000 ships per month). About 17-25% of these ships are tankers transporting approximately 170 million tons of oil per year.

67 The Turkish Straits comprise the Bosporus and Dardanelles and connect the Black Sea, through the Sea of Marmara, with the Aegean Sea. Less than a kilometre wide at their narrowest point, they are among the world's most difficult and dangerous waterways to navigate, due to their sinuous geography and high traffic (50,000 vessels, including 5,500 oil tankers, per year).

68 In 2006, noting some leaks on the Druzhba pipeline, Transneft, the Russian pipeline operator, stopped the delivery of crude to the Lithuanian Mažeikiai refinery, the only oil refinery in the Baltic States. Since then this particular pipeline segment remains closed.

69 "Technical Aspects of Variable Use of Oil Pipelines coming into the EU from Third Countries", study by ILF and Purvin & Gertz for the European Commission, 2010.

70 ERGEG and the European Task Force for Smart Grids define smart grids as electricity networks that can cost efficiently integrate the behaviour and actions of all users connected to it – generators,

operated in terms of transmission and distribution and re-structuring the present generation and consumption pathways. Through integration of digital technology and a two-way communication system, smart grids establish direct interaction between the consumers, other grid users and energy suppliers. They enable consumers to directly control and manage their individual consumption patterns, notably if combined with time differentiated tariffs, providing, in turn, strong incentives for efficient energy use. They allow companies to improve and target the management of their grid, increasing grid security and reducing costs. Smart grid technologies are needed to allow for a cost-effective evolution towards a decarbonised power system, allowing for the management of vast amounts of renewable on-shore and off-shore energy, while maintaining availability for conventional power generation and power system adequacy. Finally, smart grid technologies, including smart metering, enhance the functioning of retail markets, which gives a real choice to consumers, as energy companies as well as information and communication technology companies can develop new, innovative energy services.

Many countries have developed smart grid projects, including smart meter deployment, namely Austria, Belgium, France, Denmark, Germany, Finland, Italy, Netherlands, Portugal, Sweden, Spain and UK[71]. In Italy and Sweden almost all customers already have smart meters.

The Bio Intelligence 2008 Study[72] concludes that smart grids could reduce the EU annual primary energy consumption of the energy sector in 2020 by almost 9%, which equals to 148 TWh of electricity or savings reaching almost 7.5 billion euros/year (based on average 2010 prices). Industry estimates for individual consumption argue that an average household could save 9% of its electricity and 14% of its gas consumption, corresponding to savings of ca. 200 euros/year[73].

The Commission promotes the development and deployment of smart grids through financial support for research and development (R&D). The SET Plan European Electricity Grids Initiative (EEGI), launched in June 2010, has been developed by a team of network operators in electricity distribution and transmission supported by the Commission and aims at developing the technological issues of smart grids further. It will consolidate smart grids experiments so far through large size demonstrations and promote R&D and innovation in smart grid technologies. It will also stimulate wider deployment by addressing challenges stemming from technology integration at system level, user acceptance, economic constraints and regulation.

In addition to this technology push, market pull for the Europe-wide implementation of smart grids has been created with the adoption of the third internal energy market package in 2009, which foresees the obligation for Member States to ensure wide implementation of intelligent

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consumers and those that are both – in order to ensure economically efficient, sustainable power systems with low losses and high levels of quality and security of supply and safety. See http://ec.europa.eu/energy/gas_electricity/smartgrids/taskforce_en.htm for more information.

71 An ERGEG report, presented and disseminated at the annual Citizens' Energy Forum in London in September 2009, gives the most up-to-date and complete overview regarding the smart meter implementation status in Europe. Available at: http://ec.europa.eu/energy/gas_electricity/forum_citizen_energy_en.htm

72 "Impacts of Information and Communication Technologies on Energy Efficiency", Bio Intelligence Service Final Report, September 2008. Supported by the European Commission DG INFSO.

73 http://www.nuon.com/press/press-releases/20090713/index.jsp

metering systems by 2020[74]. Moreover, the Directive on energy end-use efficiency and energy services[75] has identified smart meters as one of the main contributors to energy efficiency improvement. The Renewables Directive[76], finally, views smart grids as an enabler for integration of increasing renewable energy into the grid and obliges Member States to develop transmission and grid infrastructure towards this aim. Jointly, these directives constitute the main policy and legal framework on which further action to stimulate the development of and deployment of smart grids will be built.

To ensure that smart grids and smart meters are developed in a way that enhances retail competition, integration of large-scale generation from renewable energy sources, and energy efficiency through the creation of an open market for energy services, the Commission has established a Task Force on smart grids in November 2009. It consists of about 25 European associations representing all relevant stakeholders. Its mandate is to advise the Commission on the EU level policy and regulatory actions and to coordinate the first steps towards the implementation of smart grids under the provisions of the third package. Initial work of the Task Force has been led by three Expert Groups[77], each focusing on (1) functionalities of smart grid and smart meters, (2) regulatory recommendations for data safety, data handling and data protection, and (3) roles and responsibilities of actors involved in the smart grids deployment.

Despite the expected benefits of smart grids and the aforementioned policy measures in place, the transition towards smart grids and meters is not progressing as fast as needed to reach the EU's energy and climate objectives.

The success of Smart Grids will not just depend on new technology and the willingness of networks to introduce them, but also on best practice regulatory frameworks to support their introduction, addressing market issues, including impacts on competition, and changes in the industry (i.e. to industry codes or regulation) and the way, in which consumers use energy. Creating the right regulatory framework for a well-functioning energy services market is the main challenge. It will require enabling the cooperation of a wide range of different market actors (generators, network operators, energy retailers, energy service companies, information and communication technology companies, consumers, appliance manufacturers). This regulatory framework will also have to ensure the adequate open access and sharing of operational information between actors and might also have to address tariff setting issues in order to provide proper incentives for grid operators to invest in smart technologies. National regulatory authorities also have a very important role as they approve tariffs that set the basis for investments in smart grids, and possibly meters. Unless a fair cost sharing model is developed and the right balance between short-term investment costs and longer term profits found, the willingness of grid operators to undertake any substantial future investments will be limited.

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74 Annex 1 of the Directive 2009/72/EC and Annex 1 of the Directive 2009/73/EC request the Member States to ensure implementation of intelligent metering systems that shall assist the active participation of consumers in the energy supply market. Such obligation might be subject to an economic assessment by Member States by 3 September 2012. According to the Electricity Directive, where roll-out of smart metering is assessed positively, at least 80% of consumers shall be equipped with intelligent metering systems by 2020.

75 Annex 3 of Directive 2006/32/EC.

76 Article 16 of Directive 2009/28/EC.

77 Task Force Smart Grids – vision and work programme: http://ec.europa.eu/energy/gas_electricity/smartgrids/doc/work_programme.pdf

Unambiguous (open) standards for smart grids and meters are needed to ensure interoperability, addressing key technological challenges and enabling successful integration of all grid users, while providing high system reliability and quality of electricity supply. Given competing efforts to develop worldwide standards, relying and investing in one specific (European) technical solution today might tomorrow translate into stranded costs. This is why the Commission launched a smart meters standardisation mandate for relevant European standardisation bodies in 2009. A new mandate to review related standards and develop new standards for smart grids will be launched by the Commission to the same standard bodies at the beginning of 2011. International collaboration is therefore essential to ensure the compatibility of solutions.

Persuading and winning the trust of consumers as regards the benefits of smart grids constitutes another challenge. As long as price elasticity of electricity remains low, the overall benefits of smart grids unverified and the risk of data abuse unaddressed[78], it may be difficult to overcome consumer reluctance, given the time and behavioural changes required to reap the benefits of smart technologies.

Last but not least, the possible lack of skilled workforce that would be ready to operate the complex smart grid system is another, non-negligible challenge.

The transition towards smart grids is a complex issue and a single leap from existing network to smart grids is not realistic. A successful transition will require fine-tuned cooperation between all stakeholders in order to find the right cost-effective solutions, avoid duplication of work and exploit existing synergies. To gain public awareness and acceptance and customer support, the benefits and costs of smart grids implementation will have to be objectively discussed and carefully explained, through active participation of consumers, small and medium enterprises and public authorities.

Recommendations

To ensure such approach and to overcome identified challenges the following key actions are recommended:

- **Specific legislation:** As outlined in the Communication, the Commission will assess whether any further legislative initiatives for smart grid implementation are necessary under the rules of third internal energy market package. The assessment will take into account the following objectives: i) ensuring the adequate open access and sharing of operational information between actors and their physical interfaces; ii) creating a well-functioning energy services market; and iii) providing proper incentives for grid operators to invest in smart technologies for smart grids. Based on this analysis, the final decision concerning specific legislation for smart grids will be taken during the first half of 2011.

- **Standardisation and Interoperability:** The Task Force has defined a set of six expected services and about 30 functionalities of smart grids. The Task Force and the CEN/CENELEC/ETSI Joint Working Group on Standards for the Smart Grid will produce by end 2010 a joint analysis on the status of European standardization for smart grid technologies and identify further work needed in this area. By beginning of 2011 the

[78] A draft bill on smart grid deployment was refused by the Dutch Parliament in 2009 on grounds of data protection concerns.

Commission will set up a standardisation mandate for the relevant European standardisation bodies to develop smart grid standards and ensure interoperability and compatibility with standards being elaborated worldwide.

- **Data protection:** Based on the work of the Task Force, the Commission, in close cooperation with the European Data Protection Supervisor, will assess the need for additional data protection measures, the roles and responsibilities of different actors concerning access, possession and handling of data (ownership, possession and access, read and change rights, etc.), and propose, if necessary, adequate regulatory proposals and/or guidelines.

- **Infrastructure investments:** Large parts of the necessary investments for the deployment of smart grids can be expected to come from network operators, notably at distribution level, and private companies, under the guidance of national regulatory authorities. Where funds are missing, public-private alliances could provide solutions. Where the rate of return for an investment is too low and the public interest evident, public finances must have the opportunity to step in. The Commission will encourage Member States to set up funds for the support of the Smart Grid deployment. The Commission will also examine particular support for smart technologies under the policy and project support programme mentioned in the Communication, as well as innovative funding instruments targeted at a rapid roll-out of smart grid technologies in transmission and distribution networks.

- **Demonstration, R&D and innovation projects:** In line with the above infrastructure investment policy, a clear European R&D and demonstration policy is necessary to boost innovation and accelerate the evolution towards smart networks, based on the EEGI and the smart grids activities of the European Energy Research Alliance, which focuses on longer-term research. Particular attention should be paid to electricity system innovations combined with R&D on power technologies (cables, transformers, etc.) with R&D on information and communication technologies (control systems, communications, etc.). Proposed measures should also address consumer behaviour, acceptance and real-life barriers to deployment. Member States and the Commission should promote R&D and demonstration projects, e.g. with a combination of public support and regulation incentives, ensuring that the EEGI can start the proposed projects as planned, despite the current difficult financial situation in the EU. This work should be closely coordinated with activities proposed in the Communication concerning Europe's electricity highways. To ensure full transparency on ongoing demonstration/pilot projects and their results and the development of a future legal framework, the Commission might create a platform to enable dissemination of good practices and experiences concerning practical deployment of smart grids across Europe and coordinate the different approaches so that synergies are ensured. The SET Plan Information system, managed by the European Commission's Joint Research Centre (JRC), includes a monitoring scheme that can be used as a starting point.

- **Promoting new skills:** To fill the gap between low-skilled and high-skill jobs due to smart grid deployment requirements, ongoing initiatives could be used such as the training actions under the SET Plan, the Knowledge and Innovation Communities of the European Institute of Technology, the Marie Curie Actions[79] and other actions such as the "New Skills for New Jobs" initiative. However, Member States will need to address seriously

[79] http://cordis.europa.eu/fp7/people/home_en.html

possible negative social consequences and launch programmes to retrain workers and support the acquisition of new skills.

4. PREPARING THE LONGER TERM NETWORKS

4.1. European electricity highways

An electricity highway should be understood as a an electricity transmission line with significantly more capacity to transport power than existing high-voltage transmission grids, both in terms of the amount of electricity transmitted and the distance covered by this transmission. To reach these higher capacities, new technologies will have to be developed, allowing notably direct current (DC) transmission and voltage levels significantly higher than 400 kV.

For the period beyond 2020 and up to 2050, a long-term solution will be needed to overcome the main challenge electricity networks are facing: accommodating ever-increasing windsurplus generation in the Northern Seas and increasing renewable surplus generation in the South Western and also South Eastern parts of Europe, connecting these new generation hubs with major storage capacities in Nordic countries and the Alps and with existing and future consumption centres in Central Europe, but also with the existing alternating current (AC) high-voltage grids. The new highways will have to take account of existing and future surplus areas, such as France, Norway or Sweden, and the complexity of the existing Central European North-South transmission corridor bringing surplus electricity from the North through Denmark and Germany to Southern German and Northern Italian deficit areas.

Despite technological uncertainties, it is clear that any future electricity highway system will need to be built stepwise, ensuring compatibility of AC/DC connections and local acceptance[80], on the basis of the other priorities up to 2020 described in chapter 3.1, in particular concerning offshore grids.

This highway system will also have to prepare for possible connections beyond EU borders to the South and the East, in order to fully benefit from the considerable renewables potential in these regions. In addition to the already synchronous connections with the Maghreb and Turkey, connections with other Mediterranean and Eastern countries might therefore be necessary in the long term. To this end, a dialogue with Northern African states on the technical and legal requirements for the development of trans-Mediterranean electricity infrastructures could be envisaged.

While there is growing awareness about the future need for a pan-European electricity grid, there is significant uncertainty concerning the moment in time, when this grid will become necessary, and the steps to be taken to build it. Action coordinated at EU level is therefore indispensable to start coherent development of this grid and reduce uncertainties and risks. European coordination will also be necessary to establish an appropriate legal, regulatory and organisational framework to design, plan, build and operate such an electricity highway system.

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[80] This could include the need for partial underground of electricity lines, taking into account that investment costs for underground cables are at least 3-10 times higher compared to overhead lines. See "Feasibility and technical aspects of partial undergrounding of extra high voltage power transmission lines", joint paper by ENTSO-E and Europacable. November 2010.

This action will need to integrate ongoing research and development work, notably under the SET plan European Electricity Grid Initiative (EEGI) and European Industrial Wind Initiative, to adapt existing and to develop new transmission, storage and smart grid technologies. In this context, it will also need to integrate the potential for large-scale hydrogen transport and storage. When coupled with fuel cells, it is particularly suited for distributed and transport applications. Commercialisation for residential applications could be expected as of 2015 and for hydrogen vehicles around 2020.[81]

Recommendations

The following key actions are necessary to prepare European electricity highways:

– In line with the conclusions of the June 2009 Bucharest Forum, initiate dedicated work on the Electricity Highways, in the framework of the Florence Forum, to structure the work carried out by all stakeholders for the preparation of the electricity highways. This work should be organised by the European Commission and ENTSO-E and bring together all relevant stakeholders. It should focus on establishing mid- and long-term generation development scenarios, assessing concepts of pan-European grid architecture and design options, analysing socio-economic and industrial policy consequences of deployment, and designing an appropriate legal, regulatory and organisational framework.

– Develop the necessary **research and development**, building on the SET-plan European Electricity Grid Initiative (EEGI) and European Industrial Wind Initiative, to adapt existing and develop new transmission, storage and smart grid technologies as well as needed grid design and planning tools.

– Establish a **modular development plan**, to be prepared by ENTSO-E by mid-2013, with the aim of commissioning first Electricity Highways by 2020. The plan would also prepare for the extension with the aim of facilitating the development of large-scale renewable generation capacities beyond the borders of the EU.

4.2. European CO_2 transport infrastructure

Given that potential CO_2 storage sites are not evenly distributed across Europe, large-scale deployment of CO_2 capture and storage in Europe, may be needed to achieve significant levels of decarbonisation of the European economies post-2020, and will necessitate the construction of an infrastructure of pipelines and, where suitable, shipping infrastructure, that could span across Member State borders, if countries do not have adequate CO_2 storage potential.

The component technologies of CCS (capture, transport and storage) are proven. However, they have not yet been integrated and tested at an industrial scale, and, currently, CCS is not commercially viable. To date, the implementation of the technology has been limited to smaller-scale plants often designed to demonstrate one or two of the components in isolation. At the same time it is commonly agreed that in order to have a profound impact on emission reductions, and thus enable a 'lowest-cost' portfolio of climate change mitigation measures, the viability of CCS technologies has to be demonstrated on large scale around 2020.

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[81] To this aim, in the framework of the SET Plan, the Fuel Cells and Hydrogen Joint Undertaking will launch a first study on EU hydrogen infrastructure planning by end 2010, leading the way for commercial deployment starting in a 2020 timeframe.

In response, the 2007 Spring European Council decided to support deployment of up to 12 large-scale CCS demonstration plants in Europe by 2015 in order to drive the technology to commercial viability. There are currently six large-scale CCS projects under construction designed to demonstrate the technology in electricity generation. They will have an installed capacity of at least 250MW and will also feature transport and storage components. These projects are co-financed by the Commission with grants amounting to €1 billion in total. A further funding mechanism, embedded in the Emission Trading System, became operational in November 2010[82]. In addition, the Commission supports CCS related research and development and has established a dedicated knowledge sharing network for large-scale CCS demonstrators.

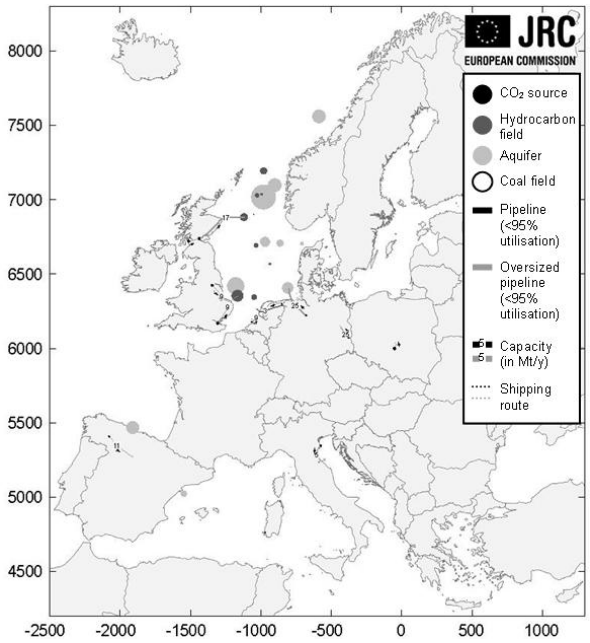
The Joint Research Centre (JRC) prepared in 2010 an assessment on the requirements for investment in CO_2 transport infrastructure[83]. Under PRIMES baseline assumptions, the study shows that 36 Mt of CO_2 will be captured in 2020 and transported in 6 EU Member States. The resulting CO_2 transport network stretches for approximately 2,000 km and requires 2.5 billion euros of investment (Map 9). Nearly all pipelines are planned to accommodate the additional CO_2 quantities anticipated to flow in the following years[84].

For 2030, the study finds that the amount of CO_2 captured increases to 272 Mt (Map 10). Many of the pipelines built earlier now operate at full capacity, and new pipelines are built, to become fully utilised in the ramp-up towards 2050. The CO_2 transport network stretches now for about 8,800 km and requires cumulative investment of 9.1 billion euros. First regional networks form across Europe around the first demonstration plants. The JRC analysis also highlights the benefits of European coordination if Europe is to achieve an optimal solution for CO_2 transport, as its results indicate that up to 16 EU Member States could be involved in cross-border CO_2 transport by 2030.

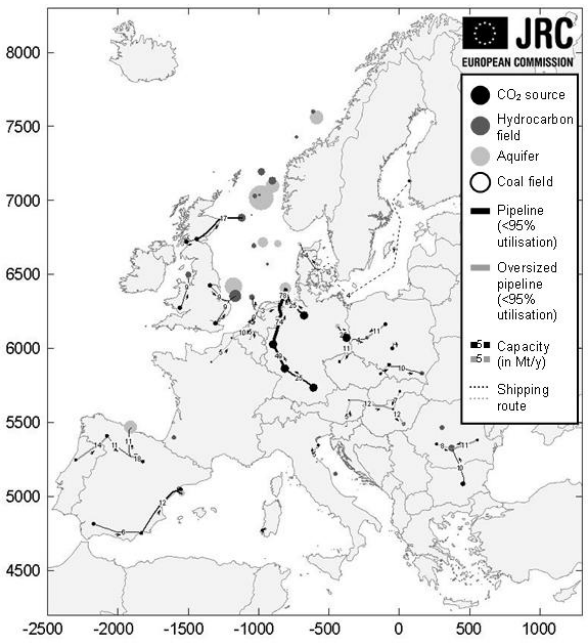
82 http://ec.europa.eu/clima/funding/ner300/index_en.htm

83 "The evolution of the extent and the investment requirements of a trans-European CO2 transport network", European Commission, Joint Research Centre, EUR 24565 EN. 2010.

84 Oversized pipelines are shown in red, while pipelines operating at full capacity are shown in blue.



Map 9: CO_2 network infrastructure in 2020, PRIMES baseline



Map 10: CO_2 network infrastructure in 2030, PRIMES baseline

A second analysis, done by Arup in 2010 and focussing on the feasibility of Europe-wide CO_2 infrastructures[85], aims at determining the optimal CO_2 transport network in Europe and its evolution over time, based on predefined volumes of CO_2, identification of suitable storage sites and a cost-minimisation approach. The most conservative scenario calculates a network of 6,900 km for 50 Mt of CO_2 transported in 2030. The study argues that, as certain countries will lack storage capacity, only a trans-boundary network could allow wider deployment of CCS.

These conclusions are corroborated by the EU Geocapacity study (2009) on European capacity for geological storage of CO_2[86]: a future CO_2 transport network depends critically upon the availability of onshore storage or the availability and development of offshore saline formations. Considering the level of public awareness on CO_2 storage and CCS technology in general, the study suggests that priority should be given to storage in saline formations offshore. The study also points out that availability of storage capacities can not yet be confirmed, additional work is therefore necessary to verify the real storage potential. However, the main driver for CCS development in the near future will be the CO_2 price, which is highly uncertain and dependent on the evolution of the ETS. Any analysis outlining a possible CO_2 network beyond 2020 should thus be treated with great caution.

All studies confirm that the evolution of the CO_2 network in Europe will be determined by the availability of storage sites and the level of CCS deployment and the degree of coordination for its development already now. The development of integrated pipeline and shipping networks, planned and constructed initially at regional or national level and taking into

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85 "Feasibility of Europe-wide CO_2 infrastructures", study by Ove Arup & Partners Ltd for the European Commission. September 2010.

86 "EU GeoCapacity - Assessing European Capacity for Geological Storage of Carbon Dioxide", Project no. SES6-518318. Final Activity Report available at: http://www.geology.cz/geocapacity/publications

account the transport needs of multiple CO_2 sources would take advantage of economies of scale and enable the connection of additional CO_2 sources to suitable sinks in the course of the pipeline lifetime[87]. In the longer run, such integrated networks would be expanded and interlinked to reach sources and storage sites spread across Europe, similar to today's gas networks.

Recommendations

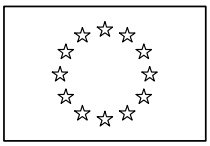
Once CCS becomes commercially viable, the pipelines and shipping infrastructure built for demonstration projects will become focal points for a future EU network. It is important that this initially fragmented structure can be planned in a way that ensures Europe-wide compatibility at a later stage. Lessons learned about the integration of initially fragmented networks as those for gas would have to be taken into account to avoid a similarly laborious process for creating common markets.

The examination of the technical and practical modalities of a CO_2 network should be pursued and an agreement on a common vision sought. The Sustainable Fossil Fuels Working Group for stakeholder dialogue (within the Berlin Forum) should be used for discussions on possible actions in this area. The CCS Project Network could be used for gathering experience from the operating demonstration projects. This in turn will allow assessing any need and extent of potential EU intervention.

Regional cooperation should also be supported in order to stimulate development of clusters constituting the first stage of a possible, future integrated European network. Existing support structures, including the CCS Project Network and the Information Exchange Group established under Directive 2009/31/EC on the geological storage of CO_2, could speed up development of regional clusters. This could include i.a. establishing focused working groups and sharing knowledge on the subject in the context of the CCS Project Network, exchanging best practice on permitting and cross-border cooperation of competent authorities within the Information Exchange Group. Global CCS discussion fora will also be used by the Commission to exchange existing knowledge on regional clusters and hubs worldwide.

The Commission will also continue working on a European CO_2 infrastructure map that can facilitate advance infrastructure planning, concentrating on the issue of cost efficiency. An important part of this task will include identification of the location, capacity and availability of storage sites, especially offshore. In order to make sure that the results of such a mapping exercise are comparable across the continent and can be used for optimal network design, efforts will be undertaken to elaborate a common storage capacity assessment methodology. For the sake of transparency with regard to storage and CCS in general, the Commission will pursue the publication of a European CO_2 Storage Atlas to visualise storage potential.

[87] The Pre-Front End Engineering Design Study of a CCS network for Yorkshire and Humber showed that initial investment in spare pipeline capacity would be cost effective even if subsequent developments joined the network up to 11 years later. The study also confirmed experience from other sectors, i.e. that investing in integrated networks would catalyse the large scale deployment of CCS technologies by consolidating permitting procedures, reducing the cost of connecting CO_2 sources with sinks and ensuring that captured CO_2 can be stored as soon as the capture facility becomes operational.



EUROPEAN COMMISSION

Brussels, 3.3.2010
COM(2010) 2020 final

COMMUNICATION FROM THE COMMISSION

EUROPE 2020

A strategy for smart, sustainable and inclusive growth

Preface

2010 must mark a new beginning. I want Europe to emerge stronger from the economic and financial crisis.

Economic realities are moving faster than political realities, as we have seen with the global impact of the financial crisis. We need to accept that the increased economic interdependence demands also a more determined and coherent response at the political level.

The last two years have left millions unemployed. It has brought a burden of debt that will last for many years. It has brought new pressures on our social cohesion. It has also exposed some fundamental truths about the challenges that the European economy faces. And in the meantime, the global economy is moving forward. How Europe responds will determine our future.

The crisis is a wake-up call, the moment where we recognise that "business as usual" would consign us to a gradual decline, to the second rank of the new global order. This is Europe's moment of truth. It is the time to be bold and ambitious.

Our short-term priority is a successful exit from the crisis. It will be tough for some time yet but we will get there. Significant progress has been made on dealing with bad banks, correcting the financial markets and recognising the need for strong policy coordination in the eurozone.

To achieve a sustainable future, we must already look beyond the short term. Europe needs to get back on track. Then it must stay on track. That is the purpose of Europe 2020. It's about more jobs and better lives. It shows how Europe has the capability to deliver smart, sustainable and inclusive growth, to find the path to create new jobs and to offer a sense of direction to our societies.

European leaders have a common analysis on the lessons to be drawn from the crisis. We also share a common sense of urgency on the challenges ahead. Now we jointly need to make it happen. Europe has many strengths. We have a talented workforce, we have a powerful technological and industrial base. We have an internal market and a single currency that have successfully helped us resist the worst. We have a tried and tested social market economy. We must have confidence in our ability to set an ambitious agenda for ourselves and then gear our efforts to delivering it.

The Commission is proposing five measurable EU targets for 2020 that will steer the process and be translated into national targets: for employment; for research and innovation; for climate change and energy; for education; and for combating poverty. They represent the direction we should take and will mean we can measure our success.

They are ambitious, but attainable. They are backed up by concrete proposals to make sure they are delivered. The flagship initiatives set out in this paper show how the EU can make a decisive contribution. We have powerful tools to hand in the shape of new economic governance, supported by the internal market, our budget, our trade and external economic policy and the disciplines and support of economic and monetary union.

The condition for success is a real ownership by European leaders and institutions. Our new agenda requires a coordinated European response, including with social partners and civil society. If we act together, then we can fight back and come out of the crisis stronger. We have the new tools and the new ambition. Now we need to make it happen.

José Manuel BARROSO

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EUROPE 2020 STRATEGY
EXECUTIVE SUMMARY

Europe faces a moment of transformation. The crisis has wiped out years of economic and social progress and exposed structural weaknesses in Europe's economy. In the meantime, the world is moving fast and long-term challenges – globalisation, pressure on resources, ageing – intensify. The EU must now take charge of its future.

Europe can succeed if it acts collectively, as a Union. We need a strategy to help us come out stronger from the crisis and turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion. Europe 2020 sets out a vision of Europe's social market economy for the 21st century.

Europe 2020 puts forward three mutually reinforcing priorities:

– Smart growth: developing an economy based on knowledge and innovation.

– Sustainable growth: promoting a more resource efficient, greener and more competitive economy.

– Inclusive growth: fostering a high-employment economy delivering social and territorial cohesion.

The EU needs to define where it wants to be by 2020. To this end, the Commission proposes the following EU headline targets:

– 75 % of the population aged 20-64 should be employed.

– 3% of the EU's GDP should be invested in R&D.

– The "20/20/20" climate/energy targets should be met (including an increase to 30% of emissions reduction if the conditions are right).

– The share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary degree.

– 20 million less people should be at risk of poverty.

These targets are interrelated and critical to our overall success. To ensure that each Member State tailors the Europe 2020 strategy to its particular situation, the Commission proposes that EU goals are translated into national targets and trajectories.

The targets are representative of the three priorities of smart, sustainable and inclusive growth but they are not exhaustive: a wide range of actions at national, EU and international levels will be necessary to underpin them. The Commission is putting forward seven flagship initiatives to catalyse progress under each priority theme:

– "Innovation Union" to improve framework conditions and access to finance for research and innovation so as to ensure that innovative ideas can be turned into products and services that create growth and jobs.

– "Youth on the move" to enhance the performance of education systems and to facilitate the entry of young people to the labour market.

– "A digital agenda for Europe" to speed up the roll-out of high-speed internet and reap the benefits of a digital single market for households and firms.

– "Resource efficient Europe" to help decouple economic growth from the use of resources, support the shift towards a low carbon economy, increase the use of renewable energy sources, modernise our transport sector and promote energy efficiency.

– "An industrial policy for the globalisation era" to improve the business environment, notably for SMEs, and to support the development of a strong and sustainable industrial base able to compete globally.

– "An agenda for new skills and jobs" to modernise labour markets and empower people by developing their of skills throughout the lifecycle with a view to increase labour participation and better match labour supply and demand, including through labour mobility.

– "European platform against poverty" to ensure social and territorial cohesion such that the benefits of growth and jobs are widely shared and people experiencing poverty and social exclusion are enabled to live in dignity and take an active part in society.

These seven flagship initiatives will commit both the EU and the Member States. EU-level instruments, notably the single market, financial levers and external policy tools, will be fully mobilised to tackle bottlenecks and deliver the Europe 2020 goals. As an immediate priority, the Commission charts what needs to be done to define a credible exit strategy, to pursue the reform of the financial system, to ensure budgetary consolidation for long-term growth, and to strengthen coordination within the Economic and Monetary Union.

Stronger economic governance will be required to deliver results. Europe 2020 will rely on two pillars: the thematic approach outlined above, combining priorities and headline targets; and country reporting, helping Member States to develop their strategies to return to sustainable growth and public finances. Integrated guidelines will be adopted at EU level to cover the scope of EU priorities and targets. Country-specific recommendations will be addressed to Member States. Policy warnings could be issued in case of inadequate response. The reporting of Europe 2020 and the Stability and Growth Pact evaluation will be done simultaneously, while keeping the instruments separate and maintaining the integrity of the Pact.

The European Council will have full ownership and be the focal point of the new strategy. The Commission will monitor progress towards the targets, facilitate policy exchange and make the necessary proposals to steer action and advance the EU flagship initiatives. The European Parliament will be a driving force to mobilise citizens and act as co-legislator on key initiatives. This partnership approach should extend to EU committees, to national parliaments and national, local and regional authorities, to social partners and to stakeholders and civil society so that everyone is involved in delivering on the vision.

The Commission proposes that the European Council endorses - in March - the overall approach of the strategy and the EU headline targets, and approves - in June - the detailed parameters of the strategy, including the integrated guidelines and national targets. The Commission also looks forward to the views and support of the European Parliament for making Europe 2020 a success.

1. A MOMENT OF TRANSFORMATION

The crisis has wiped out recent progress

The recent economic crisis has no precedent in our generation. The steady gains in economic growth and job creation witnessed over the last decade have been wiped out – our GDP fell by 4% in 2009, our industrial production dropped back to the levels of the 1990s and 23 million people - or 10% of our active population - are now unemployed. The crisis has been a huge shock for millions of citizens and it has exposed some fundamental weaknesses of our economy.

The crisis has also made the task of securing future economic growth much more difficult. The still fragile situation of our financial system is holding back recovery as firms and households have difficulties to borrow, spend and invest. Our public finances have been severely affected, with deficits at 7% of GDP on average and debt levels at over 80% of GDP – two years of crisis erasing twenty years of fiscal consolidation. Our growth potential has been halved during the crisis. Many investment plans, talents and ideas risk going to waste because of uncertainties, sluggish demand and lack of funding.

Europe's structural weaknesses have been exposed

Moving out of the crisis is the immediate challenge, but the biggest challenge is to escape the reflex to try to return to the pre-crisis situation. Even before the crisis, there were many areas where Europe was not progressing fast enough relative to the rest of the world:

– Europe's average growth rate has been structurally lower than that of our main economic partners, largely due to a productivity gap that has widened over the last decade. Much of this is due to differences in business structures combined with lower levels of investment in R&D and innovation, insufficient use of information and communications technologies, reluctance in some parts of our societies to embrace innovation, barriers to market access and a less dynamic business environment.

– In spite of progress, Europe's employment rates – at 69% on average for those aged 20-64 – are still significantly lower than in other parts of the world. Only 63% of women are in work compared to 76% of men. Only 46% of older workers (55-64) are employed compared to over 62% in the US and Japan. Moreover, on average Europeans work 10% fewer hours than their US or Japanese counterparts.

– Demographic ageing is accelerating. As the baby-boom generation retires, the EU's active population will start to shrink as from 2013/2014. The number of people aged over 60 is now increasing twice as fast as it did before 2007 – by about two million every year compared to one million previously. The combination of a smaller working population and a higher share of retired people will place additional strains on our welfare systems.

Global challenges intensify

While Europe needs to address its own structural weaknesses, the world is moving fast and will be very different by the end of the coming decade:

– Our economies are increasingly interlinked. Europe will continue to benefit from being one of the most open economies in the world but competition from developed and emerging economies is intensifying. Countries such as China or India are

investing heavily in research and technology in order to move their industries up the value chain and "leapfrog" into the global economy. This puts pressure on some sectors of our economy to remain competitive, but every threat is also an opportunity. As these countries develop, new markets will open up for many European companies.

– Global finance still needs fixing. The availability of easy credit, short-termism and excessive risk-taking in financial markets around the world fuelled speculative behaviour, giving rise to bubble-driven growth and important imbalances. Europe is engaged in finding global solutions to bring about an efficient and sustainable financial system.

– Climate and resource challenges require drastic action. Strong dependence on fossil fuels such as oil and inefficient use of raw materials expose our consumers and businesses to harmful and costly price shocks, threatening our economic security and contributing to climate change. The expansion of the world population from 6 to 9 billion will intensify global competition for natural resources, and put pressure on the environment. The EU must continue its outreach to other parts of the world in pursuit of a worldwide solution to the problems of climate change at the same time as we implement our agreed climate and energy strategy across the territory of the Union.

Europe must act to avoid decline

There are several lessons we can learn from this crisis:

– The 27 EU economies are highly interdependent: the crisis underscored the close links and spill-overs between our national economies, particularly in the euro area. Reforms, or the lack of them, in one country affect the performance of all others, as recent events have shown; moreover, the crisis and severe constraints in public spending have made it more difficult for some Member States to provide sufficient funding for the basic infrastructure they need in areas such as transport and energy not only to develop their own economies but also to help them participate fully in the internal market.

– Coordination within the EU works: the response to the crisis showed that if we act together, we are significantly more effective. We proved this by taking common action to stabilise the banking system and through the adoption of a European Economic Recovery Plan. In a global world, no single country can effectively address the challenges by acting alone;

– The EU adds value on the global scene. The EU will influence global policy decisions only if it acts jointly. Stronger external representation will need to go hand in hand with stronger internal co-ordination.

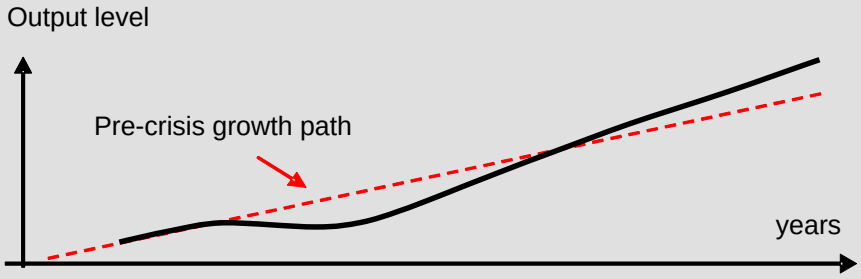
The crisis has not just been a one-off hit, allowing us to resume "business as usual". The challenges that our Union faces are greater than before the recession, whilst our room for manoeuvre is limited. Moreover, the rest of the world is not standing still. The enhanced role of the G20 has demonstrated the growing economic and political power of emerging countries.

Europe is left with clear yet challenging choices. Either we face up collectively to the immediate challenge of the recovery and to long-term challenges – globalisation, pressure on resources, ageing, – so as to make up for the recent losses, regain competitiveness, boost productivity and put the EU on an upward path of prosperity ("sustainable recovery").

Or we continue at a slow and largely uncoordinated pace of reforms, and we risk ending up with a permanent loss in wealth, a sluggish growth rate ("sluggish recovery") possibly leading to high levels of unemployment and social distress, and a relative decline on the world scene ("lost decade").

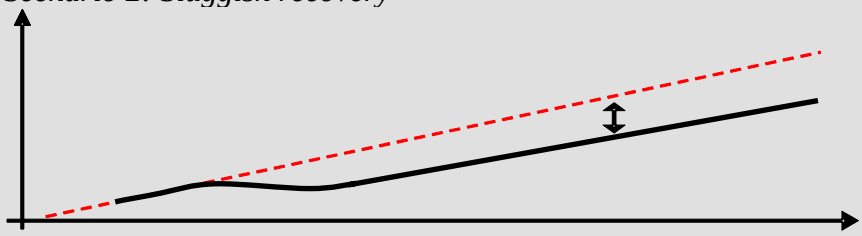
Three scenarios for Europe by 2020

Scenario 1: Sustainable recovery



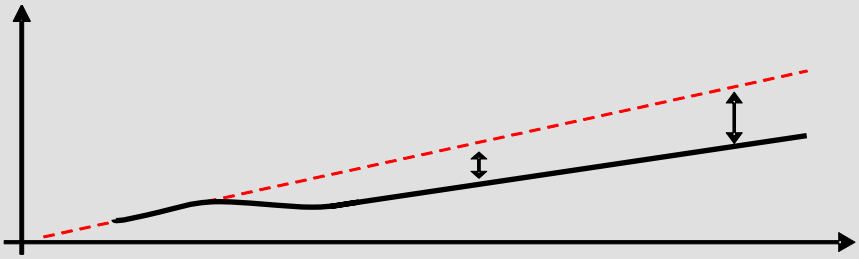
Europe is able to make a full return to earlier growth path and raise its potential to go beyond

Scenario 2: Sluggish recovery



Europe will have suffered a permanent loss in wealth and start growing again from this eroded basis

Scenario 3: Lost decade



Europe will have suffered a permanent loss in wealth and potential for future growth

Europe can succeed

Europe has many strengths: we can count on the talent and creativity of our people, a strong industrial base, a vibrant services sector, a thriving, high quality agricultural sector, strong maritime tradition, our single market and common currency, our position as the world's biggest trading bloc and leading destination for foreign direct investment. But we can also count on our strong values, democratic institutions, our consideration for economic, social and territorial cohesion and solidarity, our respect for the environment, our cultural diversity, respect for gender equality – just to name a few. Many of our Member States are amongst the most innovative and developed economies in the world. But the best chance for Europe to succeed is if it acts collectively – as a Union.

When confronted with major events in the past, the EU and its Member States have risen to the challenge. In the 1990s, Europe launched the largest single market in the world backed by a common currency. Only a few years ago, the division of Europe ended as new Member States entered the Union and other states embarked on the road towards membership or a closer relation with the Union. Over the last two years common action taken at the height of

the crisis through the European Recovery Plan helped prevent economic meltdown, whilst our welfare systems helped protect people from even greater hardship.

Europe is able to act in times of crisis and to adapt its economies and societies. And today Europeans face again a moment of transformation to cope with the impact of the crisis, Europe's structural weaknesses and intensifying global challenges.

In so doing, our exit from the crisis must be the point of entry into a new economy. For our own and future generations to continue to enjoy a high-quality of healthy life, underpinned by Europe's unique social models, we need to take action now. What is needed is a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion. This is the Europe 2020 strategy. This is an agenda for all Member States, taking into account different needs, different starting points and national specificities so as to promote growth for all.

2. SMART, SUSTAINABLE AND INCLUSIVE GROWTH

Where do we want Europe to be in 2020?

Three priorities should be the heart of Europe 2020[1]:

– Smart growth – developing an economy based on knowledge and innovation.

– Sustainable growth – promoting a more resource efficient, greener and more competitive economy.

– Inclusive growth – fostering a high-employment economy delivering economic, social and territorial cohesion.

These three priorities are mutually reinforcing; they offer a vision of Europe's social market economy for the 21st century.

To guide our efforts and steer progress, there is a large consensus that the EU should commonly agree on a limited number of headline targets for 2020. These targets should be representative of the theme of smart, sustainable and inclusive growth. They must be measurable, capable of reflecting the diversity of Member States situations and based on sufficiently reliable data for purposes of comparison. The following targets have been selected on this basis – meeting them will be critical to our success by 2020:

– The employment rate of the population aged 20-64 should increase from the current 69% to at least 75%, including through the greater involvement of women, older workers and the better integration of migrants in the work force;

– The EU currently has a target of investing 3% of GDP in R&D. The target has succeeded in focusing attention on the need for both the public and private sectors to invest in R&D but it focuses on input rather than impact. There is a clear need to improve the conditions for private R&D in the EU and many of the measures proposed in this strategy will do this. It is also clear that by looking at R&D and innovation together we would get a broader range of expenditure which would be more relevant for business operations and for productivity drivers. The Commission

[1] These themes have been widely welcomed in the public consultation carried out by the Commission. For details of the views expressed during the consultation see: http://ec.europa.eu/eu2020/index_en.htm

proposes to keep the 3% target while developing an indicator which would reflect R&D and innovation intensity;

– Reduce greenhouse gas emissions by at least 20% compared to 1990 levels or by 30%, if the conditions[2] are right; increase the share of renewable energy sources in our final energy consumption to 20%; and a 20% increase in energy efficiency;

– A target on educational attainment which tackles the problem of early school leavers by reducing the drop out rate to 10% from the current 15%, whilst increasing the share of the population aged 30-34 having completed tertiary education from 31% to at least 40% in 2020;

– The number of Europeans living below the national poverty lines should be reduced by 25%, lifting over 20 million people out of poverty[3].

These targets are interrelated. For instance, better educational levels help employability and progress in increasing the employment rate helps to reduce poverty. A greater capacity for research and development as well as innovation across all sectors of the economy, combined with increased resource efficiency will improve competitiveness and foster job creation. Investing in cleaner, low carbon technologies will help our environment, contribute to fighting climate change and create new business and employment opportunities. Meeting these targets should mobilise our collective attention. It will take strong leadership, commitment and an effective delivery mechanism to change attitudes and practices in the EU to deliver the results which are summarised in these targets.

These targets are representative, not exhaustive. They represent an overall view of where the Commission would like to see the EU on key parameters by 2020. They do not represent a "one size fits all" approach. Each Member State is different and the EU of 27 is more diverse than it was a decade ago. Despite disparities in levels of development and standards of living the Commission considers that the proposed targets are relevant to all Member States, old and newer alike. Investing in research and development as well as innovation, in education and in resource efficient technologies will benefit traditional sectors, rural areas as well as high skill, service economies. It will reinforce economic, social and territorial cohesion. To ensure that each Member States tailors the Europe 2020 strategy to its particular situation, the Commission proposes that these EU targets are translated into national targets and trajectories to reflect the current situation of each Member State and the level of ambition it is able to reach as part of a wider EU effort to meet these targets. In addition to the efforts of Member States the Commission will propose an ambitious range of actions at EU level designed to lift the EU onto a new, more sustainable growth path. This mix of EU and national efforts should be mutually reinforcing.

Smart growth – an economy based on knowledge and innovation

Smart growth means strengthening knowledge and innovation as drivers of our future growth. This requires improving the quality of our education, strengthening our research performance, promoting innovation and knowledge transfer throughout the Union, making full use of

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[2] The European Council of 10-11 December 2009 concluded that as part of a global and comprehensive agreement for the period beyond 2012, the EU reiterates its conditional offer to move to a 30% reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and that developing countries contribute adequately according to their responsibilities and respective capabilities.

[3] The national poverty line is defined as 60% of the median disposable income in each Member State.

information and communication technologies and ensuring that innovative ideas can be turned into new products and services that create growth, quality jobs and help address European and global societal challenges. But, to succeed, this must be combined with entrepreneurship, finance, and a focus on user needs and market opportunities.

Europe must act:

– Innovation: R&D spending in Europe is below 2%, compared to 2.6% in the US and 3.4% in Japan, mainly as a result of lower levels of private investment. It is not only the absolute amounts spent on R&D that count – Europe needs to focus on the impact and composition of research spending and to improve the conditions for private sector R&D in the EU. Our smaller share of high-tech firms explains half of our gap with the US.

– Education, training and lifelong learning: A quarter of all pupils have poor reading competences, one in seven young people leave education and training too early. Around 50% reach medium qualifications level but this often fails to match labour market needs. Less than one person in three aged 25-34 has a university degree compared to 40% in the US and over 50% in Japan. According to the Shanghai index, only two European universities are in the world's top 20.

– Digital society: The global demand for information and communication technologies is a market worth € 2 000 billion, but only one quarter of this comes from European firms. Europe is also falling behind on high-speed internet, which affects its ability to innovate, including in rural areas, as well as on the on-line dissemination of knowledge and on-line distribution of goods and services.

Action under this priority will unleash Europe's innovative capabilities, improving educational outcomes and the quality and outputs of education institutions, and exploiting the economic and societal benefits of a digital society. These policies should be delivered at regional, national and EU level.

Flagship Initiative: "Innovation Union"

The aim of this is to re-focus R&D and innovation policy on the challenges facing our society, such as climate change, energy and resource efficiency, health and demographic change. Every link should be strengthened in the innovation chain, from 'blue sky' research to commercialisation.

At EU level, the Commission will work:

– To complete the European Research Area, to develop a strategic research agenda focused on challenges such as energy security, transport, climate change and resource efficiency, health and ageing, environmentally-friendly production methods and land management, and to enhance joint programming with Member States and regions;

– To improve framework conditions for business to innovate (i.e. create the single EU Patent and a specialised Patent Court, modernise the framework of copyright and trademarks, improve access of SMEs to Intellectual Property Protection, speed up setting of interoperable standards; improve access to capital and make full use of demand side policies, e.g. through public procurement and smart regulation);

– To launch 'European Innovation Partnerships' between the EU and national levels to speed up the development and deployment of the technologies needed to meet the challenges identified. The first will include: 'building the bio-economy by 2020', 'the key enabling technologies to shape Europe's industrial future' and 'technologies to allow older people to live independently and be active in society';

– To strengthen and further develop the role of EU instruments to support innovation (e.g. structural funds, rural development funds, R&D framework programme, CIP, SET plan), including through closer work with the EIB and streamline administrative procedures to facilitate access to funding, particularly for SMEs and to bring in innovative incentive mechanisms linked to the carbon market, namely for fast-movers;

– To promote knowledge partnerships and strengthen links between education, business, research and innovation, including through the EIT, and to promote entrepreneurship by supporting Young Innovative Companies.

At national level, Member States will need:

– To reform national (and regional) R&D and innovation systems to foster excellence and smart specialisation, reinforce cooperation between universities, research and business, implement joint programming and enhance cross-border co-operation in areas with EU value added and adjust national funding procedures accordingly, to ensure the diffusion of technology across the EU territory;

– To ensure a sufficient supply of science, maths and engineering graduates and to focus school curricula on creativity, innovation, and entrepreneurship;

– To prioritise knowledge expenditure, including by using tax incentives and other financial instruments to promote greater private R&D investments.

Flagship initiative: "Youth on the move"

The aim is to enhance the performance and international attractiveness of Europe's higher education institutions and raise the overall quality of all levels of education and training in the EU, combining both excellence and equity, by promoting student mobility and trainees' mobility, and improve the employment situation of young people.

At EU level, the Commission will work:

– To integrate and enhance the EU's mobility, university and researchers' programmes (such as Erasmus, Erasmus Mundus, Tempus and Marie Curie) and link them up with national programmes and resources;

– To step up the modernisation agenda of higher education (curricula, governance and financing) including by benchmarking university performance and educational outcomes in a global context;

– To explore ways of promoting entrepreneurship through mobility programmes for young professionals;

– To promote the recognition of non-formal and informal learning;

– To launch a Youth employment framework outlining policies aimed at reducing youth unemployment rates: this should promote, with Member States and social partners, young people's entry into the labour market through apprenticeships, stages or other work experience, including a scheme ("Your first EURES job") aimed at increasing job opportunities for young people by favouring mobility across the EU.

At national level, Member States will need:

– To ensure efficient investment in education and training systems at all levels (pre-school to tertiary);

– To improve educational outcomes, addressing each segment (pre-school, primary, secondary, vocational and tertiary) within an integrated approach, encompassing key competences and aiming at reducing early school leaving;

– To enhance the openness and relevance of education systems by building national qualification frameworks and better gearing learning outcomes towards labour market needs.

– To improve young people's entry into the labour market through integrated action covering i.a guidance, counselling and apprenticeships.

Flagship Initiative: "A Digital Agenda for Europe"

The aim is to deliver sustainable economic and social benefits from a Digital Single Market based on fast and ultra fast internet and interoperable applications, with broadband access for all by 2013, access for all to much higher internet speeds (30 Mbps or above) by 2020, and 50% or more of European households subscribing to internet connections above 100 Mbps.

At EU level, the Commission will work:

– To provide a stable legal framework that stimulate investments in an open and competitive high speed internet infrastructure and in related services;

– To develop an efficient spectrum policy;

– To facilitate the use of the EU's structural funds in pursuit of this agenda;

– To create a true single market for online content and services (i.e. borderless and safe EU web services and digital content markets, with high levels of trust and confidence, a balanced regulatory framework with clear rights regimes, the fostering of multi-territorial licences, adequate protection and remuneration for rights holders and active support for the digitisation of Europe's rich cultural heritage, and to shape the global governance of the internet;

– To reform the research and innovation funds and increase support in the field of ICTs so as to reinforce Europe's technology strength in key strategic fields and create the conditions for high growth SMEs to lead emerging markets and to stimulate ICT innovation across all business sectors;

– To promote internet access and take-up by all European citizens, especially through actions in support of digital literacy and accessibility.

At national level, Member States will need:

– To draw up operational high speed internet strategies, and target public funding, including structural funds, on areas not fully served by private investments;

– To establish a legal framework for co-ordinating public works to reduce costs of network rollout;

– To promote deployment and usage of modern accessible online services (e.g. e-government, online health, smart home, digital skills, security).

Sustainable growth – promoting a more resource efficient, greener and more competitive economy

Sustainable growth means building a resource efficient, sustainable and competitive economy, exploiting Europe's leadership in the race to develop new processes and technologies, including green technologies, accelerating the roll out of smart grids using ICTs, exploiting EU-scale networks, and reinforcing the competitive advantages of our businesses, particularly in manufacturing and within our SMEs, as well through assisting consumers to value resource efficiency. Such an approach will help the EU to prosper in a low-carbon, resource constrained world while preventing environmental degradation, biodiversity loss and unsustainable use of resources. It will also underpin economic, social and territorial cohesion.

Europe must act:

– Competitiveness: The EU has prospered through trade, exporting round the world and importing inputs as well as finished goods. Faced with intense pressure on export markets and for a growing range of inputs we must improve our competitiveness vis-à-vis our main trading partners through higher productivity. We will need to address relative competitiveness inside the Euro area and in the wider EU. The EU was largely a first mover in green solutions, but its advantage is being challenged by key

competitors, notably China and North America. The EU should maintain its lead in the market for green technologies as a means of ensuring resource efficiency through out the economy, while removing bottlenecks in key network infrastructures, thereby boosting our industrial competitiveness.

– Combating climate change: Achieving our climate goals means reducing emissions significantly more quickly in the next decade than in the last decade and exploiting fully the potential of new technologies such as carbon capture and sequestration possibilities. Improving resource efficiency would significantly help limit emissions, save money and boost economic growth. All sectors of the economy, not just emission-intensive, are concerned. We must also strengthen our economies' resilience to climate risks, and our capacity for disaster prevention and response.

– Clean and efficient energy: Meeting our energy goals could result in € 60 billion less in oil and gas imports by 2020. This is not only financial savings; this is essential for our energy security. Further progress with the integration of the European energy market can add an extra 0.6% to 0.8% GDP. Meeting the EU's objective of 20% of renewable sources of energy alone has the potential to create more than 600 000 jobs in the EU. Adding the 20% target on energy efficiency, it is well over 1 million new jobs that are at stake.

Action under this priority will require implementing our emission-reduction commitments in a way which maximises the benefits and minimises the costs, including through the spread of innovative technological solutions. Moreover, we should aim to decouple growth from energy use and become a more resource efficient economy, which will not only give Europe a competitive advantage, but also reduce its dependency of foreign sources for raw materials and commodities.

Flagship Initiative: "Resource efficient Europe"

The aim is to support the shift towards a resource efficient and low-carbon economy that is efficient in the way it uses all resources. The aim is to decouple our economic growth from resource and energy use, reduce CO_2 emissions, enhance competitiveness and promote greater energy security.

At EU level, the Commission will work:

– To mobilise EU financial instruments (e.g. rural development, structural funds, R&D framework programme, TENs, EIB) as part of a consistent funding strategy, that pulls together EU and national public and private funding;

– To enhance a framework for the use of market-based instruments (e.g. emissions trading, revision of energy taxation, state-aid framework, encouraging wider use of green public procurement);

– To present proposals to modernise and decarbonise the transport sector thereby contributing to increased competitiveness. This can be done through a mix of measures e.g. infrastructure measures such as early deployment of grid infrastructures of electrical mobility, intelligent traffic management, better logistics, pursuing the reduction of CO_2 emissions for road vehicles , for the aviation and maritime sectors including the launch of a major European "green" car initiative which will help to promote new technologies including electric and hybrid cars through a mix of research, setting of common standards and developing the necessary infrastructure support;

– To accelerate the implementation of strategic projects with high European added value to address critical bottlenecks, in particular cross border sections and inter modal nodes (cities, ports, logistic platforms);

– To complete the internal energy market and implement the strategic energy technologies (SET) plan, promoting renewable sources of energy in the single market would also be a priority;

– To present an initiative to upgrade Europe's networks, including Trans European Energy Networks, towards a European supergrid, "smart grids" and interconnections in particular of renewable energy sources to the grid (with support of structural funds and the EIB). This includes to promote infrastructure projects of major strategic importance to the EU in the Baltic, Balkan, Mediterranean and Eurasian regions;

– To adopt and implement a revised Energy Efficiency Action Plan and promote a substantial programme in resource efficiency (supporting SMEs as well as households) by making use of structural and other funds to leverage new financing through existing highly successful models of innovative investment schemes; this should promote changes in consumption and production patterns;

– To establish a vision of structural and technological changes required to move to a low carbon, resource efficient and climate resilient economy by 2050 which will allow the EU to achieve its emissions reduction and biodiversity targets; this includes disaster prevention and response, harnessing the contribution of cohesion, agricultural, rural development, and maritime policies to address climate change, in particular through adaptation measures based on more efficient use of resources, which will also contribute to improving global food security.

At national level, Member States will need:

– To phase out environmentally harmful subsidies, limiting exceptions to people with social needs;

– To deploy market-based instruments such as fiscal incentives and procurement to adapt production and consumption methods;

– To develop smart, upgraded and fully interconnected transport and energy infrastructures and make full use of ICT;

– To ensure a coordinated implementation of infrastructure projects, within the EU Core network, that critically contribute to the effectiveness of the overall EU transport system;

– To focus on the urban dimension of transport where much of the congestion and emissions are generated;

– To use regulation, building performance standards and market-based instruments such as taxation, subsidies and procurement to reduce energy and resource use and use structural funds to invest in energy efficiency in public buildings and in more efficient recycling;

– To incentivise energy saving instruments that could raise efficiency in energy-intensive sectors, such as based on the use of ICTs.

Flagship Initiative: "An industrial policy for the globalisation era"

Industry and especially SMEs have been hit hard by the economic crisis and all sectors are facing the challenges of globalisation and adjusting their production processes and products to a low-carbon economy. The impact of these challenges will differ from sector to sector, some sectors might have to "reinvent" themselves but for others these challenges will present new business opportunities. The Commission will work closely with stakeholders in different sectors (business, trade unions, academics, NGOs, consumer organisations) and will draw up a framework for a modern industrial policy, to support entrepreneurship, to guide and help industry to become fit to meet these challenges, to promote the competitiveness of Europe's primary, manufacturing and service industries and help them seize the opportunities of globalisation and of the green economy. The framework will address all elements of the increasingly international value chain from access to raw materials to after-sales service.

At EU level, the Commission will work:

– To establish an industrial policy creating the best environment to maintain and develop a strong, competitive and diversified industrial base in Europe as well as supporting the transition of manufacturing sectors to greater energy and resource efficiency;

– To develop a horizontal approach to industrial policy combining different policy instruments (e.g. "smart" regulation, modernised public procurement, competition rules and standard setting);

– To improve the business environment, especially for SMEs, including through reducing the transaction costs of doing business in Europe, the promotion of clusters and improving affordable access to finance;

– To promote the restructuring of sectors in difficulty towards future oriented activities, including through quick redeployment of skills to emerging high growth sectors and markets and support from the EU's state aids regime and/or the Globalisation Adjustment Fund;

– To promote technologies and production methods that reduce natural resource use, and increase investment in the EU's existing natural assets;

– To promote the internationalisation of SMEs;

– To ensure that transport and logistics networks enable industry throughout the Union to have effective access to the Single Market and the international market beyond;

– To develop an effective space policy to provide the tools to address some of the key global challenges and in particular to deliver Galileo and GMES;

– To enhance the competitiveness of the European tourism sector;

– To review regulations to support the transition of service and manufacturing sectors to greater resource efficiency, including more effective recycling; to improve the way in which European standard setting works to leverage European and international standards for the long-term competitiveness of European industry. This will include promoting the commercialisation and take-up of key enabling technologies;

– To renew the EU strategy to promote Corporate Social Responsibility as a key element in ensuring long term employee and consumer trust.

At national level, Member States will need:

– To improve the business environment especially for innovative SMEs, including through public sector procurement to support innovation incentives;

– To improve the conditions for enforcing intellectual property;

– To reduce administrative burden on companies, and improve the quality of business legislation;

– To work closely with stakeholders in different sectors (business, trade unions, academics, NGOs, consumer organisations) to identify bottlenecks and develop a shared analysis on how to maintain a strong industrial and knowledge base and put the EU in a position to lead global sustainable development.

Inclusive growth – a high-employment economy delivering economic, social and territorial cohesion

Inclusive growth means empowering people through high levels of employment, investing in skills, fighting poverty and modernising labour markets, training and social protection systems so as to help people anticipate and manage change, and build a cohesive society. It is also essential that the benefits of economic growth spread to all parts of the Union, including its outermost regions, thus strengthening territorial cohesion. It is about ensuring access and opportunities for all throughout the lifecycle. Europe needs to make full use of its labour potential to face the challenges of an ageing population and rising global competition. Policies to promote gender equality will be needed to increase labour force participation thus adding to growth and social cohesion.

Europe must act:

– Employment: Due to demographic change, our workforce is about to shrink. Only two-thirds of our working age population is currently employed, compared to over 70% in the US and Japan. The employment rate of women and older workers are particularly low. Young people have been severely hit by the crisis, with an

unemployment rate over 21%. There is a strong risk that people away or poorly attached to the world of work lose ground from the labour market.

– Skills: About 80 million people have low or basic skills, but lifelong learning benefits mostly the more educated. By 2020, 16 million more jobs will require high qualifications, while the demand for low skills will drop by 12 million jobs. Achieving longer working lives will also require the possibility to acquire and develop new skills throughout the lifetime.

– Fighting poverty: 80 million people were at risk of poverty prior to the crisis. 19 million of them are children. 8 per cent of people in work do not earn enough to make it above the poverty threshold. Unemployed people are particularly exposed.

Action under this priority will require modernising, strengthening our employment education and training policies and social protection systems by increasing labour participation and reducing structural unemployment, as well as raising corporate social responsibility among the business community. Access to childcare facilities and care for other dependents will be important in this respect. Implementing flexicurity principles and enabling people to acquire new skills to adapt to new conditions and potential career shifts will be key. A major effort will be needed to combat poverty and social exclusion and reduce health inequalities to ensure that everybody can benefit from growth. Equally important will be our ability to meet the challenge of promoting a healthy and active ageing population to allow for social cohesion and higher productivity.

Flagship Initiative: "An Agenda for new skills and jobs"

The aim is to create conditions for modernising labour markets with a view to raising employment levels and ensuring the sustainability of our social models. This means empowering people through the acquisition of new skills to enable our current and future workforce to adapt to new conditions and potential career shifts, reduce unemployment and raise labour productivity.

At EU level, the Commission will work:

– To define and implement the second phase of the flexicurity agenda, together with European social partners, to identify ways to better manage economic transitions and to fight unemployment and raise activity rates;

– To adapt the legislative framework, in line with 'smart' regulation principles, to evolving work patterns (e.g. working time, posting of workers) and new risks for health and safety at work;

– To facilitate and promote intra-EU labour mobility and better match labour supply with demand with appropriate financial support from the structural funds, notably the European Social Fund (ESF), and to promote a forward-looking and comprehensive labour migration policy which would respond in a flexible way to the priorities and needs of labour markets;

– To strengthen the capacity of social partners and make full use of the problem-solving potential of social dialogue at all levels (EU, national/regional, sectoral, company), and to promote strengthened cooperation between labour market institutions including the public employment services of the Member States;

– To give a strong impetus to the strategic framework for cooperation in education and training involving all stakeholders. This should notably result in the implementation of life-long learning principles (in cooperation with Member States, social partners, experts) including through flexible learning pathways between different education and training sectors and levels and by reinforcing the attractiveness of vocational education and training. Social partners at European level should be consulted in view of developing an initiative of their own in this area;

– To ensure that the competences required to engage in further learning and the labour market are acquired and recognised throughout general, vocational, higher and adult education and to develop a common language and operational tool for education/training and work: a European Skills, Competences and Occupations framework (ESCO).

At national level, Member States will need:

– To implement their national pathways for flexicurity, as agreed by the European Council, to reduce labour market segmentation and facilitate transitions as well as facilitatig the reconciliation of work and family life;

– To review and regularly monitor the efficiency of tax and benefit systems so to make work pay with a particular focus on the low skilled, whilst removing measures that discourage self-employment;

– To promote new forms of work-life balance and active ageing policies and to increase gender equality;

– Promote and monitor the effective implementation of social dialogue outcomes;

– To give a strong impetus to the implementation of the European Qualifications Framework, through the establishment of national qualification frameworks;

– To ensure that the competences required to engage in further learning and the labour market are acquired and recognised throughout general, vocational, higher and adult education, including non formal and informal learning;

– To develop partnerships between the worlds of education/training and work, in particular by involving social partners in the planning of education and training provision.

Flagship Initiative: "European Platform against Poverty"

The aim is to ensure economic, social and territorial cohesion, building on the current European year for combating poverty and social exclusion so as to raise awareness and recognise the fundamental rights of people experiencing poverty and social exclusion, enabling them to live in dignity and take an active part in society.

At EU level, the Commission will work:

– To transform the open method of coordination on social exclusion and social protection into a platform for cooperation, peer-review and exchange of good practice, and into an instrument to foster commitment by public and private players to reduce social exclusion, and take concrete action, including through targeted support from the structural funds, notably the ESF;

– To design and implement programmes to promote social innovation for the most vulnerable, in particular by providing innovative education, training, and employment opportunities for deprived communities, to fight discrimination (e.g. disabled), and to develop a new agenda for migrants' integration to enable them to take full advantage of their potential;

– To undertake an assessment of the adequacy and sustainability of social protection and pension systems, and identify ways to ensure better access to health care systems.

At national level, Member States will need:

– To promote shared collective and individual responsibility in combating poverty and social exclusion;

– To define and implement measures addressing the specific circumstances of groups at particular risk (such as one-parent families, elderly women, minorities, Roma, people with a disability and the homeless);

– To fully deploy their social security and pension systems to ensure adequate income support and access to health care.

3. MISSING LINKS AND BOTTLENECKS

All EU policies, instruments and legal acts, as well as financial instruments, should be mobilised to pursue the strategy's objectives. The Commission intends to enhance key policies and instruments such as the single market, the budget and the EU's external economic agenda to focus on delivering Europe 2020's objectives. Operational proposals to ensure their full contribution to the strategy are an integral part of the Europe 2020.

3.1. A single market for the 21st century

A stronger, deeper, extended single market is vital for growth and job creation. However, current trends show signs of integration fatigue and disenchantment regarding the single market. The crisis has added temptations of economic nationalism. The Commission's vigilance and a shared sense of responsibility among Member States have prevented a drift towards disintegration. But a new momentum – a genuine political commitment - is needed to re-launch the single market, through a quick adoption of the initiatives mentioned below. Such political commitment will require a combination of measures to fill the gaps in the single market.

Every day businesses and citizens are faced with the reality that bottlenecks to cross-border activity remain despite the legal existenceof the single market. They realise that networks are not sufficiently inter-connected and that the enforcement of single market rules remains uneven. Often, businesses and citizens still need to deal with 27 different legal systems for one and the same transaction. Whilst our companies are still confronted with the day-to-day reality of fragmentation and diverging rules, their competitors from China, the US or Japan can draw full strength from their large home markets.

The single market was conceived before the arrival of Internet, before information and communication technologies became the one of the main drivers of growth and before services became such a dominant part of the European economy. The emergence of new services (e.g. content and media, health, smart energy metering) shows huge potential, but Europe will only exploit this potential if it overcomes the fragmentation that currently blocks the flow of on-line content and access for consumers and companies.

To gear the single market to serve the Europe 2020 goals requires well functioning and well-connected markets where competition and consumer access stimulate growth and innovation. An open single market for services must be created on the basis of the Services Directive, whilst at the same time ensuring the quality of services provided to consumers. The full implementation of the Services Directive could increase trade in commercial services by 45% and Foreign Direct investment by 25%, bringing an increase of between 0.5% and 1.5% increase in GDP.

Access for SMEs to the single market must be improved. Entrepreneurship must be developed by concrete policy initiatives, including a simplification of company law (bankruptcy procedures, private company statute, etc.), and initiatives allowing entrepreneurs to restart after failed businesses. Citizens must be empowered to play a full part in the single market. This requires strengthening their ability and confidence to buy goods and services cross-border, in particular on-line.

Through the implementation of competition policy the Commission will ensure that the single market remains an open market, preserving equal opportunities for firms and combating national protectionism. But competition policy will do more to contribute to achieving the Europe 2020 goals. Competition policy ensures that markets provide the right environment

for innovation, for example through ensuring that patents and property rights are not abused. Preventing market abuse and anticompetitive agreements between firms provides a reassurance to incentivise innovation. State aid policy can also actively and positively contribute to the Europe 2020 objectives by prompting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development.

The Commission will propose action to tackle bottlenecks in the single market by:

– Reinforcing structures to implement single market measures on time and correctly, including network regulation, the Services Directive and the financial markets legislative and supervision package, enforce them effectively and when problems arise, resolve them speedily;

– Pressing ahead with the Smart Regulation agenda, including considering the wider use of of regulations rather than directives, launching ex-post evaluation of existing legisation, pursuing market monitoring, reducing administrative burdens, removing tax obstacles, improving the business environment, particularly for SMEs, and supporting entrepreneurship;

– Adapting EU and national legislation to the digital era so as to promote the circulation of content with high level of trust for consumers and companies. This requires updating rules on liability, warranties, delivery and dispute resolution;

– Making it easier and less costly for businesses and consumers to conclude contracts with partners in other EU countries, notably by offering harmonised solutions for consumer contracts, EU model contract clauses and by making progress towards an optional European Contract Law;

– Making it easier and less costly for businesses and consumers to enforce contracts and to recognise court judgments and documents in other EU countries.

3.2. Investing in growth: cohesion policy, mobilising the EU budget and private finance

Economic, social and territorial cohesion will remain at the heart of the Europe 2020 strategy to ensure that all energies and capacities are mobilised and focused on the pursuit of the strategy's priorities. Cohesion policy and its structural funds, while important in their own right, are key delivery mechanisms to achieve the priorities of smart, sustainable and inclusive growth in Member States and regions.

The financial crisis has had a major impact on the capacity of European businesses and governments to finance investment and innovation projects. To accomplish its objectives for Europe 2020, a regulatory environment that renders financial markets both effective and secure is key. Europe must also do all it can to leverage its financial means, pursue new avenues in using a combination of private and public finance, and in creating innovative instruments to finance the needed investments, including public-private partnerships (PPPs). The European Investment Bank and the European Investment Fund can contribute to backing a "virtuous circle" where innovation and entrepreneurship can be funded profitably from early stage investments to listing on stock markets, in partnership with the many public initiatives and schemes already operating at national level.

The EU multi-annual financial framework will also need to reflect the long-term growth priorities. The Commission intends to take the priorities, once agreed, up in its proposals for the next multi-annual financial framework, due for next year. The discussion should not only be about levels of funding, but also about how different funding instruments such as structural funds, agricultural and rural development funds, the research framework programme, and the competitiveness and innovation framework programme (CIP) need to be devised to achieve the Europe 2020 goals so as to maximise impact, ensure efficiency and EU value added. It will be important to find ways of increasing the impact of the EU budget – while small it can have an important catalytic effect when carefully targetted.

The Commission will propose action to develop innovative financing solutions to support Europe 2020's objectives by:

– Fully exploiting possibilities to improve the effectiveness and efficiency of the existing EU budget through stronger prioritisation and better alignment of EU expenditure with the goals of the Europe 2020 to address the present fragmentation of EU funding instruments (e.g. R&D and innovation, key infrastructure investments in cross-border energy and transport networks, and low-carbon technology). The opportunity of the review of the Financial Regulation should also be fully exploited to develop the potential of innovative financial instruments, whilst ensuring sound financial management;

– Designing new financing instruments, in particular in cooperation with the EIB/EIF and the private sector, responding to hitherto unfulfilled needs by businesses. As part of the forthcoming research and innovation plan, the Commission will co-ordinate an initiative with the EIB/EIF to raise additional capital for funding innovative and growing businesses;

– Making an efficient European venture capital market a reality, thereby greatly facilitating direct business access to capital markets and exploring incentives for private sector funds that make financing available for start-up companies, and for innovative SMEs.

3.3. Deploying our external policy instruments

Global growth will open up new opportunities for Europe's exporters and competitive access to vital imports. All instruments of external economic policy need to be deployed to foster European growth through our participation in open and fair markets world wide. This applies to the external aspects of our various internal policies (e.g. energy, transport, agriculture, R&D) but this holds in particular for trade and international macroeconomic policy coordination. An open Europe, operating within a rules-based international framework, is the best route to exploit the benefits of globalisation that will boost growth and employment. At the same time, the EU must assert itself more effectively on the world stage, playing a leading role in shaping the future global economic order through the G20, and pursuing the European interest through the active deployment of all the tools at our disposal

A part of the growth that Europe needs to generate over the next decade will need to come from the emerging economies as their middle classes develop and import goods and services in which the European Union has a comparative advantage. As the biggest trading bloc in the world, the EU prospers by being open to the world and paying close attention to what other developed or emerging economies are doing to anticipate or adapt to future trends.

Acting within the WTO and bilaterally in order to secure better market access for EU business, including SMEs, and a level playing field vis-à-vis our external competitors should be a key goal. Moreover, we should focus and streamline our regulatory dialogues, particularly in new areas such as climate and green growth, where possible expanding our global reach by promoting equivalence, mutual recognition and convergence on key regulatory issues, as well as the adoption of our rules and standards.

The Europe 2020 strategy is not only relevant inside the EU, it can also offer considerable potential to candidate countries and our neighbourhood and better help anchor their own reform efforts. Expanding the area where EU rules are applied, will create new opportunities for both the EU and its neighbours.

In addition, one of the critical objectives in the next few years will be to build strategic relationships with emerging economies to discuss issues of common concern, promote regulatory and other co-operation and resolve bilateral issues. The structures underpinning these relationships will need to be flexible and be politically rather than technically driven.

The Commission will draw up in 2010 a trade strategy for Europe 2020 which will include:

– An emphasis on concluding on-going multilateral and bilateral trade negotiations, in particular those with the strongest economic potential, as well as on better enforcement of existing agreements, focussing on non-tariff barriers to trade;

– Trade opening initiatives for sectors of the future, such as "green" products and technologies, high-tech products and services, and on international standardization in particular in growth areas;

– Proposals for high-level strategic dialogues with key partners, to discuss strategic issues ranging from market access, regulatory framework, global imbalances , energy and climate change, access to raw materials, to global poverty, education and development. It will also work to reinforce the Transatlantic Economic Council with the US the High Level Economic Dialogue with China and deepen its relationship with Japan and Russia;

– Starting in 2011 and then annually before the Spring European Council, a trade and investment barriers report identifying ways to improve market access and regulatory environment for EU companies.

The EU is a global player and takes its international responsibilities seriously. It has been developing a real partnership with developing countries to eradicate poverty, to promote growth and to fulfil the Millenium Development Goals (MDGs). We have a particularly close relationship with Africa and will need to invest further in the future in developing that close partnership. This will take place in the broader ongoing efforts to increase development aid, improve the efficiency of our aid programmes notably through the efficient division of labour with Member States and by better reflecting development aims in other policies of the European Union.

4. EXIT FROM THE CRISIS: FIRST STEPS TOWARDS 2020

Policy instruments were decisively, and massively, used to counteract the crisis. Fiscal policy had, where possible, an expansionary and counter-cyclical role; interest rates were lowered to historical minima while liquidity was provided to the financial sector in an unprecedented way. Governments gave massive support to banks, either through guarantees, recapitalization or through "cleaning" of balance sheets from impaired assets; other sectors of the economy were supported under the temporary, and exceptional, framework for State aid. All these actions were, and still are, justified. But they cannot stay there permanently. High levels of public debt cannot be sustained indefinitely. The pursuit of the Europe 2020 objectives must be based on a credible exit strategy as regards budgetary and monetary policy on the one hand, and the direct support given by governments to economic sectors, in particular the financial sector, on the other. The sequencing of these several exits is important. A reinforced coordination of economic policies, in particular within the euro area should ensure a successful global exit.

4.1. Defining a credible exit strategy

Given remaining uncertainties about the economic outlook and fragilities in the financial sector, support measures should only be withdrawn once the economic recovery can be

regarded as self-sustaining and once financial stability has been restored[4]. The withdrawal of temporary crisis-related measures should be coordinated and take account of possible negative spill-over effects both across Member States as well as of interactions between different policy instruments. State aid disciplines should be restored, starting with the ending of the temporary state aid framework. Such a coordinated approach would need to rely on the following principles:

– The withdrawal of the fiscal stimulus should begin as soon as the recovery is on a firm footing. However, the timing may have to differ from country to country, hence the need for a high degree of coordination at European level;

– Short-term unemployment support should only start to be phased out once a turning point in GDP growth can be regarded as firmly established and thus employment, with its usual lag, will have started to grow;

– Sectoral support schemes should be phased out early as they carry a large budget costs, are considered to have by and large achieved their objectives, and due to their possible distorting effects on the single market;

– Access-to-finance support should continue until there are clear signs that financing conditions for business have broadly returned to normal;

– Withdrawal of support to the financial sector, starting with government guarantee schemes, will depend on the state of the economy overall and of the stability of the financial system in particular.

4.2. The reform of the financial system

A crucial priority in the short term will be to restore a solid, stable and healthy financial sector able to finance the real economy. It will require the full and timely implementation of the G20 commitments. Five objectives will in particular have to be met:

– Implementing the agreed reforms of the supervision of the financial sector;

– Filling the regulatory gaps, promoting transparency, stability and accountability notably as regards derivatives and market infrastructure;

– Completing the strengthening of our prudential, accounting and consumer protection rules in the form a single European rule-book covering all financial actors and markets in an appropriate way;

– Strengthening the governance of financial institutions, in order to address the weaknesses identified during the financial crisis in the area of risk identification and management;

– Setting in motion an ambitious policy that will allow us in the future to better prevent and if needed manage possible financial crises, and that – taking into account the specific responsibility of the financial sector in the current crisis – will look also into adequate contributions from the financial sector.

[4] European Council conclusions of 10/11 December 2009.

4.3. Pursuing smart budgetary consolidation for long-term growth

Sound public finances are critical for restoring the conditions for sustainable growth and jobs so we need a comprehensive exit strategy. This will involve the progressive withdrawal of short-term crisis support and the introduction of medium- to longer-term reforms that promote the sustainability of public finances and enhance potential growth.

The Stability and Growth Pact provides the right framework to implement fiscal exit strategies and Member States are setting down such strategies in their stability and convergence programmes. For most countries, the onset of fiscal consolidation should normally occur in 2011. The process of bringing the deficits to below 3% of GDP should be completed, as a rule, by 2013. However, in a number of countries, the consolidation phase may have to begin earlier than 2011 implying that the withdrawal of temporary crisis support and fiscal consolidation may in these cases need to occur simultaneously.

To support the EU's economic growth potential and the sustainability of our social models, the consolidation of public finances in the context of the Stability and Growth Pact involves setting priorities and making hard choices: coordination at EU can help Member States in this task and help address spill-over effects. In addition, the composition and quality of government expenditure matters: budgetary consolidation programmes should prioritise 'growth-enhancing items' such as education and skills, R&D and innovation and investment in networks, e.g. high-speed internet, energy and transport interconnections – i.e. the key thematic areas of the Europe 2020 strategy.

The revenue side of the budget also matters and particular attention should also be given to the quality of the revenue/tax system. Where taxes may have to rise, this should, where possible, be done in conjunction with making the tax systems more "growth-friendly". For example, raising taxes on labour, as has occurred in the past at great costs to jobs, should be avoided. Rather Member States should seek to shift the tax burden from labour to energy and environmental taxes as part of a “greening” of taxation systems.

Fiscal consolidation and long-term financial sustainability will need to go hand in hand with important structural reforms, in particular of pension, health care, social protection and education systems. Public administration should use the situation as an opportunity to enhance efficiency and the quality of service. Public procurement policy must ensure the most efficient use of public funds and procurement markets must be kept open EU-wide.

4.4. Coordination within the Economic and Monetary Union

The common currency has acted as a valuable shield from exchange rate turbulences for those Member States whose currency is the euro. But the crisis has also revealed the extent of the interdependence between the economies within the euro area, namely in the financial domain, rendering spill-over effects more likely. Divergent growth patterns lead in some cases to the accumulation of unsustainable government debts which in turn puts strains on the single currency. The crisis has thus amplified some of the challenges faced by the euro area, e.g. the sustainability of public finances and potential growth, but also the destabilising role of imbalances and competitiveness divergences.

Overcoming these challenges in the euro area is of paramount importance, and urgent, in order to secure stability and sustained and employment creating growth. Addressing these challenges requires strengthened and closer policy co-ordination including:

– A framework for deeper and broader surveillance for euro area countries: in addition to strengthening fiscal discipline, macro-economic imbalances and competitiveness developments should be an integral part of economic surveillance, in particular with a view to facilitating a policy driven adjustment.

– A framework for addressing imminent threats for the financial stability of the euro area as a whole.

– Adequate external representation of the euro area in order to forcefully tackle global economic and financial challenges.

The Commission will make proposals to take these ideas forward.

5. DELIVERING RESULTS: STRONGER GOVERNANCE

To achieve transformational change, the Europe 2020 strategy will need more focus, clear goals and transparent benchmarks for assessing progress. This will require a strong governance framework that harnesses the instruments at its disposal to ensure timely and effective implementation.

5.1. Proposed architecture of Europe 2020

The strategy should be organised around a thematic approach and a more focused country surveillance. This builds on the strength of already existing coordination instruments. More specifically:

– **A thematic approach** would focus on the themes identified in Section 2, in particular the delivery of the 5 headline targets. The main instrument would be the Europe 2020 programme and its flagship initiatives, which require action at both EU and Member States level (see Section 2 and Annexes 1 and 2). The thematic approach reflects the EU dimension, shows clearly the interdependence of Member States economies, and allows greater selectivity on concrete initiatives which push the strategy forward and help achieve the EU and national headline targets.

– **Country reporting** would contribute to the achievement of Europe 2020 goals by helping Member States define and implement exit strategies, to restore macroeconomic stability, identify national bottlenecks and return their economies to sustainable growth and public finances. It would not only encompass fiscal policy, but also core macroeconomic issues related to growth and competitiveness (i.e. macro-imbalances). It would have to ensure an integrated approach to policy design and implementation, which is crucial to support the choices Member States will have to make, given the constraints on their public finances. A specific focus will be placed on the functioning of the euro area, and the interdependence between Member States.

To achieve this, the Europe 2020 and Stability and Growth Pact (SGP) reporting and evaluation will be done simultaneously to bring the means and the aims together, while keeping the instruments and procedures separate and maintaining the integrity of the SGP. This means proposing at the same time the annual stability or convergence programmes and streamlined reform programmes which each Member State will draw up to set out measures to report on progress towards their targets, as well as key structural reforms to address their bottlenecks to growth. Both these programmes, which should contain the necessary cross-references, should be submitted to the Commission and other Member States during the last

quarter of the year. The European Systemic Risk Board (ESRB) should report regularly on macro-financial risks: these reports will be an important contribution to the overall assessment. The Commission will assess these programmes and report on progress made with their implementation. Specific attention will be devoted to the challenges of the Economic and Monetary Union.

This would give the European Council all the information necessary to take decisions. Indeed, it would have an analysis of the economic and job situations, the overall budgetary picture, macro-financial conditions and progress on the thematic agendas per Member State, and would in addition review the overall state of the EU economy.

Integrated guidelines

The Europe 2020 strategy will be established institutionally in a small set of integrated 'Europe 2020' guidelines (integrating employment and broad economic policy guidelines), to replace the 24 existing guidelines. These new guidelines will reflect the decisions of the European Council and integrate agreed targets. Following the opinion of the European Parliament on the employment guidelines as foreseen by the Treaty, the guidelines should be politically endorsed by the June European Council before they are adopted by Council. Once adopted, they should remain largely stable until 2014 to ensure a focus on implementation.

Policy recommendations

Policy recommendations will be addressed to Member States both in the context of the country reporting as well as under the thematic approach of Europe 2020. For country surveillance, they will take the form of Opinions on stability/convergence programmes under Council Regulation (EC) No 1466/97 accompanied by recommendations under the Broad Economic Policy Guidelines (BEPGs, Article 121.2). The thematic part would include Employment recommendations (Article 148) and country recommendations on other selected thematic issues (for instance on business environment, innovation, functioning of the single market, energy/climate change etc.), both of which could also be addressed to the extent that they have macroeconomic implications through the recommendations under the BEPGs as indicated above. This set-up for the recommendations would also help ensure coherence between the macro/fiscal framework and the thematic agendas.

The recommendations under the country surveillance would address issues with significant macroeconomic and public finance implications, whereas the recommendations under the thematic approach would provide detailed advice on micro-economic and employment challenges. These recommendations would be sufficiently precise and normally provide a time-frame within which the Member State concerned is expected to act (e.g. two years). The Member State would then set out what action it would take to implement the recommendation. If a Member State, after the time-frame has expired, has not adequately responded to a policy recommendation of the Council or develops policies going against the advice, the Commission could issue a policy warning (Article 121.4).

5.2. Who does what?

Working together towards these objectives is essential. In our interconnected economies, growth and employment will only return if all Member States move in this direction, taking account of their specific circumstances. We need greater ownership. The European Council should provide overall guidance for the strategy, on the basis of Commission proposals built on one core principle: a clear EU value added. In this respect, the role of the European Parliament is particularly important. The contribution of stakeholders at national and regional

level and of the social partners needs also to be enhanced. An overview of the Europe 2020 policy cycle and timeline is included in Annex 3.

Full ownership by the European Council

Contrary to the present situation where the European Council is the last element in the decision-making process of the strategy, the European Council should steer the strategy as it is the body which ensures the integration of policies and manages the interdependence between Member States and the EU.

Whilst keeping a horizontal watching brief on the implementation of the Europe 2020 programme, the European Council could focus on specific themes (e.g. research and innovation, skills) at its future meetings, providing guidance and the necessary impulses.

Council of Ministers

The relevant council formations would work to implement the Europe 2020 programme and achieve the targets in the fields for which they are responsible. As part of the flagship initiatives, Member States will be invited to step up their exchange of policy information of good practices within the various Council formations.

European Commission

The European Commission will monitor annually the situation on the basis of a set of indicators showing overall progress towards the objective of smart, green and inclusive economy delivering high levels of employment, productivity and social cohesion.

It will issue a yearly report on the delivery of the Europe 2020 strategy focusing on progress towards meeting the agreed headline targets, and assess country reports and stability and convergence programmes. As part of this process, the Commission will present policy recommendations or warnings, make policy proposals to attain the objectives of the strategy and will present a specific assessment of progress achieved within the euro-area.

European Parliament

The European Parliament should play an important role in the strategy, not only in its capacity as co-legislator, but also as a driving force for mobilising citizens and their national parliaments. Parliament could, for instance, use the next meeting with national parliaments to discuss its contribution to Europe 2020 and jointly communicate views to the Spring European Council.

National, regional and local authorities

All national, regional and local authorities should implement the partnership, closely associating parliaments, as well as social partners and representatives of civil society, contributing to the elaboration of national reform programmes as well as to its implementation.

By establishing a permanent dialogue between various levels of government, the priorities of the Union are brought closer to citizens, strengthening the ownership needed to delivery the Europe 2020 strategy.

Stakeholders and civil society

Furthermore, the Economic and Social Committee as well as the Committee of Regions should also be more closely associated. Exchange of good practices, benchmarking and networking - as promoted by several Member States - has proven another useful tool to forge ownership and dynamism around the need for reform.

The success of the new strategy will therefore depend critically on the European Union's institutions, Member States and regions explaining clearly why reforms are necessary - and inevitable to maintain our quality of life and secure our social models -, where Europe and its Member States want to be by 2020, and what contribution they are looking for from citizens, businesses and their representative organisations. Recognising the need to take account of national circumstances and traditions, the Commission will propose a common communication tool box to this effect.

6. DECISIONS FOR THE EUROPEAN COUNCIL

The Commission proposes that the European Council, at its meeting in Spring 2010:

– agrees on the thematic priorities of the Europe 2020 strategy;

– sets the five headline targets as proposed in section 2 of this paper: on R&D investments, education, energy/climate change, employment rate, and reducing poverty, defining where Europe should be by 2020; invites the Member States in a dialogue with the European Commission to translate these EU targets into national targets for decisions at the June European Council, taking into account national circumstances and differing starting points;

– invites the Commission to come forward with proposals for the flagship initiatives, and requests the Council (and its formations) on this basis to take the necessary decisions to implement them;

– agrees to strengthen economic policy co-ordination to promote positive spill-over effects and help address the Union's challenges more effectively; to this end, it approves the combination of thematic and country assessments as proposed in this communication whilst strictly maintaining the integrity of the Pact; it will also give special attention to strengthening EMU;

– calls on all parties and stakeholders (e.g. national/regional parliaments, regional and/or local authorities, social partners and civil society, and last but not least the citizens of Europe) to help implement the strategy, working in partnership, by taking action in areas within their responsibility;

– requests the Commission to monitor progress and report annually to the Spring European Council, providing an overview of progress towards the targets, including international benchmarking, and the state of implementation of the flagship initiatives.

At its subsequent meetings:

– endorses the proposed integrated guidelines which constitutes its institutional underpinning following the opinion of the European Parliament;

– validates the national targets following a process of mutual verification to ensure consistency;

– discusses specific themes assessing where Europe stands and how progress can be accelerated. A first discussion on research and innovation could take place at its October meeting on the basis of a Commission contribution.

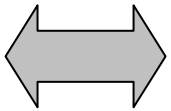
ANNEX 1 - EUROPE 2020: AN OVERVIEW

HEADLINE TARGETS

- Raise the employment rate of the population aged 20-64 from the current 69% to at least 75%.
- Achieve the target of investing 3% of GDP in R&D in particular by improving the conditions for R&D investment by the private sector, and develop a new indicator to track innovation.
- Reduce greenhouse gas emissions by at least 20% compared to 1990 levels or by 30% if the conditions are right, increase the share of renewable energy in our final energy consumption to 20%, and achieve a 20% increase in energy efficiency.
- Reduce the share of early school leavers to 10% from the current 15% and increase the share of the population aged 30-34 having completed tertiary education from 31% to at least 40%.
- Reduce the number of Europeans living below national poverty lines by 25%, lifting 20 million people out of poverty.

SMART GROWTH	SUSTAINABLE GROWTH	INCLUSIVE GROWTH
INNOVATION EU flagship initiative "**Innovation Union**" to improve framework conditions and access to finance for research and innovation so as to strengthen the innovation chain and boost levels of investment throughout the Union.	***CLIMATE, ENERGY AND MOBILITY*** EU flagship initiative "**Resource efficient Europe**" to help decouple economic growth from the use of resources, by decarbonising our economy, increasing the use of renewable sources, modernising our transport sector and promoting energy efficiency.	***EMPLOYMENT AND SKILLS*** EU flagship initiative "**An agenda for new skills and jobs**" to modernise labour markets by facilitating labour mobility and the development of skills throughout the lifecycle with a view to increase labour participation and better match labour supply and demand.
EDUCATION EU flagship initiative "**Youth on the move**" to enhance the performance of education systems and to reinforce the international attractiveness of Europe's higher education.		
DIGITAL SOCIETY EU flagship initiative "**A digital agenda for Europe**" to speed up the roll-out of high-speed internet and reap the benefits of a digital single market for households and firms.	***COMPETITIVENESS*** EU flagship initiative "**An industrial policy for the globalisation era**" to improve the business environment, especially for SMEs, and to support the development of a strong and sustainable industrial base able to compete globally.	***FIGHTING POVERTY*** EU flagship initiative "**European platform against poverty**" to ensure social and territorial cohesion such that the benefits of growth and jobs are widely shared and people experiencing poverty and social exclusion are enabled to live in dignity and take an active part in society.

ANNEX 2 - EUROPE 2020 ARCHITECTURE

Overall institutional structure	**Integrated guidelines** establishing scope of EU policy priorities, including **headline targets** for the EU to reach by 2020 and to be translated into national targets.		
Delivery	**Country reporting:** **Aim:** help Member States define and implement exit strategies to restore macroeconomic stability, identify national bottlenecks and return their economies to sustainable growth and public finances. **Approach:** enhanced assessment of main macro-economic challenges facing Member States taking account of spill-overs across Member States and policy areas. **Instruments:** reporting by the Member State through their stability and convergence programmes, followed by separate but synchronised recommendations on fiscal policy in the Stability and Convergence Programme Opinions and on macro-economic imbalances and growth bottlenecks under the Broad Economic Policy Guidelines (art. 121.2).		**Thematic approach:** **Aim:** deliver headline targets agreed at EU level combining concrete actions at EU and national levels. **Approach:** strategic role of the sectoral Council formations for monitoring and reviewing progress towards the agreed targets. **Instruments:** reporting by the Member States through streamlined national reform programmes including information on growth bottlenecks and progress towards the targets, followed by policy advice at EU level to be issued in the form of recommendations under the Broad Economic Policy Guidelines (art. 121.2) and the Employment Guidelines (art. 148).

ANNEX 3 - PROPOSED TIMELINE IN 2010 - 2012

2010

European Commission
Proposals for Europe 2020 overall approach

Spring European Council
Agreement on overall approach and choice of EU headline targets

European Commission
Proposals for Europe 2020 integrated guidelines

European Parliament
Debate on strategy and opinion on integrated guidelines

Council of Ministers
Refine key parameters (EU/national targets, flagship initiatives and integrated guidelines)

June European Council
Approval of Europe 2020 strategy, validation of EU and national targets, and endorsement of the integrated guidelines

European Commission
Operational guidance for next steps in Europe 2020

Autumn European Council
In-depth discussion on a selected thematic issue (e.g. R&D and innovation)

Member States
Stability and Convergence Programmes and National Reform Programmes

2011

European Commission
Annual Report to the European Spring Summit, Opinions on Stability and Convergence programmes and proposals for Recommendations

Council of Ministers
Review of Commission's proposals for Recommendations, ECOFIN for SGP

European Parliament
Plenary debate and adoption of a resolution

Spring European Council
Assessment of progress and strategic orientations

Member States, European Commission, Council
Follow-up on recommendations, implementation of reforms and reporting

2012

Same procedure with a specific focus on monitoring of progress

ofgem Making a positive difference for energy consumers

Decision on the cap and floor regime for the GB-Belgium interconnector project Nemo

Final decision

Publication date: 2 December 2014

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Overview:

This is our final decision on the design of the cap and floor regulatory regime for project Nemo – the proposed electricity interconnector between Great Britain and Belgium. This concludes our consultation process for Nemo and finalises our work on the cap and floor regime design. This regime will now be applied to project Nemo.

Context

Nemo is the project name for the development of a 1GW electricity interconnector between Zeebrugge in Belgium and Richborough, Kent in Great Britain (GB). The project developers are National Grid Nemo Link Ltd (a subsidiary of National Grid Plc, the GB transmission system operator (TSO)) and Elia (the Belgian TSO). Together they will jointly own and operate the interconnector.

We have developed the cap and floor regime for the Nemo interconnector over the past three years with the Belgian energy regulator – Commission de Régulation de l'Électricité et du Gaz (CREG). We have consulted formally on our proposed methodology and design (March 2013), the proposed methodology for interest during construction for Nemo (October 2013), Impact Assessment (December 2013) and cost assessment (April 2014). We have also engaged bilaterally with the project developers and CREG. This document sets out our final decision to award the cap and floor regime to Nemo, concluding this consultation process.

In May 2014, we published a minded-to consultation on the regulation of future electricity interconnector projects. Following this, in August 2014 we published our decision to roll out the cap and floor regulatory regime to new near-term electricity interconnectors. We received five applications from interconnector developers and we are currently assessing these projects.

Together with this decision for the Nemo interconnector, the cap and floor roll-out provides a framework for GB interconnector investment. Improving cross-border electricity infrastructure is fundamental to achieving GB and European energy goals, including the internal energy market.

Associated documents

Decision to roll out a cap and floor regime to near-term electricity interconnectors

Published: August 2014

The regulation of future electricity interconnection: Proposal to roll out a cap and floor regime to near-term projects

Published: May 2014

Cost assessment consultation for the proposed GB-Belgium interconnector, Nemo

Published: April 2014

Cap and Floor Regime for application to project Nemo: Impact Assessment

Published: December 2013

Offshore electricity transmission and interconnector policy: minded-to position on interest during construction (IDC)

Published: October 2013

Cap and Floor Regime for Regulated Electricity Interconnector Investment for application to project Nemo

Published: March 2013

Preliminary conclusions on the regulatory regime for project Nemo and future subsea electricity interconnector investment

Published: December 2011

Cap and floor regime for regulation of project Nemo and future subsea interconnectors

Published: June 2011

Open Letter on next steps from Ofgem's consultation on electricity interconnector policy

Published: September 2010

Electricity Interconnector Policy Consultation

Published: January 2010

Contents

Executive Summary

Electricity interconnectors can significantly benefit existing and future consumers. Our objective is to make sure that economic and efficient interconnection is delivered in a timely manner. Nemo is expected to be the first interconnector built under the cap and floor regulatory regime which we have developed with the Belgian energy regulator, CREG.

The regime

The cap and floor regulatory regime sets a framework for GB interconnector investment. This developer-led approach balances incentivising investment through a market-based approach, with appropriate risks and rewards for the project developers are appropriate.

The regime is designed to limit the downside of the investment by providing regulated revenue at the floor. Here, the developers will receive a top-up from GB and Belgian consumers if revenue falls below a predefined level. Consumers are protected through the cap, which ensures that high returns are passed back to network users in GB and Belgium. Following consultation on the details of this regime, we have now applied the regime to the GB-Belgium interconnector Nemo.

The cap and floor are constructed using a 'building block' approach. These building blocks include our assessment of efficient construction costs, a return on capital and an assessment of operating expenditure. For Nemo, we have calculated the cap and floor levels based on the final regime design and our assessment of costs to date. This generates an annual floor level of £50.4m and an annual cap level of £80m (2013/14 prices). These will be subject to final adjustments following our final assessment of costs after construction.

Impacts

We looked at the impacts of applying the cap and floor regime to Nemo as part of our Impact Assessment. We expect that over the lifetime of the project, Nemo will provide social welfare benefits resulting from trade between the GB and Belgian markets. We also anticipate wider positive impacts (such as a small increase in competition and enhanced security of supply) that will benefit consumers, in addition to those captured by trade benefits. The cap and floor regime is designed such that a project only goes ahead if revenues are expected to exceed the floor. The revenue projections presented by the developers suggest that consumer top-ups to the floor are unlikely.

Next steps

Our decision to apply the cap and floor to Nemo, along with the final regime design, has been agreed with CREG. CREG consulted on its decision in November 2014 and has now submitted its decision to the Belgian Parliament. We expect the Nemo developers to take their final investment decision in early 2015 with the interconnector in operation by the end of the decade.

This marks the end of the regime development for Nemo. We will now make the necessary changes to GB interconnector and transmission licences to reflect our decision. We will work with the developers and consult formally on these changes.

1. Introduction, background and next steps

Chapter Summary: This decision finalises a number of consultations on the cap and floor regime design for Nemo. These are summarised below along with the background to our decision.

This document

1.1. This document sets out Ofgem's[1] decision to award a cap and floor regulatory regime to project Nemo, concluding our work on the Nemo cap and floor regime design. This decision finalises a number of areas of the Nemo cap and floor regime following extensive consultation over the past few years.

1.2. First, this document sets out our final decision on the cap and floor regime design for Nemo. We consulted on the detail of the regime design in March 2013. The regime design is now finalised for Nemo.

1.3. Second, following our April 2014 consultation on the Nemo cost assessment, this document also incorporates our updated decision on efficient project costs for Nemo. Using this information, we set out in this document the cap and floor levels that will be set for the length of the regime in real GBP terms. We also set out the process we will follow to update limited aspects of the regime as part of the final cost adjustments closer to project operation – such as project operational costs and necessary adjustments to the capital costs.

1.4. Third, this consultation sets out our decision on the approach to Interest During Construction (IDC) for Nemo. This follows our consultation (on both interconnection and offshore transmission) in October 2013.

1.5. Finally, this document finalises our view of the impacts of project Nemo. This follows consultation on our draft Impact Assessment from February 2013. The amendments to our Impact Assessment are set out in Appendix 3.

[1] Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority, the regulator of the gas and electricity industries in Great Britain. The terms "Ofgem", "we" and "the Authority" are used interchangeably in this document.

Background

1.6. Interconnectors are the physical links which allow the transfer of electricity across borders.

1.7. Electricity interconnection can have many benefits:

- improving competition by creating larger effective markets, thereby making electricity market prices more efficient
- making supply more secure by increasing access to generation in periods of system or energy shortage
- making generation dispatch more efficient by providing access to the most efficient units over a larger area. This can also help to reduce the greenhouse gas emissions
- improving integration between variable generation and demand (for example, wind and solar renewable energy generation) by harnessing the diversity between output in different locations and improving access to the balancing services and other production flexibility needed to maintain security and quality of supply.

1.8. In GB, electricity interconnection can be brought forward under the exempt or regulated route.

1.9. Under the exempt route, interconnector developers identify opportunities to connect markets and to earn revenues from parties using the interconnector. Developers investing under this route apply for an exemption from aspects of European legislation to manage the risks of investment on this basis.

1.10. In 2010 we consulted on options for investing in regulated interconnectors in GB. We identified a clear need for a way to develop interconnectors in GB that would encourage appropriate and necessary investment.

1.11. In 2011 we consulted on the principles of the cap and floor approach for regulated interconnector investment in GB. This consultation highlighted a preference, taking into account views from stakeholders, for a cap and floor regulatory regime.

1.12. In March 2013 we consulted on the detailed regime design and methodology for setting the cap and floor for the Nemo interconnector. We followed this with the impact assessment consultation in December 2013.

1.13. Finally, in April 2014 we published a short consultation on the initial cost assessment for project Nemo. Following this consultation we have undertaken additional analysis to update our cost assessment for Nemo which has been used to set the cap and floor (this will be updated later and further detail is provided below).

Next steps

1.14. The regime design for Nemo is a joint regulatory regime between Ofgem and CREG that has been agreed following numerous consultations. CREG have now consulted on the tariff methodology for Nemo which will finalise the regime in Belgium.[2]

1.15. Ofgem is currently drafting the licence changes that will bring this decision into effect in GB. This will involve additions/changes to the Nemo interconnector licence and National Grid Electricity Transmission's (NGET) licence. We expect to issue an informal consultation on these licence changes in early 2015, ahead of the statutory consultation.

[2] CREG's consultation is on their website at this link: http://www.creg.be/fr/opinione.html

2. Regime overview for Nemo

Chapter Summary: This chapter provides an overview of the cap and floor regime design for project Nemo.

High level regime design

2.1. The cap and floor regime is a cost-based regime that will be set for 25 years. We will set the levels of the cap and floor ex-ante and they will remain fixed for the duration of the regime. This is so that investors have certainty about the regulatory framework applied to the project.

2.2. Once the interconnector becomes operational, the cap and floor regime will start. Every five years we will assess interconnector revenues (net of any market related costs[3]) over the period against the cap and floor levels to determine if the cap or floor is triggered.[4] Any revenue earned above the cap would be returned to the National Electricity Transmission System Operator (NETSO) in GB and Belgium on a 50/50 basis. The NETSOs would then reduce the network charges for network users in both countries. If revenue falls below the floor then the interconnector owners would be compensated by the NETSO. They will recover the costs through network charges. National Grid performs the NETSO role in GB and Elia, the Belgian TSO, in Belgium.

2.3. Each five-year period will be considered separately. Cap and floor adjustments in one period will not affect the adjustments for future periods, and total revenue earned in one period will not be taken into account in future periods.

High level regime design	
Regime length	25 years
Cap and floor levels	Levels are set at the start of the regime and remain fixed in real terms for 25 years from the start of operation. Based on applying mechanistic parameters to efficient costs: a cost of debt benchmark will be applied to costs to give the floor, and an equity return benchmark to give the cap.

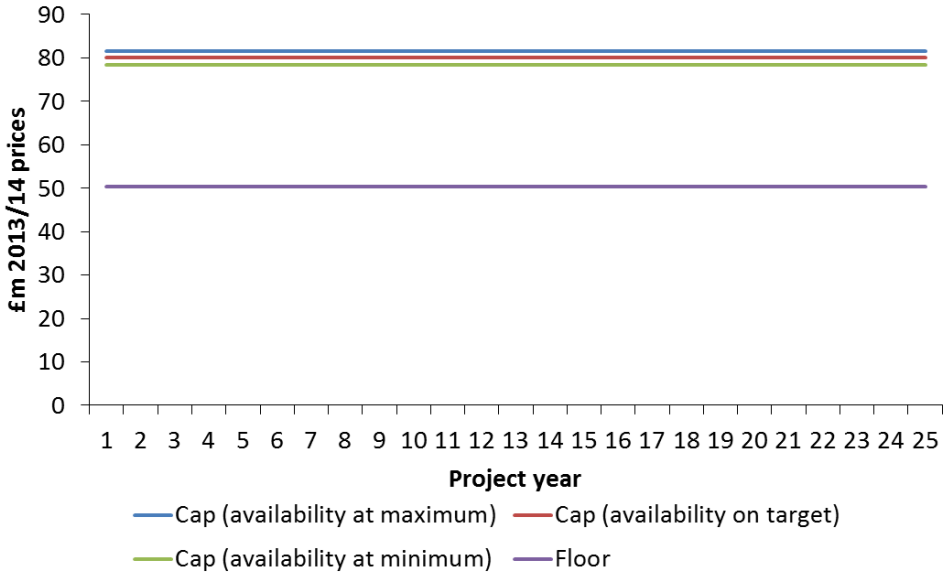
[3] Market related costs are explained in full in paragraph 4.17.
[4] Interconnector owners generate revenue (congestion revenue) by auctioning interconnector capacity. As long as there is a price difference between the two interconnected markets, there will be demand for the capacity and a revenue stream will be generated.

Assessment period (assessing whether IC revenues are above/below the cap/floor)	Every five years, with within-period adjustments if needed and justified by the developer. Within-period adjustments will let developers recover revenue during the assessment period if revenue is below the floor (or above the cap) but will still be subject to true-up at the end of the five-year assessment period.[5]
Mechanism	If revenue is between the cap and floor, no adjustment is made. Revenue above the cap is returned to consumers and any shortfall of revenue below the floor requires payment from network users (via network charges).

The cap and floor levels for Nemo

2.4. For Nemo we now have sufficient information to set the cap and floor levels. The floor is £50.4m and the cap is £80m per year (2013/14 prices) – these levels are shown in figure 2.1 below.[6] These levels are set based on the regime design and latest project cost information specified in this decision document. These levels will be updated when final project costs are known and will then be set for the length of the regime.

Figure 2.1: Cap and floor levels for project Nemo



[5] At the end of the five year assessment period we will look at whether the cap and floor have been breached and calculate whether payments to or from Nemo should take place.
[6] Note that these levels include non-assessed values for risk, insurance and opex. These will be subject to assessment in 2018/2019 as explained in this decision. There will also be minor change to the levels as we update the relevant indices at financial close.

Summary of regime design

2.5. The design of the cap and floor regime is built up of three main themes: costs, revenues and returns. Our decisions across these areas are summarised below.

Cost-related decisions	
Additions to the RAV used in the annuitisation	Approved capital expenditure (capex) will be remunerated through annuitised depreciation and return allowances generated from a Regulatory Asset Value (RAV). This process results in a flat profile of the cap and floor. There will be a review of some capex elements before construction, and a final capex adjustment to look at changes in costs and remaining cost items not yet assessed. Other costs also feed into the cap and floor through the RAV annuitisation process. Development costs and spares are added to the RAV. IDC on the RAV balance before the start of operations is added in each pre-operational year, and financial transaction costs (the costs of raising finance) are added to the RAV in the first year of operation.
Interest During Construction	IDC will be treated as a cost incurred in the construction period which is capitalised and feeds into the cap and floor levels.
Operating costs (opex)	An ex-ante assessment of opex will be undertaken ahead of operation – and this will be set for the length of the regime with a possible re-assessment after 10 years. For non-controllable costs, we will set a baseline allowance as part of the opex assessment. Where these costs change during the regime due to external factors, we will make an assessment and where appropriate, pass-through the difference to Nemo.
Tax	Tax will be annuitised and included in the cap and floor levels to give a flat profile during the regime. It is based on UK tax arrangements for the purposes of this decision but will be updated to include both UK and Belgian tax arrangements ahead of financial close. There is no tax-trigger mechanism for tax changes (ie the tax will be set for the length of the regime).
Financial transaction costs (ie costs of raising finance)	An allowance of 2.5% on notional gearing (ie proportion of debt used to finance the project) for debt transaction costs and 5% on notional equity (ie proportion of equity used to finance the project). Here we assume 50% notional gearing during operation with the gearing assumption from the IDC calculation used during construction.

2.6. Interconnector congestion revenue will be assessed against the cap and floor every five years during the regime. Revenue-related aspects of the regime design are summarised below.

Revenue-related decisions	
Profile	The cap and floor will be flat in real terms over the 25 years. The separate cap and floor returns will be used to calculate the annuities for the cap and floor levels.
Indexation	50% linked to UK RPI, 50% linked to exchange rate-adjusted Belgian CPI inflation.
Assessment periods	Five years, on a discrete basis (each five-year period is considered in isolation). At the end of the five-year period, cumulative revenue will be assessed against the cap and floor.
Within-period adjustments	There is the possibility for payment within the assessment period. This payment is subject to a joint NRAs[7] decision based on justification from the project developer (and providing revenue is below the floor/above the cap). It will be considered on a cumulative basis.[8] If at the end of the assessment period the cap and floor are not breached, then they would need to be returned on an NPV-neutral basis.[9]
Interconnector availability (cap and floor)	An adjustment of +/-2% of cap revenue is available against a target availability of 97%. Developers will lose automatic eligibility for floor payments for each individual year if availability is below an 80% threshold.
Financial assistance & refinancing	Any grants should be netted off the investment value incorporated into the cap and floor levels. Refinancing gains and/or losses will be retained by the developers.
Income adjusting events	Costs relating to income adjusting events will be passed through regardless of whether revenue is at the cap or floor, subject to justification by the developers and subject to the costs exceeding the threshold of 5% of the annual floor revenue. Changes to tax treatment are excluded. Income adjusting events shall be broadly defined as in the offshore transmission owner (OFTO) regime (with relevant amendments to reflect that interconnectors are not signatories to the System Operator – Transmission Owner Code (STC)).[10]

2.7. A return on investment is provided at both the cap and floor. The return benchmarks are separate for the cap and floor returns to reflect the different risks at the cap and floor. As revenue will not be generated until the project is operational, interest is capitalised during the construction period and included in the RAV.

[7] "NRA" stands for National Regulatory Authority and means Ofgem or CREG. "NRAs" stands for National Regulatory Authorities and means Ofgem and CREG.
[8] We will consider the financing requirement up to the year in question from the start of the relevant five year assessment period.
[9] We will ensure that the timing of payments is taken into account, both within and at the end of the assessment period.
[10] See paragraph 4.54 for full details.

Approach to returns	
Floor benchmark	Based on a cost of debt benchmark of A/BBB (iBoxx) applied to 100% of the RAV. There is a 50/50 weighting of GB/Belgium debt costs.
Cap benchmark	This will be based on the Capital Asset Pricing Model (CAPM). We will use the risk-free rate and equity risk premium as determined by our current methodology. The equity beta used is based on our assessment of risk at the cap (we consider this to be similar to the risk faced by an independent generator[11]). For the Nemo GB calculations we will use a risk-free rate of 1.6%, an equity beta of 1.25 with the equity risk premium as determined by Ofgem's current methodology.[12] There will be a 50/50 weighting of GB/Belgium parameters.
Interest During Construction methodology	This will be based on the approach to IDC as consulted on in October 2013 (calculations will be updated). Two uplifts are applied to compensate for project development risk (0.54%) and construction related cost assessment process uncertainty (0.91%). This results in IDC of 5.76% (real vanilla).

[11] We have based this assessment on the re-geared equity beta of Drax as an independent generator.
[12] For Nemo, we will use a GB equity risk premium of 5.2%. The Belgian risk-free rate used is 2.2% and the Belgian equity risk premium of 3.5%.

3. Setting the cap and floor for Nemo

Chapter summary: We have updated our view of efficient costs for Nemo for the current stage of the Nemo procurement process. We have used these costs to generate the cap and floor levels for Nemo.

3.1. Under the cap and floor regime, assessed efficient costs are used as an input to set the cap and floor levels. This chapter summarises the updated cost information we have received from Nemo through consultation. We explain the cost assessment approach we have taken to date and the costs items that will be assessed later on in the process. This includes our approach to the final opex assessment and final capex adjustment. We then set out our updated view on efficient costs for Nemo. This cost information has been used to set the cap and floor levels for Nemo.

Updated cost information

3.2. In April 2014 we consulted on the efficient costs for project Nemo. This assessment was based on an independent report from BPI consultants, which concluded in November 2013. We received 9 responses to this consultation of which 3 are confidential.[13] Through the consultation we also received confidential updated cost information from the Nemo developers.

3.3. This cost information provides additional justification for a number of cost items and in particular the progress of the ongoing procurement exercise for the major capital components. We have taken this information into account in this updated assessment. This level of justification and detail was not available at the time of our previous assessment and consultation. This has resulted in an increase in the levels of costs that we consider efficient at this stage. We have explained this updated assessment below along with the changes we have made to the Nemo cost assessment process following consultation. Much of the information that we have assessed is confidential and commercially sensitive. We have presented our high level analysis in this document.

Cost assessment approach for Nemo

3.4. Following our April 2014 consultation we have decided to amend our approach to the Nemo cost assessment. In particular, we consider it appropriate to provide the project developers with certainty on some costs now, rather than waiting for the final assessment post-construction. We have therefore updated our assessment of the project costs only where sufficient cost information is available at this stage to ensure we can make an informed decision – for example for development costs

[13] We have summarised the responses to this consultation in Appendix 2. Non-confidential responses will be available on our website shortly.

already incurred and HVDC contract costs. For other costs that have either not yet been incurred, such as opex, or where uncertainty still exists, such as risk and insurance allowances, we will undertake a full assessment ahead of operation.[14] These items do not form part of this assessment.

3.5. Setting a proportion of costs now provides more certainty for the project developers on the costs that will be incorporated into the cap and floor and reduces the scope of the final assessments. The final assessment for project Nemo will be split into two sections – the final opex assessment and final capex adjustment. We intend to run these assessments at the same time.

Final opex assessment

3.6. As proposed in our April 2014 consultation, we will set opex before Nemo starts commercial operation. We will undertake a detailed assessment of planned opex which will be set for the length of the regime. We expect to undertake this assessment at the same time as assessment of the final capex adjustments. The ex-ante opex assessment will be based on benchmarks of the cost of operating comparable interconnector projects in Europe. In order to ensure transparency, only verifiable information will be taken into account by the NRAs in the assessment.

3.7. Following the consultation, we have decided to incorporate a discretionary opex re-assessment 10 years into the regime. We expect this assessment to consider whether the original estimates are appropriate for the remainder of the regime. This will include situations where costs are both higher and lower than anticipated in the ex-ante assessment and can be initiated by Ofgem or the project developers. The full details of this re-assessment will be set out in the Nemo licence which we will consult on in early 2015.

Final capex adjustments

3.8. As set out in our April 2014 consultation, we intend to undertake the final capex adjustment when project construction is 95 per cent complete. The Nemo developers should inform Ofgem 6 months ahead of this stage of construction.

3.9. At this stage, we will also require the Nemo developers to identify any events during construction that changed the scope of the required works. Where these events are justified, were mitigated efficiently, and are outside of the control of the developers, for example unfavourable sea bed conditions, we will take these into account in the final capex adjustment. At this stage we will also assess the competitiveness of the final stages of the tender process and any changes to the final contract costs where these differ from the costs already considered as part of this assessment.

[14] We will also assess commissioning costs and remediation costs at that stage.

3.10. Finally, as part of the final capex adjustment, we will ask the Nemo developers to re-submit a spend profile for the construction phase of the project. This profile is required to ensure that the Nemo financial model is set accurately and will allow a final calculation of IDC that should be incorporated into the regime.[15] At this stage the cap and floor levels will be set for the length of the regime. We expect this to take place in 2018/2019.

Current cost estimates for Nemo

3.11. We asked our consultants, BPI, to assess the updated project cost information provided by the project developers and update the assessment of efficient costs.[16] As this assessment has included information from the current live tender process (Nemo developers are still engaged in commercial negotiations with contractors) we have not included sensitive information in this document to ensure the competitiveness of the tender process.

3.12. Using this information, we have updated our view of the efficient costs for Nemo. The table below provides a breakdown of the reductions made to Nemo's costs.

Table 3.1: Ofgem's updated cost assessment for Nemo

Assessment*	Cost category	Cost reduction
Pre-construction	HVDC contract**	-1%
	Project costs	-43%
	Mid-life replacement	-64%
	Decommissioning	-66%
	Development	2%
	Misc costs	0%
	Subtotal	**-8%**
Post-construction	Opex	0%
	Insurance	0%
	Risk	0%
	Commissioning	0%
	Remediation	0%
	Subtotal	0%
	Total	**-4%**

*Our pre-construction assessment is set out in this document. Our post-construction assessment will take place in 2018/19 and will include the final opex assessment and final capex adjustment.
**The reduction here is a result of differences in exchange rate assumptions.

[15] We note that the methodology for calculating IDC will not change following this decision. Any change to overall IDC will be driven by the timing of expenditure during construction.
[16] BPI undertook a cost assessment report for the NRAs that informed the April 2014 consultation position. This position was updated in summer 2014 to reflect the additional information available.

3.13. Overall, our proposed efficient costs for Nemo at this stage, taking into account all costs (those assessed and not assessed at this stage) results in a total project cost of €1,238m.[17] This is 4 per cent lower than Nemo's estimate. This total cost has been used to generate the cap and floor levels for this decision.

3.14. Following our April 2014 consultation, we do not intend to change our assessment that Voltage-Sourced Converter (VSC) technology is the efficient choice for Nemo. The analysis undertaken by BPI as set out in this document therefore assumes VSC technology as the efficient technology choice.

HVDC contract

3.15. The procurement process for the major capital components for Nemo is still ongoing. We have undertaken a broad assessment of the Nemo developers' approach to procurement and find that the process and outturn contract value appear reasonable. Based on the commercial pressures on Nemo through procurement, we expect the contract costs to be efficient. We find that the current expected costs are within our benchmark range expected for this type of project.

3.16. As part of the final capex adjustment exercise post-construction (expected in 2018/19), we will look at the final contract costs following completion of the tender exercise. Subject to satisfaction that the final stages of the process (ie between now and the contract award)[18] have been run competitively, and subject to the final contract costs not being significantly different to current expectations, we intend to use the final pre-construction agreed contract price as the efficient project costs for Nemo. This means that we will not re-assess the contract unless costs are significantly different.

Project (management) costs

3.17. BPI's analysis suggested that Nemo's project cost estimates were high with little justification in some areas. BPI undertook a bottom-up assessment of reasonable costs for this type of project. We have also compared recent projects and public studies to arrive at our own view for project management costs. This is 43 per cent lower than the Nemo estimate.

Mid-life replacement

3.18. Nemo requested funding for replacements during the regulatory regime for control and protection, and auxiliary power systems. BPI disagreed that the assets, being constructed to a 40-year lifetime specification, will need replacing at the mid-

[17] This is £1,049m using the exchange rate of 1.18.
[18] As part of our post-construction assessment, we will ask Nemo to submit information on the outcome of the tender process. This should include information, as directed by Ofgem, on the process taken and the outturn value of the contract.

operational period (ie around 16 years as proposed by Nemo). BPI agrees, however, that the IT systems are likely to need replacing, and has made an allowance for this. Overall, this is a 64 per cent reduction from the Nemo estimate.

Decommissioning

3.19. Nemo requested a decommissioning allowance for the onshore converters and the subsea cables at the end of the asset life. BPI has recommended an efficient allowance for decommissioning of the onshore works (including the HVDC converter stations). BPI suggested that removing the subsea cable making up 66 per cent of Nemo's proposed decommissioning costs, may have more severe environmental impacts than leaving the cable on the sea-bed. This is aligned with existing legislation which states that the competent authorities at the time of decommissioning will decide if the assets should be removed in full. As the current legislation is not definitive that the removal of the subsea cable at the end of the asset life will be the right course of action, we therefore only allow the onshore costs at this stage.

3.20. To reflect this uncertainty in future legislation, we will treat decommissioning costs as non-controllable in the regime (further detail is set out in paragraph 4.14). As such, the assessment undertaken here is final unless there is a change to legislation that requires a different approach at the time of decommissioning. Should future legislation require the subsea cable to be removed at the end of the asset life, we will assess the efficient costs of this action (subject to a cost submission and justification from Nemo) and provide an allowance to Nemo.

Other costs

3.21. The Miscellaneous cost category includes trading system costs, land purchase costs and miscellaneous costs. This total allowance requested by Nemo as part of our latest assessment is significantly less than previous Nemo estimates as costs that were treated as miscellaneous have now been allocated to actual cost items. BPI's assessment confirms that the costs proposed and assumptions made by Nemo here are appropriate based on the latest information. No reductions have been made.

3.22. For development costs, Nemo provided a detailed breakdown of the costs incurred through development. This information is additional to that available at the time of the previous assessment by BPI. This information provides further detail on incurred spend and represents a significant reduction compared to the previous assessment. We find these costs well justified and no reductions have been made.

Opex

3.23. For opex, we have used the indicative estimates provided by the Nemo developers. We will conduct a full efficiency assessment of opex as part of the final opex assessment. We use Nemo's estimates as purely indicative for the purposes of

this decision. Following our assessment, the final allowance for opex may be different to that included in the cap and floor calculation in this document.

3.24. We recognise that these opex estimates in particular are significantly higher than those presented in our April 2014 cost assessment consultation – we note that this does not imply acceptance of this higher level. As the project moves closer to operation, we expect that a much greater level of detail will be made available to Ofgem, including full justification and benchmarking with comparable projects. This will inform our full opex assessment post-construction.

Risk and insurance

3.25. At this stage of the cost assessment process, we have not undertaken a full assessment of project risk or insurance costs. For interconnectors under the cap and floor regime, there is not the same link between expenditure and revenue as there is for other regulated transmission assets. Revenue is determined by the market valuation of capacity therefore the developer returns are maximised by minimising costs. Our analysis undertaken as part of our Impact Assessment suggests that Nemo's revenue will be above the floor during operation.

3.26. We consider that there are appropriate incentives on the developers to mitigate risks that arise during construction. We consider it appropriate to look at risks post-construction to remove uncertainty developers are facing at this stage. We will only adjust the allowed costs where the developers have acted efficiently, taken reasonable mitigation actions and could not have reasonably foreseen the event (or if the risk is already included within the main contract).

3.27. We will therefore conduct a full assessment of the insurance costs and allocation of project risk as part of the final capex adjustment. At that stage we expect to have sufficient information to assess the cost impacts of any events that occur during construction. We will also require full information on the allocation of risk between Nemo and its contractors and expect this to be set out in the agreed HVDC contract. For insurance costs, due to the uncertainties in the insurance market and prices for this type of project, we consider it appropriate to base our assessment on actual costs rather than uncertain estimates.

3.28. For the purposes of this decision, we have used the project developers' expected risk and insurance allowances to calculate the cap and floor levels. We note that these values are indicative only at this stage and have not been assessed. Following our assessment, the final allowances for risk and insurance may be different to those included in the cap and floor calculation in this document.

Commissioning power

3.29. Nemo has requested an allowance for commissioning power, estimated based on the costs of the power required to test (for commissioning) the HVDC cable and converter stations. Our view is that this power would be purchased from one

market, and sold into the other. This would expose Nemo only to the price differential, rather than total cost. Whilst there is a risk of non-delivery of power during testing, Nemo have not fully acknowledged, or been able to estimate the net impact from, selling power back to the markets.

3.30. We expect the final HVDC contract to provide further clarity on the commissioning costs that are not included in the contract scope. Given this, and the uncertainties that make this cost area hard to asses at this stage, we will assess this cost in full as part of the final capex adjustment. Whilst the commissioning costs won't be incurred until construction is complete, at the time of the 95 per cent capex adjustment assessment stage we expect the developers to have sufficient information to allow us to make our assessment.

3.31. For the purposes of this decision, we have used the project developers' expected commissioning costs to calculate the cap and floor levels. We note that this value is indicative only at this stage. Following our assessment, the final allowance for commissioning may be different to that included in the cap and floor calculation in this document.

Remediation costs

3.32. Remediation costs did not form part of our previous cost assessment. Nemo have indicated that some remediation work may be required at the converter sites at Richborough and Zeebrugge. Nemo have provided an estimate of these costs. We will assess the cost of remediation as part of the final capex adjustment. At that stage we will know the full scope of the HVDC contract, including the remediation works included, and will be able to undertake a full assessment of the costs Nemo face.

3.33. For the purposes of this decision, we have used the project developers' expected remediation costs to calculate the cap and floor levels. We note that this value is indicative only at this stage and has not been assessed. Following our assessment, the final allowance for remediation may be different to that included in the cap and floor calculation in this document.

Regime financial parameters

3.34. The following chapter sets out the final decision on the policy design of the cap and floor regime for Nemo. This includes a number of financial parameters that are used to calculate the cap and floor levels. As part of this decision we are deciding on a number of these parameters for Nemo, including aspects of IDC and project returns.

3.35. For the calculation of the real cap and floor levels, the only parameters that we will leave open at this stage are the cost of debt indices and related inflation figures used at the floor and as part of the IDC calculation. Here we will use the relevant value from the iBoxx index (as explained in the next chapter) for the date of

the final investment decision (financial close).[19] This will ensure that the cost of debt used in the financial model reflects the actual market costs observed at the time debt is raised. We set out in paragraph 4.24 and Appendix 1 that the tax rate applied at the cap and floor will also be updated at financial close – this is to incorporate a blended UK and Belgian rate.

3.36. The project developers should inform the NRAs when they intend to reach final investment decision (financial close).

[19] As set out in chapter 5, we will use a 20-day average of the iBoxx A and BBB indices of non-financial corporate debt with ten or more years to maturity.

4. Regime design: final detailed positions

Chapter summary: We provide a detailed explanation of the Nemo regime design. This is split into 3 sections – cost-related design parameters, revenue-related design parameters and incentives.

4.1. This chapter provides further detail on the regime design for Nemo. Appendix 2 provides background to our decision, the position set out in our March 2013 consultation and a summary of consultation responses. Unless otherwise stated, we have maintained our position and rationale as set out in the March 2013 consultation. We have explained areas where our position has changed.

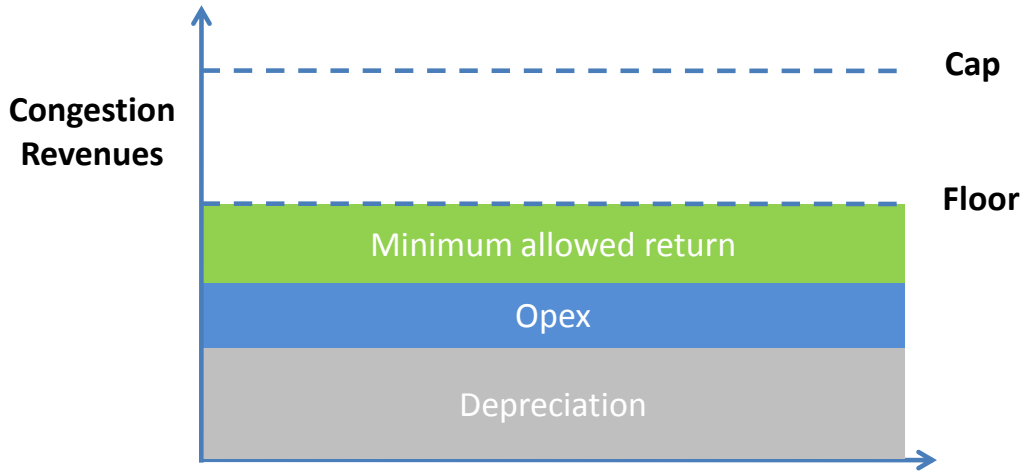
Cost-related design parameters

4.2. In March 2013 we proposed to set the cap and floor levels based on costs using a RAV-based model. We will follow this approach for the regime for Nemo. The cap and floor levels will be built up based on the following inputs, which are also explained in Figure 4.1:

- Depreciation of the capital, to allow return of capital invested
- Financing costs, to allow a return on capital invested
- Operating expenditure.

4.3. In practice, this will be an annuitised RAV model building up allowances in a similar way to a conventional RAV approach. We consider cost components added to this as 'RAV additions'. The RAV in the cap and floor regime is however annuitised to generate the cap and floor levels which are constant in real terms.

Figure 4.1: High-level components of the cap and floor



4.4. The following areas are covered in this section:

- Components of the cap and floor (RAV additions)
- Interest during construction (IDC)
- Operating expenditure (opex) and market-related costs
- Taxation
- Transaction costs.

Components of the cap and floor

4.5. The cap and floor regime is designed on a RAV-based model. Alongside capex, the following variables will also be incorporated in the RAV and will generate depreciation and return allowances during the operational period:

- Replacement capex
- Development costs
- Spares
- Modelled IDC
- Transaction costs.

4.6. In the March 2013 consultation, we did not make it explicit that development costs and spares were included. These costs will be incorporated into the RAV in the same way as capex. The NRAs must be satisfied that spares have not been counted twice in the opex allowance and that unused spares are taken off the decommissioning cost at the end of the project. This is dealt with through the cost assessment.

4.7. Table 4.2 below shows the items added to the RAV, indicating whether they will be added to the RAV during the pre-operational (construction) period or during the operational period. During the pre-operational period, there is no potential to receive income through the regime, so any IDC generated pre-operation is capitalised. It is only once operation starts that this can be recovered through depreciation and return.

Table 4.2: Additions to the RAV used in the annuity calculation

Pre-operational RAV addition	Operational RAV addition
Capex	Transaction costs (in first year of operations)
Development costs	Replacement capex
Spares	
IDC	

4.8. RAV additions will be modelled on an annual basis. In this chapter, we explain the calculation of the cap and floor levels. The regime will be based on a reporting year starting on the day on which commercial operation starts. This may result in the

years of the regime being based on periods that do not align with financial years, calendar years or even start on the first day of a month. Cost reporting and assessment will be performed in such a way that they can be adjusted to reflect changes in the date on which the regime years start. The reporting requirements and calculation of revenue against the cap and floor levels during the regime will be aligned with wider charging and reporting requirements in the interconnector licence.

4.9. The RAV is modelled in a way that will ensure that there is no terminal value for the asset at the end of the operational period. Including a depreciation term therefore allows for the return of capital invested both at the floor and at the cap. Pre-annuitisation, depreciation during the operational period will be modelled on a straight-line basis over the remaining life of the project such that all additions are fully recovered in real terms by the end of the project life.[20]

Interest during construction

4.10. IDC is used to account for the delay between when costs are incurred in the construction phase and when the developer is remunerated for these (ie the commercial operation of the link). Following consultation on IDC at the end of 2013[21], our view remains that there is a cost of financing the construction of the interconnection which is not taken into account in the capex review.

4.11. We will treat IDC as a cost incurred in the construction process. This cost will be reflected in the cap and floor, modelled annually (in line with the treatment of other components of the cap and floor levels).

4.12. The pre-operational RAV, which is the base on which IDC is earned, will be calculated using the approved RAV additions following the capex review. This will be re-assessed following the final capex adjustments. It is a function of the level of pre-operational expenditure and of timing, with compounding of IDC for expenditure occurring in earlier years. To ensure that there are no incentives to delay expenditure and that IDC does not reflect delays within the control of the developer, the final capex adjustment will consider the timing of expenditure, not just its level.

[20] A modification to the way in which the return calculation will be made means that the cap and floor levels are insensitive to the exact depreciation profile chosen. This feature occurs because the rate of return used to calculate returns at the cap (floor) and the discount rate used to calculate the annuity at the cap (floor) are now aligned, and the return calculation is now on a NPV-neutral basis as in RIIO models. These allow the timing of depreciation to be NPV-neutral (when assessed using the respective cap or floor rate of return as the discount rate) regardless of when they occur. Therefore the depreciation profile has no impact on the cap and floor levels.

[21] Our consultation on IDC for Nemo can be found on our website here: Offshore electricity transmission and interconnector policy: minded-to position on interest during construction (IDC)

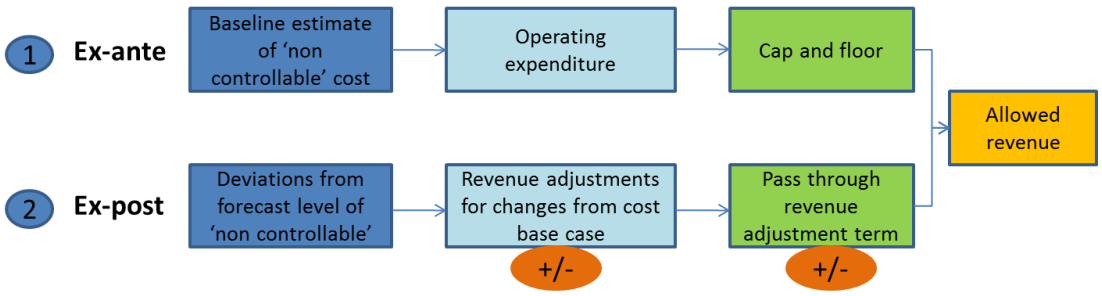
Operating expenditure and market-related costs

4.13. We will assess three distinct categories of risk-sharing for operating expenditure:

- Non-controllable costs will be subject to a full pass-through. This means that these costs will form part of the cap and floor but the developers will not be exposed to deviations in these costs. They will be passed on to network users directly through network charges.
- Market-related costs will be subject to a partial pass-through. These will not be included in the cap and floor levels and will be taken off total revenue before assessing against the cap and floor.
- Other opex (such as the general operating costs of running the interconnector) will be subject to an ex-ante cost assessment – these costs will feed directly into the cap and floor.

4.14. The baseline estimate of **non-controllable costs** will be determined ex-ante and included as operating expenditure in the cap and floor. Our approach to non-controllable costs is based on the 'Allowed Pass-through Items' as defined in the OFTO licence.[22] Deviations from the baseline allowance – whether positive or negative and where the reason for justification is recognised in the licence – will be passed through to network users (provided the operator has used all necessary measures to mitigate these). Where pass-through costs are justified, these will be accumulated during the assessment period and recovered at the end of the five-year assessment period. These adjustments will occur regardless of whether revenues are between the cap and floor or not as shown in Figure 4.3 below.

Figure 4.3: Treatment of 'non-controllable' costs in a cap and floor regime



[22] The assumptions behind this baseline cost estimate may change due to legislation changes or requirements by the relevant authorities (eg The Crown Estate and the Marine Management Office in GB). In this case, the increase/decrease in the economic and efficient costs is passed through outside the cap and floor, ie it is a non-controllable cost. Otherwise, developers are exposed to the full cost upside/downside. An example of this term in an existing OFTO licence can be found on the Electronic Public Register here.

4.15. The following costs will be included as non-controllable costs:

- Crown Estate Lease costs/fees
- Property rates/taxes
- Licence fees
- Grid costs or network rates
- Costs relating to the Marine and Coastal Act 2009
- Decommissioning costs.[23]

4.16. In the event that the 'revenue adjustment for changes from cost base case' term is positive, the developer must show that it has done all it could to limit the increase for each cost item with a positive deviation (outturn > baseline).

4.17. Costs defined as **market-related** will be subject to a partial pass-through. Under this approach, we refer to gross congestion revenue as the actual revenue earned by the project developer before market-related costs are taken into account. Net congestion revenue is the gross congestion revenue minus the market-related costs. It is this net revenue figure that will be assessed against cap and floor levels.

4.18. In practice, this means that developers will be subject to risk from such costs only in the event that revenue is between the cap and floor, and would no longer be subject to risk once revenue falls below the floor or rises above the cap.

4.19. Consider an example, where the floor allowance is £5m per year. If the interconnector earns £10m in revenue and pays £1m in market-related costs, its net revenue is £9m and it is not eligible for any regulated payment. If however, the interconnector earns only £5m in revenue and pays £1m in market-related costs, then its net revenue of £4m would be below the floor. It would therefore be eligible for a floor payment of £1m.

4.20. We will treat firmness as a market-related cost, partially exposing developers to this cost.[24] In addition, error accounting cost and trip contract costs will be treated as market-related and deducted from gross congestion revenue.[25]

[23] Decommissioning costs are those relating to sufficiently removing (or other actions) assets at the end of the operational life in line with current legislation. We note that decommissioning costs should be considered net of any scrap value of the assets.
[24] Firmness costs are the costs of compensating parties who have purchased interconnector capacity that cannot be provided.
[25] Under current UK electricity trading arrangements, for implicit auctions only, Nemo would act as the Interconnector Error Accountant (IEA) for the link and as such would settle any energy imbalance due to scheduling errors and unplanned outages. The cost of these actions will be treated as non-controllable. Trip contract costs are an example of firmness mitigation costs. This could be in the form of a contract with a third party to deliver/off-take power in the market at either side of the interconnector in situations where the link is down.

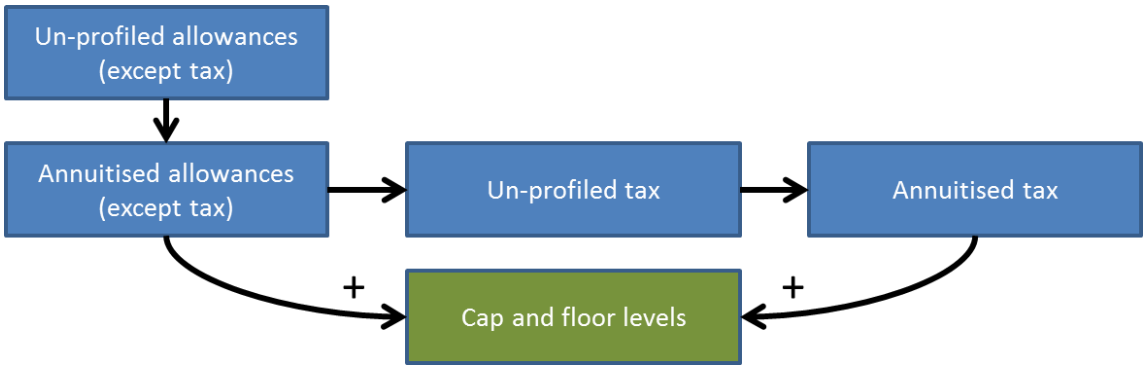
4.21. Opex that is defined as neither non-controllable nor market-related would attract no special treatment. For Nemo, these costs will be finalised 12 months before the start of operation. Once the opex forecasts are finalised, deviations from the forecast level (positive or negative) are at the developer's risk. However, we will include the option to review opex after ten years as a limited reopener.

Taxation

4.22. We will treat Nemo as a standalone entity for the calculation of tax at the cap and floor. We will calculate tax at both the cap and at the floor in the same way, as if they were calculated for two separate entities.

4.23. An un-profiled tax allowance will be calculated based on annuitised revenues excluding tax. This un-profiled allowance will then be annuitised itself to give the cap and floor levels indexed and applied in practice.[26] This process is illustrated in Figure 4.4.

Figure 4.4: Tax and annuitisation



4.24. The way we will calculate tax at financial close is 50 per cent weighting on UK and 50 per cent weighting on Belgian tax regime. All tax parameters and allocation of costs to tax treatments will be set at financial close (at the same time the cost of debt index is updated) based on changes announced in HM Treasury Budget Statements that have not yet passed into law. Once set, the values will remain fixed for the remainder of the regime.

4.25. We note that for the purposes of this decision, we have calculated the tax allowance for the cap and floor 100 per cent weighted on the UK tax regime. This is

[26] We do not, for example, feed the annuitised tax allowance back into a further tax calculation. We consider a single iteration of this process to be consistent with the simple approach adopted for this regime.

a simplifying assumption for this publication and will be updated ahead of financial close with the appropriate blended rate for GB and Belgium.[27]

4.26. Further detail on our decision relating to tax treatment is in Appendix 1. This includes discussion of capital allowances, tax allowance calculations and tax treatment of costs.

Transaction costs

4.27. We will provide an allowance for debt and equity transaction costs. We will add the transaction cost allowance during the first year of the operational period, rather than adding it to its opening value in order to ensure it is fully compensated through depreciation and return.

4.28. We will provide an allowance of 2.5 per cent on notional gearing (ie proportion of debt used to finance the project) for debt transaction costs and 5 per cent on notional equity (ie proportion of equity used to finance the project). Here we assume 50 per cent notional gearing during operation with the gearing assumption from the IDC calculation used during construction. Further detail on our approach to transaction costs is in Appendix 1.

Revenue-related design decisions

4.29. Revenue-related design features are those that determine how the costs are translated into the cap and floor levels and how deviations from those levels are treated. The revenue-related design features addressed in this section are:

- Assessed revenue
- Profile of the cap and floor
- Indexation
- Assessment periods
- Within-period adjustments
- Recovery of adjustments.

Assessed revenue

4.30. We will assess interconnector revenue to determine whether the cap and floor have been breached.[28] Additional revenue streams, earned by Nemo during the

[27] The reason for this is that the Belgian authorities are currently undertaking a piece of work to calculate the appropriate equivalent tax rate in Belgium. We expect this to be completed by the time the developers take their investment decision. It will then be incorporated into the financial model.

[28] Revenues will be assessed in real GBP terms. Reporting, calculation and further details of the real GBP revenues will be set in the interconnector licence.

regime length, will also be included in the revenue that is assessed against the cap and floor. For example, these could include, but are not limited to:

- Revenue earned under the Electricity Marker Reform capacity market in GB
- Revenue earned through the provision of ancillary services.[29]

4.31. The former reflects the possibility that, as well as earning congestion revenue as a direct result of the price differential between markets, in the future interconnector owners may be compensated for making capacity available (regardless of whether it is used). This is a valid source of revenue for compensating interconnector investment, and should be considered alongside congestion revenue.

4.32. Similarly, an interconnector developer might be able to provide ancillary services to TSOs. In particular, a key advantage of the VSC technology is the ability to provide voltage support, black start and balancing possibilities. Revenue generated from such services will also be treated in the same way as congestion revenue for the purposes of the cap and floor assessment.

Profile of the cap and floor

4.33. The cap and floor will be flat in real terms at the time of awarding and will be based on an annuity. Since March 2013 we have updated our view on the rates used to calculate the annuities and on the price base of the revenues.

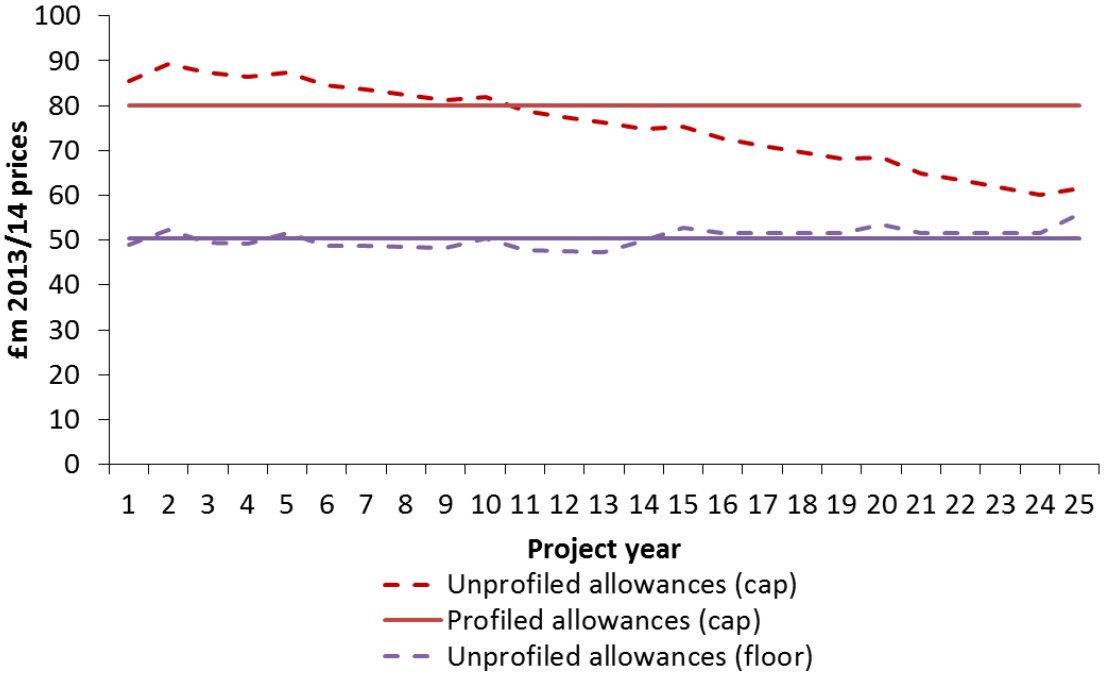
4.34. We seek to maintain market incentives within the regulatory framework. The flat profile that will be adopted represents a neutral position for forecast revenues. We consider that this is appropriate given that congestion revenues are variable from year to year and unpredictable.

4.35. The constant profile will be achieved by calculating separate annuities at the cap and at the floor. This will be based on the net present value of un-profiled allowances common to each approach (eg RAV depreciation and opex) but also returns and tax, which will differ at the cap and the floor. Further information on the annuitisation of the tax allowance is provided above and in Appendix 1.

4.36. The cap and floor annuities will be evaluated respectively using the cap return and the floor return. This ensures consistency between the rate of return provided on the RAV and the calculation of the annuity. Figure 4.5 below presents the impact of profiling on allowances based on the current assessment of costs set out in this document.

[29] This could include services to support system operation such as frequency control, black start capability, or balancing services.

Figure 4.5: Profiling impact on cap and floor levels



4.37. Given the international nature of the interconnection project, the regime will protect the real value of cap and floor for the GBP and EUR shares of the cap and floor.

Indexation

4.38. The cap and floor levels will be set in real GBP. The cap and floor levels will be 50 per cent indexed to UK inflation and 50 per cent indexed to Belgian inflation, adjusted for exchange rate movements. To implement this, the cap and floor annuities expressed in real GBP 2013/14 prices will be multiplied by an index factor to express them in nominal prices for each year.

Assessment periods

4.39. The cap and floor assessment period for Nemo will be every five years. In the year following each five-year assessment period, the present value of realised congestion revenues during the assessment period will be assessed and compared to the present value of the cap and floor. These present value calculations will be performed using the operational discount rate, defined as the mid-point between the cap return and the floor return.

4.40. The present value of any within-period adjustments allowed during the assessment period (as discussed below) will also be assessed using the operational

discount rate. This value will be netted-off from any present value excess above the cap or shortfall below the floor.[30]

4.41. Any floor payment will be subject to achieving a minimum level of availability – ie the link must be operational for a minimum amount of time in each year. In the case that Nemo is not eligible for the floor, revenues below the floor in that year cannot be used to justify the need for a within-period or end-of-period floor adjustment. But if Nemo receives revenues above the floor in that year, the excess above the floor will be used in the normal way to assess within-period and end-of-period floor adjustments. This ensures that Nemo does not have an incentive to reduce availability to increase the likelihood of floor payments in the rest of the period.

Within-period adjustments

4.42. We will allow Nemo to apply for adjustments within each five-year assessment period. This option will only be available in circumstances where Nemo's revenues are below the floor or above the cap and can demonstrate to the NRAs that an adjustment is required.

4.43. There are two principal reasons for allowing within-period adjustments:

(i) Financeability
(ii) Pre-emption of potentially large end-of-period adjustments.

4.44. The financeability motivation primarily applies at the floor and is rooted in the aim to provide a regime that is finance solution-invariant – ie does not preclude or promote a certain financing structure. The NPV-neutral approach should make a developer indifferent to the timing of revenue adjustments. We are aware that some non-recourse financing structures are vulnerable to financeability problems when there are delays between shortfalls in revenue and the corresponding adjustment.

4.45. Pre-empting large end-of-period adjustments can be helpful both from the perspective of volatility for developer/network operator, and for avoiding the need to adjust cash payments to maintain NPV neutrality. The regime will be less distortionary if transfer volatility is minimised. This applies equally to adjustments above the cap as below the floor. We have therefore decided to accommodate early repayment above the cap as well.

4.46. Any request by Nemo for such an adjustment will be subject to joint approval by the NRAs and an NPV-neutral claw-back at the end of the period.[31] If Nemo

[30] This will preserve the NPV value of the five-year cap and floor levels and avoid double compensation in situations where a within-period adjustment has been granted but revenue for the whole assessment period remain within the cap and floor.
[31] The NPV neutral claw-back will use the operational discount rate.

receives a within-period floor adjustment, it would need to pay it back in full, adjusted for the time value of money if their five-year revenues, excluding adjustments, were within the cap and floor. This will encourage Nemo to only use these adjustments when they are needed.

4.47. The maximum size of cap and floor adjustments available to Nemo will be based on the cumulative assessment of revenues (net of previous within-period adjustments) against the cap and floor. Nemo will be able to apply for a within-period adjustment up to 100 per cent of the NPV cumulative shortfall below the floor (or equally pay back excess above the cap) in each year until the end of each period when the full end-of-period adjustment is undertaken.

4.48. Assessing the within-period adjustments will be subject to the same availability conditions and incentives as applied to the end-of-period adjustments.

Recovery of adjustments

4.49. Adjustments and payments under the cap and floor regime will be split 50/50 between Belgium and GB based on prevailing exchange rates.

4.50. All adjustments[32] will be made at the earliest possible opportunity following the verification and joint NRAs approval of values provided by Nemo. Given the time needed to verify and process values provided by the developer, we recognise that it may not be possible for these to feed into the subsequent charging year for the NETSO and may be delayed. The default lead time between the end of a period or year, and any adjustments arising from it will be two full calendar years.[33]

4.51. This approach allows the timing of the cap and floor regime to fit with the arrangements for recovering adjustments from or paying them to consumers through the NETSOs. This should reduce the cost of capital, and hence the floor that consumers are underwriting. The approach is consistent with onshore and offshore transmission regimes across Europe.

4.52. Nemo will perform an annual calculation of its performance against the annual cap and floor levels in order to determine whether any amount would be payable to or receivable from the TSOs. These annual calculations will be reviewed, aggregated and reconciled in total at the end of each five year period in order to determine the amount to be settled with the relevant TSOs. These amounts will be settled between

[32] Within-period adjustments, end-of-period adjustments, income adjusting events and adjustments for pass-through costs.
[33] The present value of 'recoverable' adjustments, calculated under the assumption of a two year lag, will be preserved in real GBP terms by neutralising any difference (including differences less than a full calendar year) from the two year delay using the operational discount rate.

Nemo and the relevant TSO(s) after each five year period in accordance with the settlement process that will be set out in the licence.

4.53. Half of the value of each allowed adjustment will be recovered through the GB TSO and half through the Belgian TSO. We recognise that time lags may differ between Belgium and GB or may need to adapt to different charging methodologies over the life of the project. The value of any adjustment for each country will be adjusted for the timing differences accordingly.

Income adjusting events

4.54. We will include an income adjusting event term in the cap and floor regime. Our only change to the March 2013 proposals is to clarify that we will not include tax changes as an income adjusting event.

4.55. The criteria for identifying the income adjusting event will be based on the GB offshore transmission licence which is set out below (we note however that interconnectors are not signatories to the STC).

> *'It must be:*
> *(i) an event of circumstance constituting force majeure under the System Operator – Transmission Owner Code (STC); or*
> *(ii) an event or circumstance resulting from an amendment to the STC not allowed for when allowed transmission owner revenues of the licensee were determined for the relevant year t; or*
> *(iii) an event or circumstance other than listed above which, in the opinion of the NRAs is an income adjusting event and is approved by them.'*[34]

4.56. As there is a high regulatory burden associated with investigating income adjusting events, the threshold for the cost associated with the claim is set at 5 per cent of the annual floor in real terms.

4.57. Just as with non-controllable costs, only the economic and efficient spend will be passed through, which may be less than the increase sought by the developer. The NRAs think that the likelihood of an income adjusting event is rare and do not expect any to occur within the duration of the cap and floor regime.

[34] This is taken from the OFTO licence, Amended Standard Condition E12-J3: Restriction of Transmission Revenue: Allowed Pass-through Items Formula for the Income Adjusting Event Revenue Adjustment. An example of this can be found on the Electronic Public Register: https://epr.ofgem.gov.uk/Document

Treatment of financial assistance and refinancing gains

4.58. We propose to net-off any grants Nemo receives from the RAV. It would not be right for consumers to underwrite floor revenues on a proportion of the RAV that had already been financed in full at no cost to Nemo. Nemo must inform the NRAs if any grants area received.

4.59. We also propose to allow Nemo to retain the gains/losses of refinancing. The intention in developing the cap and floor regime has always been to remain as neutral as possible to the developer's choice of financing structure. Nemo will remain exposed to risk throughout the interconnector operational life. Any refinancing – for example, to introduce a greater amount of debt into the project – would carry risks for investors. We think that it is appropriate to allow Nemo to decide how best to manage those risks.[35]

Incentives

Availability incentive

4.60. At the cap we will implement a symmetric financial incentive. Each year, actual availability will be compared to the target level. Availability above the target will result in a one-for-one percentage increase in the level of revenue at the cap. Availability below the target will result in a one-for-one decrease in the level of revenue at the cap. The maximum upside and downside (increase in revenue or decrease in revenue) as a result of the availability incentive will be limited to 2 per cent.

4.61. We consulted in 2013 on a target availability range for Nemo from 97.1 per cent to 97.8 per cent, incorporating targets for Scheduled Energy Unavailability (SEU) and Forced Energy Unavailability (FEU).[36]

4.62. We acknowledge that the SEU target figure was based on HVDC converters and that there are other components to consider, which together make up the converter stations. So we propose to set the SEU figure at 1.0 per cent (up from 0.55 per cent). Combined with the FEU target of 1.95 per cent this gives a target availability figure for Nemo of 97 per cent.

4.63. In addition to the availability incentive at the cap, the floor will depend on a minimum level of link availability. In each individual year, the right to receive

[35] This presents a contrast to the situation for offshore transmission licensees. Under the offshore regime, gains from refinancing are shared between investors and consumers. However, there is a difference between the two regimes. Offshore projects can be refinanced after the vast majority of the project risk has been resolved. Since there is no equivalent reduction in risk for an interconnector developer, we consider our approach appropriate.
[36] This range is based on the results set out in section 9.3 and 10.2 of SKM's report.

payments from consumers at the floor will be conditional on achieving a minimum of 80 per cent reported availability, assessed on the same basis as for the availability incentive at the cap. If availability falls below this level, Nemo may retain its right to payments at the floor in that year if it provides a written statement to the NRAs explaining what it did to make the interconnector available to minimise the effect and duration of unavailability.[37] This will then be subject to a decision by the NRAs. This process will be set out in Nemo's licence.

4.64. We will assess availability annually to ensure that Nemo has incentives to maintain availability throughout each year of the assessment period.

[37] In the case that the developer is not eligible for the floor, revenues below the floor in that year cannot be used to justify the need for a within-period or end-of-period floor adjustment. However, should they receive revenues above the floor in that year, the excess above the floor will be used in the normal manner for the assessment of within-period and end-of-period floor adjustments. This ensures that the developer does not have an incentive to reduce availability in order to increase the likelihood of floor payments in the rest of the period.

5. Approach to returns

Chapter summary: A return on capital is calculated at both the cap and floor. The way we have set these returns is outlined in this chapter.

5.1. In this chapter we translate the regime design above into the relevant return parameters for Nemo. For the return for Nemo we have:

- Based the cap and floor returns on separate benchmarks, rather than attempting to work from a single central figure
- Adopted a mechanistic approach in order to keep the regime simple
- Adopted an approach that acknowledges that the interconnector will make investments and be exposed to risk in two jurisdictions
- Set the majority of parameters as part of this decision.[38]

5.2. This section shows how we will set the benchmark rate of return for: the floor, the cap, and the discount rates to be used to re-profile revenues and payments.

Floor benchmark

5.3. We will apply the cost of debt benchmark to 100 per cent of the RAV. This has two main implications. First, this can accommodate a range of financing structures. Second, equity investors may also be able to earn a (small) positive return even at the floor. The floor provides for a guaranteed level of revenue, subject to meeting acceptable availability levels. In our view the scale of this return results in appropriate incentives for development. Further, this approach leaves investors (and in particular equity investors) exposed to the following risks:

- If availability falls below the required threshold for a given year (and this is not due to factors outside the developer's control), then the developer will not be eligible for that year's floor (as set out under the minimum availability threshold explained earlier).

- If outturn costs (including opex, capex or financing costs) are different from forecasts and within the developer's control, then this will directly change (reduce or increase) the returns available to equity investors.

- If the interconnector developer's actual financial structure or timing of annual revenues differs from the notional calculations at the cap and floor, then its actual tax obligations could be different from those modelled.

[38] We will set a limited number of parameters at financial close.

5.4. The right floor level is one that allows for financing of interconnector projects while also providing the right incentives during operation and allowing market incentives for interconnection. We consider that the proposed approach achieves these aims.

5.5. We have now confirmed the within-period adjustment mechanism (as described in the section on revenue-related design decisions). The interconnector developer is eligible for payments up to and including the level of the floor for each year within an assessment period. This provides some certainty, and should allow an efficient developer to raise debt at a lower cost than if within-period adjustments were not available. We have decided to use the average of an A and BBB cost of debt index to determine the cost of debt to be used at the floor.

5.6. We propose to align our choice of index with that used to set onshore price control allowances. We will base parameter estimates on the relevant iBoxx index of non-financial debt with ten or more years to maturity. We will calculate a 20-day trailing average. This will give an accurate, up-to-date view of debt costs with some of the day-to-day volatility smoothed out.

5.7. The indices to be used are nominal indices, and will need to be deflated to arrive at a real cost of debt. We have made a small change to our approach to accounting for the rate of inflation for our calculation for Belgium. We indicated in March 2013 that we would use the ECB inflation target of 2 per cent. However, this is an upper bound rather than a central target, and recent experience in Belgium has shown evidence of a lower rate. In consultation with CREG, the forward-looking rate of inflation that we will use is 1.8 per cent. The UK index will be deflated based on daily Bank of England breakeven inflation data.

5.8. For Nemo, the floor will be updated at financial close to reflect current data. Based on data as of October 2014 used for this publication, the floor would provide a real return of 0.93 per cent.

Table 5.1: Details of floor benchmark for Nemo

Aspect	UK	Belgium
Calculation technique	20-day simple trailing average (to be set at financial close)	
Index	GBP Non-Financials of 10+ years to maturity; credit ratings of A/BBB	EUR Non-Financials of 10+ years to maturity; credit ratings of A/BBB
Source	iBoxx	iBoxx
Inflation	10-year breakeven data published by the Bank of England: 2.9% (to be set at financial close) [39]	ECB and Belgian proposed rate: 1.8%

Cap benchmark

5.9. For the cap benchmark we will apply a cost of equity to 100 per cent of the RAV and will base our returns benchmark on a CAPM approach, taking a long-term perspective on each parameter. As part of this calculation we have reflected recent developments and analysis of Ofgem's approach to GB parameters.[40]

5.10. For the cap, we consider that the evidence available is sufficient to set our estimates for the risk-free rate and equity beta parameters. We estimate the long-term real risk-free rate to be 1.6 per cent for the UK and 2.2 per cent for Belgium. We will use a value of 1.25 for the equity beta. For the Nemo decision we will use the GB equity risk premium of 5.2 per cent and the Belgian equity risk premium of 3.5 per cent. The rationale for this is below.

5.11. In the cap calculation, we have firstly updated our approach to reflect the impact of the structural change in RPI. This effect has led to an enduring increase of around 0.4 per cent per annum in the RPI. This introduces a distortion to indices and parameters that rely on or are influenced by RPI. We have sought to correct this distortion.

5.12. Second, we consider the risk-free rate and the total, long-term equity market return are more objectively observable parameters than the equity market premium.[41] As a result, our approach is to define the equity market premium as the residual between the total market return and the risk-free rate, rather than an

[39] Individual daily values are used to deflate the nominal cost of debt value, the value presented here is the average of the 20 daily values used.
[40] These are discussed more fully in our decision letter on Ofgem's methodology for assessing the equity market return for the purpose of setting RIIO-ED1 price controls. These issues will be subject to further exploration over the long-term. This letter is on our website here: https://www.ofgem.gov.uk/ofgem-publications/86366/decisiononequitymarketreturnmethodology.pdf
[41] Total equity market returns can also be considered more stable over time.

independent parameter to be estimated directly. We have sought to ensure the methodology used for the cap and floor regime is consistent with this approach.

5.13. We estimate the risk-free rate and equity risk premium using a long-term estimate drawing on recent regulatory settlements. The resulting UK rate of 1.6 per cent for the risk-free rate is based on recent UK regulatory settlements on the cost of equity, adjusted downward by 0.4 per cent for structural change in RPI. For Belgium, we have used the policy of the Belgian Regulator, CREG: 1.8 per cent.

5.14. Our approach to assessing equity market returns for GB onshore price controls has incorporated a further adjustment to put more weight on current market conditions. This is in light of the recent approach taken by the Competition Commission[42] in its provisional determination for Northern Ireland Electricity (NIE) published on 12 November 2013. For onshore price controls, where the objective is to determine the cost of equity over an eight-year time horizon, we think it is right to place weight on contemporaneous evidence as well as longer-term trends. For Nemo, our objective is different. We must set a benchmark rate of return for a period that is not projected to start until later this decade and will last for 25 years. In this context, we consider it is more appropriate to focus on long-term evidence.

5.15. We use Drax as a benchmark for setting returns at the cap. It is important that the returns available at the cap match the nature and extent of risks. At the margin, those risks for a developer operating at the cap can be considered similar to those faced by a generator. This also recognises that the floor provides some downside protection for developer revenues. We have previously indicated that we would seek to characterise those risks through applying Drax's asset beta, re-geared to 50 per cent.

5.16. Given changes in Drax's business mix, and in particular its pursuit of a strategy that increasingly incorporates biomass generation, it is unlikely that we would try to reflect future movements in its asset beta. Such movements are more likely to represent statistical noise or changes in business mix than underlying changes in the risk of generation, which is the benchmark we seek. We have therefore fixed the equity beta we are using for Nemo at 1.25, reflecting the level of Drax's re-levered equity beta over recent years.

[42]On 1 April 2014, the Competition Commission was abolished and its functions transferred to the Competition and Markets Authority.

Table 5.2: Details of cap benchmark for Nemo

Aspect	UK	Belgium
Calculation technique	CAPM	
Risk-free rate	Long-term real risk-free rate used in recent regulatory settlements adjusted for RPI formula effect: 1.6%	Long-term estimate of the real yield on long-term Belgian OLO (linear bonds) adjusted for inflation of 1.8%: 2.2%
Equity beta	Set at 1.25	
Equity risk premium	5.2%	3.5%

Project discount rates

5.17. There are a number of instances where payments or allowances in the cap and floor regime for Nemo will need to be re-profiled over time. These include:

- Annuitising cap and floor levels to ensure that they are constant in real terms
- Aggregating revenue and the cap and floor levels within each assessment period (in a way that is NPV-neutral) in order to assess revenue against the cap and floor
- Accounting for the delay between when a cap or floor payment is due and when it is paid.

5.18. We annuitised the cap and floor levels using the cap and floor rates of return, respectively. This will align the returns at each level and the discount rate used to calculate the annuity. This will result in a more consistent interpretation of the cap and floor as annuities. Aligning the rates this way will neutralise the choice of depreciation profile of the RAV, so that there is no need to model short-lived asset depreciation profiles and replacement capex.

5.19. For all other aspects of the regime we will discount using the midpoint rate of return to represent the operational cost of capital. We propose to set the midpoint rate of return based on equal weightings of the cost of debt used to set floor returns and the cost of equity used to set the cap.

Methodology for setting IDC

5.20. For Nemo we will use an IDC of 5.76 per cent. This is made up of an IDC cost of debt calculation and separate IDC cost of equity calculations for GB and Belgium. The final IDC will be updated at financial close to reflect changes in the debt index used in the calculation. All other parameters will be fixed as part of this decision as explained below.

5.21. We consulted in October 2013 on the appropriate approach to IDC for Nemo. In our consultation we proposed two uplifts to IDC for Nemo to reflect the specific nature of interconnector investment. Following consultation we continue to consider that Nemo faces a greater degree of asymmetric development and cost assessment risk than comparable infrastructure projects. So we will apply the two uplifts as set out in our IDC consultation. These include uplifts for additional construction risk (0.91 per cent) and for additional project development risk (0.54 per cent). We will review this for future projects. The rationale for such uplifts should weaken over time as the regulatory approach and cost assessment process for interconnector assets becomes clearer. The IDC benchmarks at the cap and floor are below.[43]

5.22. In line with the calculation of floor returns, the IDC cost of debt will be updated at financial close as shown in Table 5.3. We consider that the evidence available is sufficient to set our estimates for the cost of equity components of IDC as show in Table 5.4. We have also set the IDC notional gearing at 33.41 per cent based on an updated view of the calculations underlying the Grant Thornton Report, and the equity beta at 1.04.[44] We have taken this decision given the stable nature of these variables, and the additional certainty this provides for the Nemo investors.

5.23. To ensure consistency with other aspects of the Nemo decision, for the IDC calculation we will use the same 1.8 per cent assumption for expected Belgian inflation as we apply for the cap and floor calculations.

Table 5.3: Details of IDC cost of debt

Aspect	UK	Belgium
Calculation technique	20-day simple trailing average	
Index	GBP Non-Financials of 10+ years to maturity; credit ratings of A/BBB	EUR Non-Financials of 10+ years to maturity; credit ratings of A/BBB
Source	iBoxx	iBoxx
Inflation	10-year breakeven data published by the Bank of England: 2.90% (to be set at financial close)[45]	ECB and Belgian proposed rate: 1.8%
Value	1.25% (real cost of debt to be updated at financial close)	0.61% (real cost of debt to be updated at financial close)

[43] To calculate IDC, the two benchmarks are combined using a notional gearing assumption based on the average gearing of companies used in the sample for the beta calculation.
[44] The Grant Thornton report is on our website here: https://www.ofgem.gov.uk/sites/default/files/docs/2013/10/grant_thornton_review_of_interest_during_construction_stage2.pdf
[45] Individual daily values are used to deflate the nominal cost of debt values, the value presented here is the average of the 20 daily values used.

Table 5.4: Details of IDC cost of equity

Aspect	UK	Belgium
Calculation technique	CAPM	
Risk-free rate	0.74% 10-year average of yields on long-term ILGs	1.75% 10-year average of the yield on long-term Belgian OLO (linear bonds) adjusted for inflation of 1.8%
Equity beta	Two-year asset beta of traditional energy companies[46], weighted by market capitalisation. Calculated based on approach advised by Grant Thornton. This gives a value of 1.04 that we have now locked-down.	
Equity risk premium	Fixed at 4.60% based on the latest Belgium value of the arithmetic mean risk premium over bonds from Dimson, Marsh and Staunton (DMS), which is published in the Credit Suisse Global Investment Returns Sourcebook, for the data series starting in 1900.	

[46] Centrica, SSE, E.ON and RWE.

Appendices index

Appendix 1 – Detailed information on taxation, transaction costs and indexation

Taxation

1.1. The Nemo cap and floor regime incorporates a tax allowance at the cap and at the floor. The tax allowance calculation at the cap is based on achieving cap returns in every year of the regime. The tax allowance calculation at the floor is based on achieving floor returns in every year of the regime. These represent high and low tax scenarios within the bounds of the cap and floor. We will not attempt to replicate tax based on the developer's realised returns over time.

1.2. For the purposes of this decision, Ofgem has used the UK tax rate only to set the tax allowance at the cap and floor. We note that this is indicative at this stage as the rate is likely to be different for the final setting of the cap and floor following the process set out below.

1.3. A first step will be for each NRA to estimate for each country the effective tax rate if all profits were taxed in that single country and a second step would be to use the simple average of those rates within the model. The UK tax rate will be the expected rate of corporation tax, 20 per cent (as published by MH Revenue and Customs).[47] The appropriate rate in Belgium will be calculated by CREG. This rate will be communicated to the Nemo developers. The final tax rate (based on both the UK and Belgian rates) will be incorporated into the Nemo financial model at final investment decision (financial close).

1.4. The tax calculation is simple relative to the approach used by Ofgem for the RIIO onshore price controls. We have calculated a single capital allowance pool and assume a single tax treatment for each category of expenditure. We have modelled tax losses and include the tax deductibility of interest. We treat business rates as non-controllable operating costs. Table A3.2 below summarises the tax treatment of costs in the Nemo cap and floor regime.

1.5. The allocations shown in Table A3.2 will be updated at financial close based on any changes in the UK tax legislation or HM Treasury Budget statements made in the intervening period between now and financial close. The corporation tax rate and writing-down allowance rate will be reviewed in the same manner. Once set, the values will remain fixed for the remainder of the project life. There will be no tax trigger mechanism nor will tax be eligible for consideration under the income adjusting events clause of the regime. We would however make an exception to this in the case that there were a tax developed to target high returns on subsea

[47] The Finance Bill 2013 provided for a reduction of the UK main rate of Corporation Tax to 20 per cent from 1st April 2015.

electricity interconnectors, in which case we would seek to neutralise the impact of the tax.

Table A3.2: Indicative tax treatment of costs[48]

Cost	Long-life pool	Revenue expense	Non-qualifying
Capex	Yes	-	-
Replacement capex	Yes	-	-
Controllable opex	-	Yes	-
Non-controllable opex (baseline)	-	Yes	-
Decommissioning (baseline)	-	-	Yes
Development costs	-	-	Yes
Spares	-	-	Yes
IDC	-	-	Yes
Cap and floor returns	-	-	Yes
Equity transaction costs	-	-	Yes
Debt transaction costs	-	Yes	-

1.6. In order to maintain the flat profile of the cap and floor, the tax allowance (calculated based on annuitised allowances except tax) will itself be annuitised and added to the other allowances.

1.7. The approach outlined above is consistent with the principles of the cap and floor regime, providing a reasonable allowance to the developers to cover their tax liability.

Transaction costs

1.8. Following our March 2013 consultation, we have not changed our position that we will provide an allowance for debt and equity transaction costs. However, we will add the transaction cost allowance during the first year of the operational period, rather than adding it to its opening value in order to ensure it is fully compensated through depreciation and return.[49]

[48] Only 'baseline' ex ante decommissioning and non-controllable opex allowances feed into the tax allowance. Ex-post differences from these levels do not feed into the tax allowance for the cap and floor.
[49] In order to ensure full remuneration of a value through the RAV, it should be added during the year, rather than transferred in at the start of a period.

1.9. We will calculate the allowance based on the opening RAV at the start of the operational period.

1.10. The allowance will comprise an element to remunerate the cost of debt. This will be calculated based on a share of the opening RAV value defined as the greater of the notional gearing assumption assumed for the pre-operational period and the notional gearing assumption assumed for the operational period. As proposed in March 2013, an allowance of 2.5 per cent of that notional debt will be provided in the regime. This allowance covers all fees including any swap fees.

1.11. The allowance will also comprise an element to remunerate equity transaction costs. The proportion of equity used for this calculation will be the greater of the notional equity assumed for the pre-operational period and for the operational period.

1.12. The pre-operational notional equity level is the notional equity portion assumed in the calculation of IDC. This means some of the equity issued during the construction phase is either in the form of a short-term shareholder loan from the parent company or redeemed at the start of the operational period.

1.13. Based on the assumptions above, the total amount of debt and equity receiving transaction costs would be greater than the opening RAV value. This is because it is assumed that the pre-operational period will be funded with a greater amount of equity than the operational period. At the start of the operational period, it is assumed that additional debt is raised to achieve the assumed operational gearing level. As proposed in March 2013, an allowance of 5.0 per cent of that notional equity will be provided.

Indexation

1.14. Further detail on the approach to indexation is set out below.

$$Nominal\ Cap_t = Real\ Cap\ Annuity \times Index\ factor_t$$

$$Nominal\ Floor_t = Real\ Floor\ Annuity \times Index\ factor_t$$

1.15. The index factor will be the same for the cap and the floor and will be calculated as shown in the following equation.

$$Index\ factor_t = 0.5 \times \left(\frac{UK\ RPI\ index_t}{UK\ RPI\ index_{2013/14}}\right) + 0.5 \times \frac{\left(\frac{Belgium\ CPI\ index_t}{Belgium\ CPI\ index_{2013/14}}\right)}{\left(\frac{GBP_t/EUR_t}{GBP_{2013/14}/EUR_{2013/14}}\right)}$$

1.16. This approach reflects an equal split of costs between Belgium and the UK in real terms from the perspective of consumers in each country. While the actual costs may not be distributed in this manner, it reflects the split of 50:50 obligations on consumers in each country and that adjustments arising from the regime will be split equally between the countries. The approach applied will index the tariffs to fix half of the opening tariff in real GBP terms from the point of view of GB consumers. It will also fix half of the opening tariff in real EUR terms from the point of view of Belgian consumers. This should largely insulate consumers in each country from exchange rate risk.

1.17. One key effect that this adjustment incorporates is the potential for offsetting movements in the exchange rate when inflation rates diverge. Complete offsetting of these effects would occur where the concept of 'relative purchasing power parity' holds, in which case indexation would be equivalent to full UK inflation indexation. The approach would also allow for the case where there are no exchange rate changes over time despite different inflation rates, in which case indexation could be equivalent to an average of the inflation rates in the two countries. Given the long-term nature of the cap and floor, we consider it appropriate to allow for such macroeconomic effects to occur within this regime.

1.18. As discussed in chapter 4, in relation to the indices used to implement this approach, at the outset of the regime we will assume that relative purchasing power parity will hold. This will result in a flat real GBP cap and floor profile. However, if relative purchasing power parity does not hold over time, this will result in changes to the cap and floor expressed in GBP terms and divergence from a strictly flat profile expressed in GBP. Nonetheless, we consider this to be consistent with the decision to have a flat cap and floor profile, as this will help the cap and floor to be flat in real terms from the perspective of both UK and Belgian consumers, not just one country.

Appendix 2 – March 2013 proposals and summary of consultation responses

1.1. This Appendix summarises the policy positions from the March 2013 consultation and the responses to this consultation. These responses have informed our final decision as set out in this document.

1.2. We have also summarised the responses to the October 2013 IDC consultation and the April 2014 Cost Assessment consultation.

Components of the cap and floor

Summary of 2013 consultation proposals

1.3. We proposed to use an ex-post capex assessment for Nemo to determine the opening RAV. All capex will be fully depreciated over the length of the regime. We proposed to set an allowance for replacement capex up front, which would feed into the cap and floor levels. We also proposed that IDC and transaction costs would be added to the RAV.

Summary of responses

1.4. Respondents to the consultation presented their views on the appropriateness of moving to an ex-ante incentive-based treatment of capex for projects following Nemo.

1.5. Among those who responded, all commented on the suitability of moving towards an ex-ante capex incentive for future interconnector projects. Energy companies and interconnector developers noted that as more projects are built using the same technology proposed for Nemo, which has previously not been deployed at this scale, more robust estimates of building an interconnector may be attainable. This may allow a move towards an ex-ante incentive based treatment of capex for future projects.

1.6. One interconnector developer suggested that Ofgem should review the equipment supply and construction contracts at financial close (final investment decision) and carry out an ex-ante capex assessment at this point. They suggested that Ofgem analyses the construction and contract information obtained in the offshore electricity transmission tender process to facilitate benchmarking. They believe this process would reduce regulatory risk for developers at financial close. This view was supported by a TSO, who felt that an ex-ante incentive would provide a stronger incentive on timeliness and efficiency in the construction phase. They also expressed concern with commercially sensitive information around suppliers' costs being shared for the ex-post capex review.

1.7. One energy company warned that generalised capex incentives are not likely to be a simple matter for case by case projects. They suggested that each project should be dealt with individually, given the likely developments in technology.

Approach to Interest during construction

Summary of 2013 consultation proposals

1.8. In March 2013, we proposed to set a return (IDC) that developers will earn on economically and efficiently incurred spend incurred during the construction phase of the project. Based on a qualitative assessment of the relative level of risks faced by developers in constructing transmission assets for interconnection and offshore wind, our initial view was that the required return by an efficient interconnector developer may need to be higher.

1.9. Proposals made on the approach to calculate IDC, including views from the October 2013 IDC consultation, and on the resulting level of the allowance are discussed in chapters 4 and 5.

Summary of responses

1.10. Two interconnector developers supported our proposed approach to setting IDC. One energy company endorsed our proposed methodology and advocated that the methodology ensured a fair and balanced outcome for investors and consumers.

1.11. One interconnector developer felt that the IDC methodology should incorporate an appropriate allowance for development costs within the methodology for calculating IDC to reflect the particular risk associated with development costs.

1.12. One interconnector developer commented that they did not expect a significant difference between the operational cost of capital and cost of financing during construction. This was because under the proposed ex-post capex review all economic and efficient spend was passed through into the opening cap and floor levels.

1.13. Amongst energy companies, respondents held diverging views on the appropriate rate of IDC. One energy company felt that under an ex-post capex review, IDC can be considered as an almost risk-free return and could be equal to the minimum return calculated at the floor. Conversely, another energy company supported CEPA's inclusion of ~20 per cent risk of unrewarded costs (RoUC) term in the IDC calculation due to inefficient or uneconomic capex being disallowed in the offshore transmission regime.

Operating expenditure (opex) and market-related costs

Summary of 2013 consultation proposals

1.14. In March 2013, we proposed to treat operating expenditure differently depending upon how it is categorised. For most opex, we proposed to use a two stage assessment process. In the first phase, NRAs would take a high level view of opex to form part of the provisional cap and floor levels (this would however be non-binding). Subsequently, up to 12 months prior to the scheduled operational date of the link, the NRAs would re-assess opex forecasts submitted by developers and determine an ex-ante opex allowance to be applied for the duration of the regime.

1.15. There were two exceptions to this approach. First, we proposed to treat firmness costs as market related costs. In practice, this means they would be net-off from gross congestion revenues before revenue is assessed against the cap and floor levels. Second, we proposed to pass through non-controllable opex using a revenue adjustment term.

Summary of responses

1.16. Several interconnector developers and energy companies commented that exposure to market related costs incentivises developers to maximise link availability. One energy company remarked that the requirement to provide firm forward products, which may result from the European network codes, should provide a good incentive to maintain link availability as developers have to comply with the network codes. They felt firm products will be more valuable to network users and provide more earnings for interconnector owners.

Taxation

Summary of 2013 consultation proposals

1.17. In March 2013, we proposed that we would set a separate tax allowance at the cap and at the floor to reflect the different levels of taxable profits associated with revenue being at the cap and floor respectively, and to be consistent with the use of vanilla values (such as those used in the GB onshore price control) to set the cap and floor levels.

1.18. In the supporting illustrative model, we indicated that the tax regime applied would be a 50:50 weighting of the UK and Belgian tax regimes.

1.19. No specific responses were made regarding the tax allowance during the consultation process. However, the Nemo developers engaged with Ofgem to provide input regarding its envisaged corporate structure and the resulting tax implications.

Transaction costs

Summary of 2013 consultation proposals

1.20. In March 2013, we proposed to provide an allowance for debt and equity transaction costs expressed as a percentage of the opening RAV. This value would be added to the opening RAV which will then be annuitised to set the cap and floor levels. No comments were received in relation to transaction costs.

Income adjusting events

Summary of 2013 consultation proposals

1.21. In March 2013, we proposed the inclusion of income adjusting events in the regime to reduce the potential large liability for interconnectors for unexpected events. Income adjusting events would cover the change in cost items not included in the revenue adjustment for changes from the cost base case, with a threshold for the cost associated with the claim as 5 per cent of the floor in real terms for the year in which the cost was incurred. Adjustments arising from this term would be made outside the cap and floor in the same manner as the non-controllable costs.

1.22. We did not receive any comments on the proposals to include income adjusting events in the cap and floor regime.

Assessed revenue

Summary of 2013 consultation proposals

1.23. In March 2013, we proposed to assess interconnector congestion revenue. No consultations responses were received in relation to what should be included in assessed revenue.

Profile of the cap and floor

Summary of 2013 consultation proposals

5.24. In March 2013, we proposed that the cap and floor would be 'flat' in real terms and that this would be achieved by setting the levels based on an annuity of the allowances available to the developer. No consultation responses were received regarding the profile of the cap and floor.

Assessment periods

Summary of 2013 consultation proposals

1.24. In March 2013, we proposed that congestion revenue would be assessed against the level of the cap and floor every five years. Cap and floor adjustments in

one period would not affect the allowances for future periods, and outturn revenue earned in one period would not be taken into account in future periods.

Summary of responses

1.25. Respondents were split between those advocating five-year assessments and those favouring annual assessments. Respondents favouring annual assessments were primarily project finance investors. They highlighted that five year periodic assessments may not allow us to meet our objective of the regime being finance solution-invariant. They favoured either annual assessments or periodic assessments with a strong financeability provision to provide the certainty needed to raise debt finance.

Within-period adjustments

Summary of 2013 consultation proposals

1.26. We noted in the March 2013 document that a lack of guaranteed revenue within a five year assessment period meant that developers would have to finance themselves through provision of an equity buffer. We further noted that this could result in a higher cost of capital – which would require consumers to underwrite a higher floor – and might also preclude access to certain sources of finance. As such, we proposed to consider a within-period adjustment if warranted to support financeability.

Summary of responses

1.27. Respondents to the consultation held differing views on the need for a financeability test within-period under five year assessment periods and the trigger for causing the movement of funds if there was such a test.

1.28. As noted above, project finance investors generally favoured either annual assessments or periodic assessments with a strong financeability test provision. Other interconnector developers and TSOs were broadly in favour of five year assessment periods with provision for a financeability test within period. Energy companies that commented on this question advocated five year assessment periods with no within-period financeability test.

1.29. One interconnector developer advocated cumulative annual assessments over a five year period and a strong mechanistic financeability test if five year assessment periods were retained. Several interconnector developers and one TSO highlighted the need for clarity on how the financeability test would be conducted for the investment decision.

1.30. One energy company cautioned that whilst a financeability test may protect against very negative events within period, it could encourage inefficient gearing arrangements which would require higher floor returns to ensure debt covenants are met. They proposed the trigger for the test should be relatively strict. This view was supported by an interconnector developer who advocated that the trigger should be

below the cumulative level of the floor and restricted to conditions that are beyond those which could have been reasonably foreseen by the developer. Another energy company went further and argued that if there is a business case for the interconnector project, a financeability test within period should not be required.

Recovery of adjustments

Summary of 2013 consultation proposals

1.31. In March 2013, we indicated that the recovery of adjustments arising from income adjusting events would be made at the next available opportunity, which in practice could involve a two year time delay from the income adjusting event happening. End-of-period adjustments were modelled to be recovered with a two year delay. We did not receive any responses in this area.

Availability incentive

Summary of 2013 consultation proposals

1.32. In March 2013, we proposed an availability incentive with a symmetric financial incentive linked to the cap, with the aim of addressing potential perverse incentives relating to interconnector availability that may arise at the cap.

1.33. We proposed a one percentage point change in the level of the cap for each percentage point deviation in link availability from the target level, subject to a maximum upside/downside of two percentage points. Target availability will be set based on a model produced by Sinclair Knight Merz (SKM) consultants, which is published alongside our March 2013 document. A supporting report by SKM is also published.[50]

1.34. We also proposed to make the floor payment conditional on availability being at or above a pre-defined minimum threshold, in a manner similar to OFTO licences.

1.35. We proposed that availability would be measured over the five year assessment periods but that availability is to be reported on an annual basis.

Summary of responses

1.36. Respondents agreed with our proposed approach for setting target availability on a mechanistic, project by project basis and the application of the financial incentive at the cap and a minimum availability threshold at the floor. Most respondents agreed that the proposed availability incentive would be effective for incentivising high interconnector availability.

[50] The report and model are available on our website here: https://www.ofgem.gov.uk/publications-and-updates/cap-and-floor-regime-regulated-electricity-interconnector-investment-application-project-nemo

1.37. Some respondents suggested that other factors may need to be taken into account when setting target availability, in particular external constraints imposed on the link by the system operator.

1.38. Interconnector developers and one TSO provided additional comments on the availability incentive in the following areas:

- Measuring 'actual' availability: One interconnector developer supported a project specific assessment for availability but sought further clarity on the definition of target availability (technical and market availability). They suggested that neither target nor actual availability should include the impact of market-driven or potential external factors beyond the control of the link operator. Another interconnector developer and a TSO supported this view.

- Dataset used to set 'target' availability: One interconnector developer felt that the dataset used in the model should be continuously updated. Another interconnector developer felt that the proposed target for Nemo diverged from observed availability data for existing high voltage direct current (HVDC) interconnectors.

Treatment of financial assistance and refinancing gains

Summary of 2013 consultation proposals

1.39. We proposed to net-off any grants received for the project from the RAV of the project and allow developers to retain the benefits of refinancing. We did not receive any consultation responses in this area.

Floor benchmark

Summary of 2013 consultation proposals

1.40. We proposed to apply a relevant cost of debt benchmark to 100 per cent of the RAV. This cost of debt would be based on a 20-day trailing average of an index of BBB debt with 10+ years' maturity. It would be based on a 50 per cent weighting of a GB cost of debt index and a 50 per cent weighting of a Belgian cost of debt index.

Summary of responses

1.41. One TSO supported our proposal that an efficient developer should be allowed to recover its costs and service its debt obligations (be 'financeable') at the floor. They noted they would have views on minimum equity and/or liquidity and maximum allowable gearing if they were entering into a project with a partner and these views may differ to Ofgem's notional gearing assumption.

1.42. One interconnector developer commented that further detail on the particular benchmarks and parameters that will be chosen in Belgium would be helpful.

Cap benchmark

Summary of 2013 consultation proposals

1.43. We proposed to apply a relevant cost of equity to 100 per cent of the RAV. This cost of equity would be based on an approach rooted in the CAPM.

1.44. This approach requires estimates for three parameters: the risk-free rate; the equity risk premium; and the equity beta. We proposed to take a long-term perspective on the first two, weighting our estimate equally based on evidence from GB and Belgium. We proposed to use a beta estimate for Drax as a relevant comparator.

Summary of responses

1.45. One interconnector developer commented on the proposed methodology used to set the cap and floor on returns. They believed that the methodology used to set the cap may need to take into account two additional considerations.

- First, using the cost of equity for a generation plant caps developer return at a level less than or equal to those received by a generator (whose average returns will include contributions from returns above as well as below their average value). Under our proposed methodology, the cost of equity is being applied on the whole asset base not just the non-geared proportion.

- Second, they queried the use of Drax as the generation comparator. They suspected that there are number of other factors which are relevant to Drax's observable beta which are not relevant to interconnector investment appraisals but did not provide any alternatives. They also felt that the presence of the floor and the floor on returns does not reduce the level of risk at the cap.

Project discount rates

Summary of 2013 consultation proposals

1.46. We proposed to use an operational cost of capital for the purposes of re-profiling allowances and ensuring NPV neutrality during the operational phase. This was set using a 50 per cent weighting of each of the floor and cap rates of return.

Summary of responses

1.47. One interconnector developer noted that under an operation cost of capital that is determined by a 50:50 weighting of cap and floor returns, the cap and floor will be symmetric around the project cost of capital if the cap and floor are set appropriately. They cautioned that with separate cost of capital calculations for the cap and floor there was a risk of an unduly low prospective average project return.

Methodology for setting IDC (including October 2013 IDC consultation)

Summary of 2013 consultation proposals

1.48. In our March 2013 consultation, we proposed that, based on our assessment of the relative level of risks faced by developers in constructing transmission assets for interconnection and offshore wind, the required return by an efficient interconnector developer may need to be higher than that for offshore.

1.49. We subsequently issued a consultation on the IDC approach to be used for interconnector development and offshore wind in October 2013. In this consultation we proposed an overall approach based on the Weighted Average Cost of Capital (WACC), with a CAPM for calculating the return on the equity component. When applying the CAPM, we proposed to use market data for companies that share characteristics with companies constructing interconnectors, to derive values for risk, equity and gearing that are appropriate to the sector. This group of comparators includes integrated energy companies.

1.50. We proposed to include two additional uplifts for Nemo to the basic rate to compensate developers for asymmetric risks. These uplifts reflected:

- Asymmetric development risk – ie the risk that some projects might be aborted during the development phase; and
- Asymmetric construction risk – ie risk that costs would be disallowed under the cost assessment process after they had been incurred.

Summary of responses

1.51. There were limited responses to the October 2013 consultation in relation to the approach to IDC for Nemo (beyond those received in relation to the March 2013 Nemo consultation).

1.52. All respondents agreed that the use of CAPM and WACC are appropriate but some highlighted the importance of inputting appropriate parameters. The majority of respondents had concerns over some of the existing parameters, such as the cost of debt or the risk-free rate.

1.53. Respondents were generally supportive of our proposals for Nemo. All respondents agreed that IDC should be fixed at FID. Three respondents commented on different aspects of application: one suggested that a review every two years would be more appropriate than an annual review; one suggested that project-specific rates of IDC should be introduced and another suggested having a different cap on IDC for the development and construction phases. One respondent disagreed with our policy of adjusting the cap on IDC for projects that are currently accruing IDC.

Cost assessment consultation April 2014

Summary of responses

1.54. We received 9 responses to the April 2014 cost assessment consultation. Non-confidential responses are on our website.

1.55. The majority of respondents commented that the assessed costs were significantly lower than expected therefore costs were underestimated by BPI and Ofgem. One respondent broadly agreed with the assessment but noted that some costs, after reductions, did seem low.

1.56. A number of respondents challenged the timing of the cost assessment, suggesting that whilst a detailed assessment was appropriate, it had been conducted too early in the process. A number of respondents disagreed with an assessment that is designed to minimise costs, suggesting that there are already incentives on the developers to reduce costs.

1.57. Respondents commented that benchmarks for HVDC technology are hard to come by and some questioned whether the reliance on benchmarks was an appropriate approach for this cost assessment. The majority of respondents suggested an approach that took more account of the project specific elements of the project.

1.58. There was broad agreement that the choice of technology for Nemo (VSC) was appropriate. One respondent suggested that they could not provide a view without seeing the full information used to make our decision. One respondent suggested that the true value of VSC technology was not reflected in the consultation. Another questioned why a project developer should have to justify the technology choice.

1.59. A number of respondent suggested that opex was underestimated or were surprised at the scale of the opex reductions. One respondent suggested that setting opex for 25 years with no re-opener was not appropriate.

Appendix 3 – Updated Impact Assessment

Introduction

1.60. The consultation on our initial Impact Assessment (IA) closed on 13 February 2014. We had 6 responses. The respondents are listed in Table A3.1 below.

Table A3.1: IA consultation responses

Name	Category
Diamond Transmission Corporation (confidential response)	Interconnector developer
DONG Energy	Interconnector developer; energy company
EDF Energy	Energy company
National Grid Business Development	Nemo developer
National Grid Electricity Transmission	Transmission System Operator
Transmission Investment	Interconnector and OFTO developer

1.61. This appendix assesses the themes highlighted by respondents in turn and sets out our updated position.

1.62. This appendix is our updated IA. This should be read as an addition to the December 2013 consultation. We consider that the material in the December IA remains appropriate.

Discussion of responses by theme

Stranding risk and our approach to future cap and floor regime reviews

1.63. Three respondents requested more information on the proposal to review the cap and floor if revenues are consistently at the floor. One of these respondents also requested clarity on how exceptional or force majeure events would be treated under the regime, drawing comparison with the licence provisions under the OFTO regime for offshore transmission.

1.64. The floor provides a guaranteed return level which de-risks interconnector investment. The floor payment is subject to meeting a minimum availability threshold.

1.65. We will not include a reopener for policy or regulatory changes, such as further detail becoming available on the level of funding via any capacity market payments or changes in the GB carbon price floor. We consider that the floor provides sufficient insulation from such risks and therefore protects developers from such changes.

1.66. There are two safeguards for developers in the regime:

- Where the developer considers an income adjusting event has occurred they have the opportunity to raise this with us to request additional funding. This process will be set out in the licence and will be addressed outside the cap and floor mechanism.

- Similarly, we have implemented a minimum availability threshold at the floor. We will consider events that are beyond developers' control when assessing availability against this minimum threshold. Where we think that availability below this threshold was for reasons beyond the control of the developers, the top-up to the floor will be provided.

Validity of modelling

1.67. One respondent noted that the modelling used in the IA, undertaken by the Brattle Group and provided by the Nemo developers, should be updated. This respondent suggested that the modelling may not accurately represent the risk to consumers of having to pay for the floor on a consistent basis as a result of reduced revenues.

1.68. We agree with the respondent that the modelling provided by the Brattle Group is now dated. However, we still consider it to be useful in giving an indication of the revenues generated by the interconnector (and subsequent likelihood of consumers having to underwrite the floor) and of the consumer welfare benefits that are likely as a result of the interconnector being in operation.

1.69. The likelihood of consumers having to make payments at the floor is based on the amount of revenue generated by Nemo, and so will be a product of two factors: the amount of electricity traded over the interconnector and the value of these trades. As a result of market conditions and policy changes, we consider that the likelihood of the interconnector making less money than the level of the floor has reduced since the Brattle Group's study was undertaken. This is in part due to additional policy mechanisms such as the carbon price floor, which reinforces the existing price differential between the GB market and other markets and was not reflected in the Brattle Group's study.

1.70. Modelling work undertaken for DECC by Redpoint supports this view and that set out in our draft IA, and shows that Nemo is likely to contribute to a net welfare increase for GB (under a number of interconnector configurations and scenarios).[51] This analysis suggests that the floor is unlikely to be triggered. This is shown to be the case even if a number of other interconnectors come online. Further least-regrets analysis undertaken in the Redpoint report concludes that '*incremental increases*

[51] This analysis can be found on DECC's website here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266307/DECC_Impacts_of_further_electricity_interconnection_for_GB_Redpoint_Report_Final.pdf

with GB's closest neighbours are likely to be beneficial to GB under a broad range of circumstances … in the medium term, some interconnection to France, Ireland, Belgium and Norway is unlikely to lead to regret'.

1.71. There are two additional reasons why we have not undertaken additional analysis:

- Given the rate of change in energy markets, and the assumption-driven nature of interconnector modelling, we do not think it would be prudent or efficient to commission further modelling to inform our decision for Nemo.
- Further modelling would delay the Nemo project at the time when the need for increased interconnector capacity is widely recognised by the government, energy regulators, industry stakeholders and European Union institutions. This may also create uncertainty in the market (which could hinder the progression of forthcoming projects or could increase the risk profile and therefore costs of such projects). Both these outcomes would be to the detriment of GB consumers.

Risk of displacing current generation

1.72. One respondent suggested that the completion of Nemo is likely to displace coal and gas in the GB generation mix, reducing the revenues for these plants and thereby potentially having a detrimental impact on GB security of supply.

1.73. We note the government is implementing the Capacity Market in order to directly remunerate the security of supply benefit that existing (and new) plants can offer, which aims to offer a source of revenue to plants that may otherwise have been mothballed or shut down.

1.74. Work is also ongoing to establish new balancing services, for which the SO will be responsible. National Grid recently consulted on the products and services that it is seeking to include in its contracts with system users.[52] It is likely that these new services may generate contractual revenues for plants which can offer responsive and flexible balancing services.

1.75. In principle we highlighted in the IA that GB consumers may benefit as a result of electricity generated by a more efficient plant operating in continental Europe and being imported at a lower price than electricity generated at a less efficient plant in GB. This was identified as a key consumer benefit of the interconnector – allowing demand to be met in the most efficient manner.

[52] More information is available on National Grid's website here: http://www.nationalgrid.com/uk/electricity/additionalmeasures

1.76. In practice we agree that this is likely to displace inefficient generation in GB and that Nemo may therefore impact on revenues of some coal and gas plants with higher running and production costs. We expect that any impact of the displacement of these plants on GB security of supply will be offset by the introduction of the Capacity Market and new balancing services.

1.77. We conclude that we do not consider the potential displacement of existing generation as a result of Nemo to have a material detrimental impact.

Considering alternative options (such as new flexible generation and emerging technologies)

1.78. Two respondents suggested that we have not sufficiently assessed Nemo against other technologies, such as alternative interconnectors, new flexible generation, demand side response (DSR) and electricity storage. Conversely, one respondent suggested that Nemo can make savings compared to the cost of these alternative measures and that we should take account of these potential costs.

1.79. Whilst we recognise that other interconnector projects are likely to come forward, and that there is scope for other technologies to perform similar functions, we do not consider it appropriate to measure the impacts of Nemo against other potential technologies. Nemo is a mature project at the investment stage, for which we have been developing a regulatory regime since 2011. We expect that Nemo will be operational in 2019. We think it would be difficult and unrealistic to consider this against some technologies, such as DSR and grid-scale electricity storage, that may be some years from full maturity. As a result, the assessment of interconnection against other technologies has been beyond the scope of the IA.

1.80. We do not have any regulatory tools that would bring alternative technologies to fruition and consider that it would not be in the interests of consumers to compare a viable and mature project to other options that may or may not come forward under a range of different circumstances.

1.81. It is widely accepted that additional interconnection will realise benefits for GB. As the most mature interconnector project we consider that Nemo going ahead will result in benefits to GB. This also reflects our March 2013 decision to progress Nemo separately to other interconnector projects. Our framework for regulation of future interconnector projects allows for the comparison of interconnector projects and allows us to determine whether there are benefits in some or all of them going ahead.

1.82. In conclusion, we do not think it would be in the interests of GB consumers to delay Nemo in order to enable comparisons with, or assessment against, other technologies or projects that may or may not be realised at some point in the future.

Impacts of Nemo on the GB network

1.83. One respondent suggested that we should further set out the onshore transmission costs resulting from Nemo, and how these impact on consumer bills. They also suggest further discussion of the benefits of VSC over Line Commutated Converter (LCC) technology.

1.84. We have assessed the impact of technology choice as part of our April 2014 cost assessment consultation. Our minded-to position for the cost assessment consultation was that the choice of VSC technology was justified, including when considering the cost of onshore reinforcements. Following consultation and assessment of responses, we have confirmed this decision in chapter 3 of this document.

Regulation of other interconnector projects

1.85. A number of respondents suggested that uncertainty about regulatory treatment for projects other than Nemo could delay investment in interconnection, with potential detrimental impacts on GB.

1.86. Although this issue was beyond of the scope of the Nemo IA, we recognise the concerns of respondents. We consulted on our proposals for regulation of near-term electricity interconnectors in May 2014 and have since published our decision to extend the cap and floor regime developed for Nemo to other near-term electricity interconnectors.[53] Our proposals for regulation of longer-term interconnectors were also discussed in our ITPR document published in September 2014.[54]

[53] Our decision letter is available on our website here: https://www.ofgem.gov.uk/publications-and-updates/decision-roll-out-cap-and-floor-regime-near-term-electricity-interconnectors

[54] Our ITPR draft conclusions is available on our website here: https://www.ofgem.gov.uk/electricity/transmission-networks/integrated-transmission-planning-and-regulation

COMMISSION DELEGATED REGULATION (EU) No 1391/2013

of 14 October 2013

amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 [1], and in particular Article 3(4) thereof,

Whereas:

(1) Regulation (EU) No 347/2013 sets out a new framework for infrastructure planning and project implementation for the period up to 2020 and beyond. It identifies nine strategic geographic infrastructure priority corridors in the domains of electricity, gas and oil, and three Union-wide infrastructure priority areas for electricity highways, smart grids and carbon dioxide transportation networks, and establishes a transparent and inclusive process to identify concrete projects of common interest (PCIs). Projects labelled as PCIs will benefit from accelerated and streamlined permit granting procedures, better regulatory treatment and – where appropriate – financial support under the Connecting Europe Facility (CEF).

(2) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Commission is to be empowered to adopt delegated acts to establish the Union list of PCIs (Union list) on the basis of the regional lists adopted by the decision-making bodies of the Regional Groups as established under that Regulation.

(3) Project proposals submitted for inclusion in the first Union list of PCIs were assessed by the Regional Groups established under Regulation (EU) No 347/2013 and composed of representatives of the Member States, national regulatory authorities, transmission system operators (TSOs), as well as the Commission, the Agency for the Cooperation of Energy Regulators (the Agency) and the European Network of Transmission System Operators for Electricity and Gas (ENTSO-E and ENTSOG).

(4) In the context of the work of the Regional Groups, organisations representing relevant stakeholders, including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection, were consulted.

(5) The draft regional lists were agreed upon during a meeting at technical level, comprising representatives of the Commission and of the relevant Member States, on 13 July 2013. Following an opinion by the Agency on the draft regional lists submitted on 17 July 2013, the final regional lists were adopted by the decision-making bodies of the Regional Groups on 24 July 2013. All of the proposed projects obtained the approval of the Member States to which territory they relate, in accordance with Article 172 of the TFEU and with Article 3(3)(a) of Regulation (EU) No 347/2013.

(6) The Union list of PCIs is based on the final regional lists. One project had to be removed from the list due to ongoing discussions on the designation of Natura 2000 sites.

(7) The projects on this first Union list of PCIs were assessed against, and found to meet, the criteria for projects of common interest set out in Article 4 of Regulation (EU) No 347/2013.

(8) Cross-regional consistency was ensured, taking into account the opinion of the Agency submitted on 17 July 2013.

(9) The PCIs are listed according to the order of the priority corridors set out in Annex I of Regulation (EU) No 347/2013. The list does not contain any ranking of projects.

[1] OJ L 115, 25.4.2013, p. 39.

(10) PCIs are either listed as stand-alone PCIs or as part of a cluster of several PCIs. Some PCIs have been clustered because of their interdependent, potentially competing or competing nature [1]. All PCIs are subject to the same rights and obligations established by Regulation (EU) No 347/2013.

(11) The Union list contains PCIs in different stages of their development. Some are still in the early phases, i.e. the pre-feasibility, feasibility or assessment phases. In those cases, studies are still needed to demonstrate that the projects are technically and economically viable, and that they are compliant with Union legislation, and with Union environmental legislation in particular. In this context, potential impacts on the environment should be adequately identified, assessed and avoided or mitigated.

(12) The inclusion of projects in the Union list of PCIs, in particular of those still in the early phases, is without prejudice to the outcome of relevant environmental assessment and permitting procedures. Projects not in compliance with Union legislation should be removed from the Union list of PCIs. The implementation of the PCIs, including their compliance with EU legislation, should be monitored at national level and pursuant to Article 5 of Regulation (EU) No 347/2013.

(13) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Union list is to take the form of an annex to that Regulation.

(14) Regulation (EU) No 347/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

An Annex VII is added to Regulation (EU) No 347/2013 in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 October 2013.

For the Commission
The President
José Manuel BARROSO

[1] As explained in the Annex.

ANNEX

The following annex is added to Regulation (EU) No 347/2013:

'ANNEX VII

Union list of projects of common interest ("union list"), referred to in Article 3(4)

A. The Commission applied the following principles when establishing the Union list:

1. *Clusters of PCIs*

Some PCIs form part of a cluster because of their interdependent, potentially competing or competing nature. The following principles were applied for the clustering of PCIs:

— A **cluster of interdependent PCIs** is defined as a "Cluster X including the following PCIs". Clusters of interdependent projects have been formed to identify those projects which are all needed to address the same bottleneck across country borders and which provide synergies if realised together. In this case, all projects have to be implemented to realise the Union-wide benefits.

— A **cluster of potentially competing PCIs** is defined as a "Cluster X including one or more of the following PCIs". Clusters of potentially competing projects reflect uncertainty around the extent of the bottleneck across country borders. In this case, not all of the PCIs contained in the clusters have to be implemented. It is left to the market whether all, several or one of the projects go ahead, subject to the necessary planning, permitting and regulatory approvals. The need for the projects shall be reassessed in the subsequent PCI identification process, including with regard to the capacity needs.

— A **cluster of competing PCIs** is defined as a "Cluster X including one of the following PCIs". Clusters of competing projects address the same bottleneck across country borders. However, the extent of the bottleneck is more certain than in the second case above and it is therefore clear that only one of the PCIs has to be implemented. It is left to the market which one of the projects goes ahead, subject to the necessary planning, permitting and regulatory approvals. Where necessary, the need for the projects shall be reassessed in the subsequent PCI identification process.

All PCIs are subject to the same rights and obligations established by Regulation (EU) No 347/2013.

2. *Treatment of substations, back-to-back stations and compressor stations*

Substations and back-to-back stations in electricity and compressor stations in gas are considered as part of the PCIs and are not mentioned explicitly, if they are geographically located on the transmission line. If they are placed in a different location, they are explicitly mentioned. These items are subject to the rights and obligations of Regulation (EU) No 347/2013.

B. Union list of projects of common interest:

1. **Priority corridor Northern Seas offshore grid ("NSOG")**

No	Definition
1.1.	Cluster Belgium – United Kingdom between Zeebrugge and Canterbury [currently known as the NEMO project] including the following PCIs: 1.1.1. Interconnection between Zeebrugge (BE) and the vicinity of Richborough (UK) 1.1.2. Internal line between the vicinity of Richborough and Canterbury (UK) 1.1.3. Internal line between Dungeness to Sellindge and Sellindge to Canterbury (UK)
1.2.	PCI Belgium – two grid-ready offshore hubs connected to the onshore substation Zeebrugge (BE) with anticipatory investments enabling future interconnections with France and/or UK
1.3.	Cluster Denmark – Germany between Endrup and Brunsbüttel including the following PCIs: 1.3.1. Interconnection between Endrup (DK) and Niebüll (DE) 1.3.2. Internal line between Brunsbüttel and Niebüll (DE)

No	Definition
1.4.	Cluster Denmark – Germany between Kassö and Dollern including the following PCIs: 1.4.1. Interconnection between Kassö (DK) and Audorf (DE) 1.4.2. Internal line between Audorf and Hamburg/Nord (DE) 1.4.3. Internal line between Hamburg/Nord and Dollern (DE)
1.5.	PCI Denmark – Netherlands interconnection between Endrup (DK) and Eemshaven (NL)
1.6.	PCI France – Ireland interconnection between La Martyre (FR) and Great Island or Knockraha (IE)
1.7.	Cluster France-United Kingdom interconnections, including one or more of the following PCIs: 1.7.1. France – United Kingdom interconnection between Cotentin (FR) and the vicinity of Exeter (UK) [currently known as FAB project] 1.7.2. France — United Kingdom interconnection between Tourbe (FR) and Chilling (UK) [currently known as the IFA2 project] 1.7.3. France – United Kingdom interconnection between Coquelles (FR) and Folkestone (UK) [currently known as the ElecLink project]
1.8.	PCI Germany – Norway interconnection between Wilster (DE) and Tonstad (NO) [currently known as the NORD.LINK project]
1.9.	Cluster connecting generation from renewable energy sources in Ireland to United Kingdom, including one or more of the following PCIs: 1.9.1. Ireland – United Kingdom interconnection between Co. Offaly (IE), Pembroke and Pentir (UK) 1.9.2. Ireland – United Kingdom interconnection between Coolkeeragh — Coleraine hubs (IE) and Hunterston station, Islay, Argyll and Location C Offshore Wind Farms (UK) 1.9.3. Ireland – United Kingdom interconnection between the Northern hub, Dublin and Codling Bank (IE) and Trawsfynyd and Pembroke (UK) 1.9.4. Ireland – United Kingdom interconnection between the Irish midlands and Pembroke (UK) 1.9.5. Ireland – United Kingdom interconnection between the Irish midlands and Alverdiscott, Devon (UK) 1.9.6. Ireland – United Kingdom interconnection between the Irish coast and Pembroke (UK)
1.10.	PCI Norway – United Kingdom interconnection
1.11.	Cluster of electricity storage projects in Ireland and associated connections to United Kingdom, including one or more of the following PCIs: 1.11.1. Hydro-pumped storage in North West Ireland 1.11.2. Ireland – United Kingdom interconnection between North West Ireland (IE) and Midlands (UK) 1.11.3. Hydro-pumped (seawater) storage in Ireland – Glinsk 1.11.4. Ireland – United Kingdom interconnection between Glinsk, Mayo (IE) and Connah's Quai, Deeside (UK)
1.12.	PCI compressed air energy storage in United Kingdom – Larne

2. **Priority corridor North-South electricity interconnections in Western Europe ("NSI West Electricity")**

No	Definition
2.1.	PCI Austria internal line between Westtirol and Zell-Ziller (AT) to increase capacity at the AT/DE border
2.2.	Cluster Belgium — Germany between Lixhe and Oberzier [currently known as the ALEGrO project] including the following PCIs: 2.2.1. Interconnection between Lixhe (BE) and Oberzier (DE) 2.2.2. Internal line between Lixhe and Herderen (BE) 2.2.3. New substation in Zutendaal (BE)
2.3.	Cluster Belgium – Luxembourg capacity increase at the BE/LU border including the following PCIs: 2.3.1. Coordinated installation and operation of a phase-shift transformer in Schifflange (LU) 2.3.2. Interconnection between Aubange (BE) and Bascharage/Schifflange (LU)
2.4.	PCI France – Italy interconnection between Codrongianos (IT), Lucciana (Corsica, FR) and Suvereto (IT) [currently known as the SA.CO.I. 3 project]
2.5.	Cluster France — Italy between Grande Ile and Piossasco, including the following PCIs: 2.5.1. Interconnection between Grande Ile (FR) and Piossasco (IT) [currently known as Savoie-Piemont project] 2.5.2. Internal line between Trino and Lacchiarella (IT)
2.6.	PCI Spain internal line between Santa Llogaia and Bescanó (ES) to increase capacity of the interconnection between Bescanó (ES) and Baixas (FR)
2.7.	PCI France – Spain interconnection between Aquitaine (FR) and the Basque country (ES)
2.8.	PCI Coordinated installation and operation of a phase-shift transformer in Arkale (ES) to increase capacity of the interconnection between Argia (FR) and Arkale (ES)
2.9.	PCI Germany internal line between Osterath and Philippsburg (DE) to increase capacity at Western borders
2.10.	PCI Germany internal line between Brunsbüttel-Großgartach and Wilster-Grafenrheinfeld (DE) to increase capacity at Northern and Southern borders
2.11.	Cluster Germany – Austria – Switzerland capacity increase in Lake Constance area including the following PCIs: 2.11.1. Interconnection between border area (DE), Meiningen (AT) and Rüthi (CH) 2.11.2. Internal line in the region of point Rommelsbach to Herbertingen, Herbertingen to Tiengen, point Wullenstetten to point Niederwangen (DE) and the border area DE-AT
2.12.	PCI Germany – Netherlands interconnection between Niederrhein (DE) and Doetinchem (NL)

No	Definition
2.13.	Cluster Ireland – United Kingdom (Northern Ireland) interconnections, including one or more of the following PCIs: 2.13.1. Ireland – United Kingdom interconnection between Woodland (IE) and Turleenan (UK – Northern Ireland) 2.13.2. Ireland – United Kingdom Interconnection between Srananagh (IE) and Turleenan (UK – Northern Ireland)
2.14.	PCI Italy – Switzerland interconnection between Thusis/Sils (CH) and Verderio Inferiore (IT)
2.15.	Cluster Italy – Switzerland capacity increase at IT/CH border including the following PCIs: 2.15.1. Interconnection between Airolo (CH) and Baggio (IT) 2.15.2. Upgrade of Magenta substation (IT) 2.15.3. Internal line between Pavia and Piacenza (IT) 2.15.4. Internal line between Tirano and Verderio (IT)
2.16.	Cluster Portugal capacity increase at PT/ES border including the following PCIs: 2.16.1. Internal line between Pedralva and Alfena (PT) 2.16.2. Internal line between Pedralva and Vila Fria B (PT) 2.16.3. Internal line between Frades B, Ribeira de Pena and Feira (PT)
2.17.	PCI Portugal – Spain interconnection between Vila Fria – Vila do Conde – Recarei (PT) and Beariz – Fontefría (ES)
2.18.	PCI capacity increase of hydro-pumped storage in Austria — Kaunertal, Tyrol
2.19.	PCI hydro-pumped storage in Austria — Obervermuntwerk II, Vorarlberg province
2.20.	PCI capacity increase of hydro-pumped storage in Austria — Limberg III, Salzburg
2.21.	PCI hydro-pumped storage in Germany — Riedl

3. **Priority corridor North-South electricity interconnections in Central Eastern and South Eastern Europe ("NSI East Electricity")**

No	Definition
3.1.	Cluster Austria – Germany between St. Peter and Isar including the following PCIs: 3.1.1. Interconnection between St. Peter (AT) and Isar (DE) 3.1.2. Internal line between St. Peter and Tauern (AT) 3.1.3. Internal line between St. Peter and Ernsthofen (AT)
3.2.	Cluster Austria – Italy between Lienz and Veneto region including the following PCIs: 3.2.1. Interconnection between Lienz (AT) and Veneto region (IT) 3.2.2. Internal line between Lienz and Obersielach (AT) 3.2.3. Internal line between Volpago and North Venezia (IT)

No	Definition
3.3.	PCI Austria – Italy interconnection between Nauders (AT) and Milan region (IT)
3.4.	PCI Austria – Italy interconnection between Wurmlach (AT) and Somplago (IT)
3.5.	Cluster Bosnia and Herzegovina – Croatia between Banja Luka and Lika including the following PCIs: 3.5.1. Interconnection between Banja Luka (BA) and Lika (HR) 3.5.2. Internal lines between Brinje, Lika, Velebit and Konjsko (HR)
3.6.	Cluster Bulgaria capacity increase with Greece and Romania including the following PCIs: 3.6.1. Internal line between Vetren and Blagoevgrad (BG) 3.6.2. Internal line between Tsarevets and Plovdiv (BG)
3.7.	Cluster Bulgaria – Greece between Maritsa East 1 and N. Santa including the following PCIs: 3.7.1. Interconnection between Maritsa East 1 (BG) and N. Santa (EL) 3.7.2. Internal line between Maritsa East 1 and Plovdiv (BG) 3.7.3. Internal line between Maritsa East 1 and Maritsa East 3 (BG) 3.7.4. Internal line between Maritsa East 1 and Burgas (BG)
3.8.	Cluster Bulgaria – Romania capacity increase including the following PCIs: 3.8.1. Internal line between Dobrudja and Burgas (BG) 3.8.2. Internal line between Vidino and Svoboda (BG) 3.8.3. Internal line between Svoboda (BG) and the splitting point of the interconnection Varna (BG) - Stupina (RO) in BG 3.8.4. Internal line between Cernavoda and Stalpu (RO) 3.8.5. Internal line between Gutinas and Smardan (RO) 3.8.6. Internal line between Gadalin and Suceava (RO)
3.9.	Cluster Croatia – Hungary – Slovenia between Žerjavenec/Heviz and Cirkovce including the following PCIs: 3.9.1. Interconnection between Žerjavenec (HR)/Heviz (HU) and Cirkovce (SI) 3.9.2. Internal line between Divača and Beričevo (SI) 3.9.3. Internal line between Beričevo and Podlog (SI) 3.9.4. Internal line between Podlog and Cirkovce (SI)
3.10.	Cluster Israel – Cyprus – Greece between Hadera and Attica region [currently known as the euro Asia Interconnector] including the following PCIs: 3.10.1. Interconnection between Hadera (IL) and Vasilikos (CY) 3.10.2. Interconnection between Vasilikos (CY) and Korakia, Crete (EL) 3.10.3. Internal line between Korakia, Crete and Attica region (EL)

No	Definition
3.11.	Cluster Czech Republic internal lines to increase capacity at North-Western and Southern borders including the following PCIs: 3.11.1. Internal line between Vernerov and Vitkov (CZ) 3.11.2. Internal line between Vitkov and Prestice (CZ) 3.11.3. Internal line between Prestice and Kocin (CZ) 3.11.4. Internal line between Kocin and Mirovka (CZ) 3.11.5. Internal line between Mirovka and Cebin (CZ)
3.12.	PCI internal line in Germany between Lauchstädt and Meitingen to increase capacity at Eastern borders
3.13.	PCI internal line in Germany between Halle/Saale and Schweinfurt to increase capacity in the North-South Corridor East
3.14.	Cluster Germany – Poland between Eisenhűttenstadt and Plewiska [currently known as the GerPol Power Bridge project] including the following PCIs: 3.14.1. Interconnection between Eisenhűttenstadt (DE) and Plewiska (PL) 3.14.2. Internal line between Krajnik and Baczyna (PL) 3.14.3. Internal line between Mikułowa and Świebodzice (PL)
3.15.	Cluster Germany – Poland between Vierraden and Krajnik including the following PCIs: 3.15.1. Interconnection between Vierraden (DE) and Krajnik (PL) 3.15.2. Coordinated installation and operation of phase shifting transformers on the interconnection lines between Krajnik (PL) – Vierraden (DE) and Mikułowa (PL) – Hagenwerder (DE)
3.16.	Cluster Hungary — Slovakia between Gőnyü and Gabčikovo including the following PCIs: 3.16.1. Interconnection between Gőnyü (HU) and Gabčikovo (SK) 3.16.2. Internal line between Velký Ďur and Gabčikovo (SK) 3.16.3. Extension of Győr substation (HU)
3.17.	PCI Hungary – Slovakia interconnection between Sajóvánka (HU) and Rimavská Sobota (SK)
3.18.	Cluster Hungary – Slovakia between Kisvárda area and Velké Kapušany including the following PCIs: 3.18.1. Interconnection between Kisvárda area (HU) and Velké Kapušany (SK) 3.18.2. Internal line between Lemešany and Velké Kapušany (SK)
3.19.	Cluster Italy – Montenegro between Villanova and Lastva including the following PCIs: 3.19.1. Interconnection between Villanova (IT) and Lastva (ME) 3.19.2. Internal line between Fano and Teramo (IT) 3.19.3. Internal line between Foggia and Villanova (IT)

No	Definition
3.20.	Cluster Italy – Slovenia between West Udine and Okroglo including the following PCIs: 3.20.1. Interconnection between West Udine (IT) and Okroglo (SI) 3.20.2. Internal line between West Udine and Redipuglia (IT)
3.21.	PCI Italy – Slovenia interconnection between Salgareda (IT) and Divača — Bericevo region (SI)
3.22.	Cluster Romania – Serbia between Resita and Pancevo including the following PCIs: 3.22.1. Interconnection between Resita (RO) and Pancevo (RS) 3.22.2. Internal line between Portile de Fier and Resita (RO) 3.22.3. Internal line between Resita and Timisoara/Sacalaz (RO) 3.22.4. Internal line between Arad and Timisoara/Sacalaz (RO)
3.23.	PCI hydro-pumped storage in Bulgaria — Yadenitsa
3.24.	PCI hydro-pumped storage in Greece — Amfilochia
3.25.	PCI battery storage systems in Central South Italy
3.26.	PCI hydro-pumped storage in Poland — Młoty

4. **Priority corridor Baltic Energy Market Interconnection Plan ("BEMIP Electricity")**

No	Definition
4.1.	PCI Denmark – Germany interconnection between Ishőj/Bjæverskov (DK) and Bentwisch/Gűstrow (DE) via offshore windparks Kriegers Flak (DK) and Baltic 2 (DE) [currently known as Kriegers Flak Combined Grid Solution]
4.2.	Cluster Estonia – Latvia between Kilingi-Nõmme and Riga [currently known as 3rd interconnection] including the following PCIs: 4.2.1. Interconnection between Kilingi-Nõmme (EE) and Riga CHP2 substation (LV) 4.2.2. Internal line between Harku and Sindi (EE)
4.3.	PCI Estonia/Latvia/Lithuania synchronous interconnection with the Continental European networks
4.4.	Cluster Latvia – Sweden capacity increase [currently known as the NordBalt project] including the following PCIs: 4.4.1. Internal line between Ventspils, Tume and Imanta (LV) 4.4.2. Internal line between Ekhyddan and Nybro/Hemsjö (SE)
4.5.	Cluster Lithuania – Poland between Alytus (LT) and Elk (PL) including the following PCIs: 4.5.1. LT part of interconnection between Alytus (LT) and LT/PL border 4.5.2. Internal line between Stanisławów and Olsztyn Mątki (PL) 4.5.3. Internal line between Kozienice and Siedlce Ujrzanów (PL) 4.5.4. Internal line between Płock and Olsztyn Mątki (PL)

No	Definition
4.6.	PCI hydro-pumped storage in Estonia — Muuga
4.7.	PCI capacity increase of hydro-pumped storage in Lithuania — Kruonis

5. **Priority corridor North-South gas interconnections in Western Europe ("NSI West Gas")**

Projects allowing bidirectional flows between Ireland and the United Kingdom:

No	Definition
5.1.	Cluster to allow bidirectional flows from Northern Ireland to Great Britain and Ireland and also from Ireland to United Kingdom including the following PCIs: 5.1.1. Physical reverse flow at Moffat interconnection point (Ireland/United Kingdom) 5.1.2. Upgrade of the SNIP (Scotland to Northern Ireland) pipeline to accommodate physical reverse flow between Ballylumford and Twynholm 5.1.3. Development of the Islandmagee Underground Gas Storage (UGS) facility at Larne (Northern Ireland)
5.2.	PCI Twinning of Southwest Scotland onshore system between Cluden and Brighouse Bay. (United Kingdom)
5.3.	PCI Shannon LNG Terminal located between Tarbert and Ballylongford (Ireland)

Projects allowing bidirectional flows between Portugal, Spain France and Germany:

No	Definition
5.4.	PCI 3rd interconnection point between Portugal and Spain
5.5.	PCI Eastern Axis Spain-France – interconnection point between Iberian Peninsula and France at Le Perthus [currently known as Midcat]
5.6.	PCI Reinforcement of the French network from South to North – Reverse flow from France to Germany at Obergailbach/Medelsheim Interconnection point (France)
5.7.	PCI Reinforcement of the French network from South to North on the Bourgogne pipeline between Etrez and Voisines (France)
5.8.	PCI Reinforcement of the French network from South to North on the east Lyonnais pipeline between Saint-Avit and Etrez (France)

Bidirectional flows between Italy, Switzerland, Germany and Belgium/France:

No	Definition
5.9.	PCI Reverse flow interconnection between Switzerland and France
5.10.	PCI Reverse flow interconnection on TENP pipeline in Germany
5.11.	PCI Reverse flow interconnection between Italy and Switzerland at Passo Gries interconnection point
5.12.	PCI Reverse flow interconnection on TENP pipeline to Eynatten interconnection point (Germany)

Development of interconnections between the Netherlands, Belgium, France and Luxembourg:

No	Definition
5.13.	PCI New interconnection between Pitgam (France) and Maldegem (Belgium)
5.14.	PCI Reinforcement of the French network from South to North on the Arc de Dierrey pipeline between Cuvilly, Dierrey and Voisines (France)
5.15.	Cluster implementing gas compressor optimisation in the Netherlands including the following PCIs: 5.15.1. Emden (from Norway to Netherlands) 5.15.2. Winterswijk/Zevenaar (from the Netherlands to Germany) 5.15.3. Bocholtz (from the Netherlands to Germany) 5.15.4. 's Gravenvoeren (from the Netherlands to Belgium) 5.15.5. Hilvarenbeek (from the Netherlands to Belgium)
5.16.	PCI Extension of the Zeebrugge LNG terminal.
5.17.	Cluster between Luxembourg, France and Belgium including one or more of the following PCIs: 5.17.1. Interconnection between France and Luxembourg. 5.17.2. Reinforcement of the interconnection between Belgium and Luxembourg

Other projects:

No	Definition
5.18.	PCI Reinforcement of the German network to reinforce interconnection capacities with Austria [currently known as Monaco pipeline phase I] (Haiming/Burghausen-Finsing)
5.19.	PCI Connection of Malta to the European Gas network (gas pipeline with Italy at Gela and Floating LNG Storage and Re-gasification Unit (FSRU))
5.20.	PCI Gas Pipeline connecting Algeria to Italy (Sardinia) and France (Corsica) [currently known as Galsi & Cyréné pipelines]

6. **Priority corridor North-South gas interconnections in Central Eastern and South Eastern Europe ("NSI East Gas")**

Projects allowing bidirectional flows between Poland, Czech Republic, Slovakia and Hungary linking the LNG terminals in Poland and Croatia:

No	Definition
6.1.	Cluster Czech – Polish interconnection upgrade and related internal reinforcements in Western Poland, including the following PCIs: 6.1.1. Poland – Czech Republic Interconnection [currently known as Stork II] between Libhošť – Hať (CZ/PL) – Kędzierzyn (PL) 6.1.2. Lwówek-Odolanów pipeline 6.1.3. Odolanow compressor station 6.1.4. Czeszów-Wierzchowice pipeline

No	Definition
	6.1.5. Czeszów-Kiełczów pipeline 6.1.6. Zdzieszowice-Wrocław pipeline 6.1.7. Zdzieszowice-Kędzierzyn pipeline 6.1.8. Tworóg-Tworzeń pipeline 6.1.9. Tworóg-Kędzierzyn pipeline 6.1.10. Pogórska Wola-Tworzeń pipeline 6.1.11. Strachocina – Pogórska Wola pipeline
6.2.	Cluster Poland – Slovakia interconnection and related internal reinforcements in Eastern Poland, including the following PCIs: 6.2.1. Poland – Slovakia interconnection 6.2.2. Rembelszczyzna compressor station 6.2.3. Rembelszczyzna-Wola Karczewska pipeline 6.2.4. Wola Karczewska-Wronów pipeline 6.2.5. Wronów node 6.2.6. Rozwadów-Końskowola-Wronów pipeline 6.2.7. Jarosław-Rozwadów pipeline 6.2.8. Hermanowice-Jarosław pipeline 6.2.9. Hermanowice-Strachocina pipeline
6.3.	PCI Slovakia – Hungary Gas Interconnection between Veľké Zlievce (SK) – Balassagyarmat border (SK/HU) – Vecsés (HU)
6.4.	PCI Bidirectional Austrian – Czech interconnection (BACI) between Baumgarten (AT) – Reinthal (CZ/AT) – Brečlav (CZ)

Projects allowing gas to flow from Croatian LNG terminal to neighbouring countries:

No	Definition
6.5.	Cluster Krk LNG Regasification Vessel and evacuation pipelines towards Hungary, Slovenia and Italy, including the following PCIs: 6.5.1. LNG Regasification vessel in Krk (HR) 6.5.2. Gas pipeline Zlobin – Bosiljevo – Sisak – Kozarac – Slobodnica (HR) 6.5.3. LNG evacuation pipeline Omišalj – Zlobin (HR) – Rupa (HR)/Jelšane (SI) – Kalce (SI) or 6.5.4. Gas pipeline Omišalj (HR) – Casal Borsetti (IT)
6.6.	PCI Interconnection Croatia – Slovenia (Bosiljevo – Karlovac – Lučko – Zabok – Rogatec (SI))
6.7.	PCI Interconnection Slovenia – Italy (Gorizia (IT)/Šempeter (SI) – Vodice (SI))

Projects allowing gas flows from the Southern Gas Corridor and/or LNG terminals in Greece through Greece, Bulgaria, Romania, Serbia and further to Hungary as well as Ukraine, including reverse flow capability from south to north and integration of transit and transmission systems:

No	Definition
6.8.	Cluster Interconnection between Greece and Bulgaria and necessary reinforcements in Bulgaria, including the following PCIs: 6.8.1. Interconnection Greece – Bulgaria [currently known as IGB] between Komotini (EL) – Stara Zagora (BG) 6.8.2. Necessary rehabilitation, modernization and expansion of the Bulgarian transmission system
6.9.	Cluster LNG terminal in Greece, including one of the following PCIs: 6.9.1. Independent Natural Gas System LNG Greece 6.9.2. Aegean LNG import terminal
6.10.	PCI Gas Interconnection Bulgaria – Serbia [currently known as IBS]
6.11.	PCI Permanent reverse flow at Greek – Bulgarian border between Kula (BG) – Sidirokastro (EL)
6.12.	PCI Increase the transmission capacity of the existing pipeline from Bulgaria to Greece
6.13.	Cluster Romania – Hungary – Austria transmission corridor, including the following PCIs: 6.13.1. Városföld-Ercsi– Győr pipeline + enlargement of Városföld Compressor station + modification of central odorization 6.13.2. Ercsi-Százhalombatta pipeline 6.13.3. Csanádpalota or Algyő compressor station
6.14.	PCI Romanian – Hungarian reverse flow at Csanádpalota or Algyő (HU)
6.15.	Cluster Integration of the transit and transmission system and implementation of reverse flow in Romania, including the following PCIs: 6.15.1. Integration of the Romanian transit and transmission system 6.15.2. Reverse flow at Isaccea

Projects allowing gas from the Southern gas corridor and/or LNG terminals reaching Italy to flow towards the north to Austria, Germany and Czech Republic (as well as towards the NSI West corridor):

No	Definition
6.16.	PCI Tauerngasleitung (TGL) pipeline between Haiming (AT)/Überackern (DE) – Tarvisio (IT)
6.17.	PCI Connection to Oberkappel (AT) from the southern branch of the Czech transmission system
6.18.	PCI Adriatica pipeline (IT)
6.19.	PCI Onshore LNG terminal in the Northern Adriatic (IT) [1]

[1] The precise location of the LNG terminal in the Northern Adriatic will be decided by Italy in agreement with Slovenia.

Projects allowing development of underground gas storage capacity in South-Eastern Europe:

No	Definition
6.20.	Cluster increase storage capacity in South-East Europe, including one or more of the following PCIs: 6.20.1. Construction of new storage facility on the territory of Bulgaria 6.20.2. Chiren UGS expansion 6.20.3. South Kavala storage in Greece 6.20.4. Depomures storage in Romania

Other projects:

No	Definition
6.21.	PCI Ionian Adriatic Pipeline (Fieri (AB) – Split (HR))
6.22.	Cluster Azerbaijan–Georgia–Romania Interconnector project, including the following PCIs: 6.22.1. Gas pipeline Constanta (RO) – Arad – Csanádpalota (HU) [currently known as AGRI] 6.22.2. LNG terminal in Constanta (RO)
6.23.	PCI Hungary – Slovenia interconnection (Nagykanizsa – Tornyiszentmiklós (HU) – Lendava (SI) – Kidričevo)

7. **Priority corridor Southern Gas Corridor ("SGC")**

No	Definition
7.1.	Cluster of integrated, dedicated and scalable transport infrastructure and associated equipment for the transportation of a minimum of 10 bcm/a of new sources of gas from the Caspian Region, crossing Georgia and Turkey and ultimately reaching final EU markets through two possible routes: one crossing South-East Europe and reaching Austria, the other one reaching Italy through the Adriatic Sea, and including one or more of the following PCIs: 7.1.1. Gas pipeline from the EU to Turkmenistan via Turkey, Georgia, Azerbaijan and the Caspian [currently known as the combination of the "Trans Anatolia Natural Gas Pipeline" (TANAP), the "Expansion of the South-Caucasus Pipeline" (SCP-(F)X) and the "Trans-Caspian Gas Pipeline" (TCP)] 7.1.2. Gas compression station at Kipi (EL) 7.1.3. Gas pipeline from Greece to Italy via Albania and the Adriatic Sea [currently known as the "Trans-Adriatic Pipeline" (TAP)] 7.1.4. Gas pipeline from Greece to Italy via the Adriatic Sea [currently known as the "Interconnector Turkey-Greece-Italy" (ITGI)] 7.1.5. Gas pipeline from Bulgaria to Austria via Romania and Hungary
7.2.	PCI consisting of integrated, dedicated and scalable transport infrastructures and associated equipment for the transportation of a minimum of 8 bcm/a of new sources of gas from the Caspian Region (Azerbaijan and Turkmenistan) to Romania, including the following projects: 7.2.1. Sub-marine gas pipeline in the Caspian Sea from Turkmenistan to Azerbaijan [currently known as the "Trans-Caspian Gas Pipeline" (TCP)]

No	Definition
	7.2.2. Upgrade of the pipeline between Azerbaijan and Turkey via Georgia [currently known as the "Expansion of the South-Caucasus Pipeline" (SCP-(F)X)] 7.2.3. Sub-marine pipeline linking Georgia with Romania [currently known as "White Stream"]
7.3.	Cluster of gas infrastructures and associated equipment for the transportation of new sources of gas from the offshore fields in the East Mediterranean including one or more of the following PCIs: 7.3.1. Pipeline from offshore Cyprus to Greece mainland via Crete 7.3.2. LNG storage located in Cyprus [currently known as the "Mediterranean Gas Storage"]
7.4.	Cluster of interconnections with Turkey, including the following PCIs: 7.4.1. Gas compression station at Kipi (EL) with a minimum capacity of 3bcm/a 7.4.2. Interconnector between Turkey and Bulgaria with a minimum capacity of 3 bcm/a [currently known as "ITB"]

8. **Priority corridor Baltic Energy Market Interconnection Plan in gas ("BEMIP Gas")**

No	Definition
8.1.	Cluster LNG supply in the Eastern Baltic Sea Region, including the following PCIs: 8.1.1. Interconnector between Estonia and Finland "Balticconnector", and 8.1.2. One of the following LNG terminals: 8.1.2.1. Finngulf LNG 8.1.2.2. Paldiski LNG 8.1.2.3. Tallinn LNG 8.1.2.4. Latvian LNG
8.2.	Cluster infrastructure upgrade in the Eastern Baltic Sea region, including the following PCIs: 8.2.1. Enhancement of Latvia-Lithuania interconnection 8.2.2. Enhancement of Estonia-Latvia interconnection 8.2.3. Capacity enhancement of Klaipeda-Kiemenai pipeline in Lithuania 8.2.4. Modernization and expansion of Incukalns Underground Gas Storage
8.3.	PCI Poland–Denmark interconnection "Baltic Pipe"
8.4.	PCI Capacity expansion on DK-DE border
8.5.	PCI Poland-Lithuania interconnection [currently known as "GIPL"]
8.6.	PCI Gothenburg LNG terminal in Sweden
8.7.	PCI Capacity extension of Świnoujście LNG terminal in Poland
8.8.	PCI Upgrade of entry points Lwówek and Włocławek of Yamal-Europe pipeline in Poland

9. **Priority corridor Oil Supply Connections in Central Eastern Europe (OSC)**

No	Definition
9.1.	PCI Adamowo-Brody pipeline: pipeline connecting the JSC Uktransnafta's Handling Site in Brody (Ukraine) and Adamowo Tank Farm (Poland)
9.2.	PCI Bratislava-Schwechat-Pipeline: pipeline linking Schwechat (Austria) and Bratislava (Slovak Republic)
9.3.	PCI JANAF-Adria pipelines: reconstruction, upgrading, maintenance and capacity increase of the existing JANAF and Adria pipelines linking the Croatian Omisalj seaport to the Southern Druzhba (Croatia, Hungary, Slovak Republic)
9.4.	PCI Litvinov (Czech Republic)-Spergau (Germany) pipeline: the extension project of the Druzhba crude oil pipeline to the refinery TRM Spergau
9.5.	Cluster Pomeranian pipeline (Poland), including the following PCIs: 9.5.1. Construction of Oil Terminal in Gdańsk 9.5.2. Expansion of the Pomeranian Pipeline: loopings and second line on the Pomeranian pipeline linking Plebanka Tank Farm (near Płock) and Gdańsk Handling Terminal
9.6.	PCI TAL Plus: capacity expansion of the TAL Pipeline between Trieste (Italy) and Ingolstadt (Germany)

10. **Priority thematic area Smart Grids Deployment**

No	Definition
10.1.	North Atlantic Green Zone Project (Ireland, UK/Northern Ireland): Lower wind curtailment by implementing communication infrastructure, enhance grid control and establishing (cross-border) protocols for Demand Side Management
10.2.	Green-Me (France, Italy): Enhance RES integration by implementing automation, control and monitoring systems in HV and HV/MV substations, advanced communicating with the renewable generators and storage in primary substations'

Marine Management Organisation Marine Licence

1 Introduction

This is a licence granted by the Marine Management Organisation on behalf of the Secretary of State to authorise the licence holder to carry on activities for which a licence is required under Part 4 of the Marine and Coastal Access Act 2009.

This licence is for the licensed activities only and is subject to the terms and conditions set out in this licence.

1.1 Licence number

The licence number for this licence is L/2013/00373.

1.2 Licence holder

The licence holder is the person or organisation set out below:

Name / Company Name	National Grid Nemo Link Limited
Company registration number (if applicable)	08169409
Address	1-3 Strand London WC2N 5EH
Contact within Company	Mr Mark Pearce
Position within Company (if applicable). State if Company Officer or Director	Project Development Director

1.3 Licence date

Version	V 1.0
Licence start date	23 December 2013
Licence end date	31 December 2115
Date of original issue	23 December 2013

1.4 Licence validity

This licence is valid only once the MMO has received notification of commencement of the licensed activities as set out in the licence conditions (section 5 of this licence).

2 General

2.1 Interpretation

In this licence, terms are as defined in section 115 of the Marine and Coastal Access Act and the Interpretation Act 1978 unless otherwise stated.

a) "the 2009 Act" means the Marine and Coastal Access Act 2009
b) "licensable activity" means any activity listed in section 66 of the 2009 Act
c) "licence holder" means the person(s) or organisation(s) named in section 1 above to whom this licence is granted
d) "licensed activities" means any activities set out in section 4 of this licence
e) "MMO" means the Marine Management Organisation
f) "mean high water springs" means the average of high water heights occurring at the time of spring tides
g) "seabed" means the ground under the sea
h) All geographical co-ordinates contained within this licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless stated otherwise.

2.2 Contacts

Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence shall be:

Marine Management Organisation
Marine Licensing Team
Lancaster House
Hampshire Court
Newcastle upon Tyne, NE4 7YH

Tel: 0300 123 1032
Fax: 0191 376 2681
Email: marine.consents@marinemanagement.org.uk

Any references to any Coastal MMO Office shall be the relevant officer in the area(s) located at:

Marine Management Organisation
Fish Market
Rock-A-Nore Road
Hastings
East Sussex, TN34 3DW

Tel: 01424 424 109 or 01424 438 152
Fax: 01424 444 642
Email: hastings@marinemanagement.org.uk

3 Project overview

3.1 Project title

Nemo Link Interconnector

3.2 Project description

The Nemo Link Interconnector project is an electrical interconnector, with an approximate capacity of 1000 megawatts, which will allow the transfer of electrical power between the high voltage grid systems of Belgium and the United Kingdom. The project is being developed by National Grid Nemo Link Limited, part of the National Grid group, and Elia Asset S.A. which is part of the national transmission company in Belgium.

The proposed development consists of the installation and operation of a bundle of two High Voltage Direct Current (HVDC) cables and one fibre optic cable in English waters, dredging and disposal of materials required during the cable installation process and cable armouring at one cable crossing location.

3.3 Related marine licences

Not applicable.

4 Licensed activities

The following activities are licensed. The licensed activities are licensed only for those locations specified within the activity details below:

Site 1 – Nemo Link Interconnector		
Site location	A 500 metre width cable corridor located between mean high water springs at Pegwell Bay, Kent and the English territorial 12 nautical mile limit.	
Activity 1 – Installation and operation of HVDC submarine interconnector cables and fibre optic cable.		
Activity type	Construction	
Activity location	Longitude	Latitude
	01°21.9512'E	51°19.3049'N

	01°22.0369'E	51°19.3895'N
	01°22.0549'E	51°19.4107'N
	01°22.0586'E	51°19.4187'N
	01°22.0598'E	51°19.4266'N
	01°22.0554'E	51°19.4530'N
	01°22.0556'E	51°19.4584'N
	01°22.0585'E	51°19.4633'N
	01°22.0623'E	51°19.4657'N
	01°22.0724'E	51°19.4679'N
	01°22.1057'E	51°19.4675'N
	01°22.1157'E	51°19.4681'N
	01°22.1267'E	51°19.4704'N
	01°22.1354'E	51°19.4740'N
	01°22.1446'E	51°19.4806'N
	01°22.1532'E	51°19.4906'N
	01°22.1598'E	51°19.4962'N
	01°22.1645'E	51°19.4972'N
	01°22.1781'E	51°19.4974'N
	01°22.1845'E	51°19.4988'N
	01°22.1956'E	51°19.5037'N
	01°22.2459'E	51°19.5314'N
	01°22.9336'E	51°19.4258'N
	01°22.9582'E	51°19.4210'N
	01°23.7055'E	51°19.2441'N
	01°26.4752'E	51°18.5154'N
	01°27.0504'E	51°18.4920'N
	01°28.5614'E	51°18.5989'N
	01°30.6079'E	51°18.8600'N

	01°32.6417'E	51°19.3340'N
	01°32.6743'E	51°19.3399'N
	01°32.7122'E	51°19.3424'N
	01°36.0788'E	51°19.3862'N
	01°39.5186'E	51°19.7354'N
	01°39.8757'E	51°19.8802'N
	01°39.9102'E	51°19.8916'N
	01°39.9482'E	51°19.8989'N
	01°40.2296'E	51°19.9361'N
	01°40.2575'E	51°19.9384'N
	01°40.2913'E	51°19.9382'N
	01°40.5307'E	51°19.9244'N
	01°43.5406'E	51°19.7490'N
	01°49.2931'E	51°19.7657'N
	01°51.5986'E	51°19.7890'N
	01°51.5960'E	51°19.5193'N
	01°49.2949'E	51°19.4960'N
	01°43.5323'E	51°19.4793'N
	01°43.5112'E	51°19.4799'N
	01°40.2843'E	51°19.6678'N
	01°40.0760'E	51°19.6403'N
	01°39.7053'E	51°19.4901'N
	01°39.6800'E	51°19.4823'N
	01°39.6534'E	51°19.4766'N
	01°39.6397'E	51°19.4746'N
	01°36.1268'E	51°19.1179'N
	01°36.1028'E	51°19.1168'N
	01°32.7576'E	51°19.0733'N

	01°30.7424'E	51°18.6036'N
	01°30.7235'E	51°18.5998'N
	01°28.6237'E	51°18.3320'N
	01°27.0797'E	51°18.2227'N
	01°27.0563'E	51°18.2218'N
	01°26.4113'E	51°18.2477'N
	01°26.3840'E	51°18.2500'N
	01°26.3568'E	51°18.2545'N
	01°23.5442'E	51°18.9940'N
	01°22.8185'E	51°19.1659'N
	01°22.0070'E	51°19.2908'N
	01°21.9776'E	51°19.2968'N
	01°21.9512'E	51°19.3049'N
Description	The Nemo Link Interconnector project will consist of the installation of one bundle of submarine cable comprising two HVDC cables and one fibre optic cable. The cables will either be Cross Link Polyethylene or Mass Impregnated HVDC cable. Cable armouring will be undertaken at one location within the consented cable corridor to provide cable protection at the crossing point of the Atlantic Crossings 1 telecommunications cable.	
Methodology	A pre-lay grapnel run will be followed by cable installation in a single trench within the consented cable corridor by means of: Open trench and backfill; Jetting; Tracked or skidded plough; or Horizontal directional drilling Cable armouring will be undertaken with the final methodology and volumes confirmed once a cable crossing agreement has been finalised. Rock armouring or concrete mattress installation must not exceed a maximum footprint of 100m x 30m. Specific works methodologies and volumes for cable armouring are not yet known. However, the final methodologies, to be agreed with the MMO under	

	licence condition 5.2.14, must be within the parameters assessed within the Nemo Link UK Marine Environmental Statement (February 2013).
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016 and take up to three months to complete. Precise timings of the works must be agreed with the MMO under condition 5.2.14.

Site 2 – Nemo Link Interconnector Dredging		
Site location	Three locations between mean high water springs at Pegwell Bay and the UK / France median line.	
Activity 2 – Dredging of material from seabed prior to interconnector installation		
Activity type	Dredging	
Location	Longitude	Latitude
	Area A	
	2° 01.6030" E	51° 19.3897" N
	1° 58.2231" E	51° 19.3782" N
	1° 58.0850" E	51° 19.3982" N
	1° 57.3962" E	51° 19.3922" N
	1° 56.6467" E	51° 19.4123" N
	1° 56.4335" E	51° 19.4125" N
	1° 56.4467" E	51° 18.6643" N
	1° 57.5148" E	51° 18.6603" N
	1° 58.2178" E	51° 18.6478" N
	2° 01.8392" E	51° 18.6602" N
	2° 01.6030" E	51° 19.3897" N
	The total volume of material dredged within Area A must not exceed 24,470 m^3.	
	Area B	
	1° 48.6597" E	51° 19.4942" N

	1° 44.6077" E	51° 19.4821" N
	1° 44.6052" E	51° 19.7521" N
	1° 48.6580" E	51° 19.7638" N
	1° 48.6597" E	51° 19.4942" N
	The total volume of material dredged within Area B must not exceed 93,138 m^3.	
	Area C	
	1° 26.4752" E	51° 18.5153" N
	1° 27.0503" E	51° 18.4920" N
	1° 28.2957" E	51° 18.5808" N
	1° 28.3441" E	51° 18.3123" N
	1° 27.0580" E	51° 18.2218" N
	1° 26.3718" E	51° 18.2519" N
	1° 25.3577" E	51° 18.5180" N
	1° 25.5032" E	51° 18.7712" N
	1° 26.4752" E	51° 18.5153" N
	The total volume of material dredged within Area C must not exceed 1,170 m^3.	
Description	Dredging of the seabed to reduce the height of sandwaves along the cable corridor to aid optimal installation of the interconnector cables.	
Methodology	Dredging will be undertaken by Trailer Suction Hopper Dredger (THSD) only. Dredged material must not exceed the volumes defined within this licence and must only be conducted within Area A, B and C defined above.	
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016.	

Site 3 – Disposal of Dredged Material	
Site location	Three locations between mean high water springs at Pegwell Bay and the UK / France median line.
Activity 3 – Disposal of material dredged from Area A, Area B and Area C during	

cable installation.		
Activity type	Disposal of dredged material	
Location	Longitude	Latitude
	Nemo Disposal Site A – TH150	
	1° 57.5100" E	51° 19.6560" N
	1° 59.2140" E	51° 19.6440" N
	2° 01.8360" E	51° 19.6560" N
	2° 01.6020" E	51° 19.3860" N
	1° 58.2180" E	51° 19.3740" N
	1° 58.0800" E	51° 19.3980" N
	1° 57.3960" E	51° 19.3920" N
	1° 56.6460" E	51° 19.4100" N
	1° 56.4300" E	51° 19.4100" N
	1° 56.4420" E	51° 19.6620" N
	1° 57.5100" E	51° 19.6560" N
	The total volume of material disposed within disposal site TH150 must not exceed 24,470 m^3.	
	Nemo Disposal Site B – TH151	
	1° 48.6597" E	51° 19.4942" N
	1° 44.6077" E	51° 19.4821" N
	1° 44.6052" E	51° 19.7521" N
	1° 48.6580" E	51° 19.7638" N
	1° 48.6597" E	51° 19.4942" N
	The total volume of material disposed within disposal site TH151 must not exceed 93,138 m^3.	
	Nemo Disposal Site C – TH152	
	1° 26.4752" E	51° 18.5153" N
	1° 27.0503" E	51° 18.4920" N
	1° 28.2957" E	51° 18.5808" N

	1° 28.3441" E	51° 18.3123" N
	1° 27.0580" E	51° 18.2218" N
	1° 26.3718" E	51° 18.2519" N
	1° 25.3577" E	51° 18.5180" N
	1° 25.5032" E	51° 18.7712" N
	1° 26.4752" E	51° 18.5153" N
	The total volume of material disposed within disposal site TH152 must not exceed 1,170 m^3.	
Description	Only the disposal of material dredged under Activity 2 of this licence is permitted.	
Methodology	The final methodology and volume of material to be disposed is not yet known due to the mobility of sandwaves. The final methodology must be agreed with the MMO under licence condition 5.2.24.	
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016.	

5 Licence conditions

5.1 General conditions

5.1.1 Notification of commencement

The licence holder must notify the MMO **prior to** the commencement of the first instance of any licensed activity. This notice must be received by the MMO no less than five working days before the commencement of that licensed activity.

This licence is only valid once notification of commencement is received by the MMO. If a licensable activity is carried out without authority of a valid licence, enforcement action may be taken.

5.1.2 Licence returns

The licence holder must ensure that all licence returns required by these conditions are complied with. A summary of these requirements is at Annex 1.

5.1.3 Licence conditions binding other parties

Where provisions under section 71(5) of the 2009 Act apply, all conditions attached to this licence apply to any person who for the time being owns, occupies or enjoys any use of the licensed activities for which this licence has been granted.

5.1.4 Agents / contractors / sub-contractors

The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder.

5.1.5 Vessels

The licence holder must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity listed in section 4 of this licence, and that a copy of this licence is held on board any such vessel.

5.1.6 Changes to this licence

Should the licence holder become aware that any of the information on which the granting of this licence was based has changed or is likely to change, they must notify the MMO at the earliest opportunity. Failure to do so may render this licence invalid and may lead to enforcement action.

5.2 Project specific conditions

This section sets outs project specific conditions relating to licensed activities as set out in section 4 of this licence.

ALL LICENSED ACTIVITES	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	
5.2.1	The licence holder must notify the Source Data Receipt Team at the UK Hydrographic Office (UKHO), Taunton, Somerset, TA1 2DN (email: hdcfiles@ukho.gov.uk; Tel 01823 337900) of the commencement of licensed activities at least **2 weeks** prior to the commencement of licensed activities. Copies of such notification must be provided to the MMO and MMO Coastal Office. *Reason: To reduce navigational risk by ensuring nautical charts are updated and ensure the provision of information to mariners.*
5.2.2	The licence holder must ensure Notices to Mariners (NTMs) are issued at least **2 weeks** prior to commencement of licensed activities and no less than fortnightly during licensed construction, dredging and disposal activities. Copies of such notices must be provided to the MMO and MMO Coastal Office. *Reason: To ensure vessels in the vicinity of the works can safely plan and conduct their passage.*
5.2.3	The licence holder must undertake a pre-construction survey to determine the location and extent of any Annex 1 habitats within the cable corridor. The survey specification must be submitted to the MMO, for approval, no less than **4 months** prior to the survey works. The results of the survey must be submitted to the MMO no less than **4 months** prior to the commencement of licensed activities and include an assessment of the need to micro-site the cable to avoid any Annex I habitats identified. Licensed activities must not commence until the MMO has provided written approval of the pre-construction benthic monitoring reports. *Reason: To ensure that Annex I features such as Sabellaria spinulosa reef will not be subject to impact as a result of the*

	works.
5.2.4	The licence holder must submit a Marine Pollution Contingency Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The MPCP must: • Outline procedures to be implemented in the event of spills and collision incidents (including oil and chemical spills); • Be adhered to and be included within the Project Environmental Management Plan referred to in condition 5.2.10; • Take into account existing plans for all operations, including offshore installations, which may influence the MPCP; and • Detail practices used to refuel vessels at sea. *Reason: To minimise the risk of pollution incident occurring by adopting best practice techniques.*
5.2.5	The licence holder must submit a Project Environmental Management Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The PEMP must document the environmental management required for all parties involved with the project and affected by it. The PEMP must include details of: • A marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the works; • A waste management plan; and • The appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer. Licensed activities must not commence until the MMO has provided written approval of the PEMP. *Reason: To minimise the environmental impacts of the works by ensuring best practices are adopted and suitable mitigation measures are adopted.*
5.2.6	The licence holder must prepare a Written Scheme of Investigation (WSI) in consultation with English Heritage (EH) to detail archaeological assessment and mitigation works necessary to inform the detailed delivery of the project. The WSI must be agreed with the MMO, in consultation with EH, **4 months** prior to the commencement of any survey work commissioned to aid delivery of the project. The WSI must include: • An Archaeological Reporting protocol for the prompt reporting and recording of archaeological remains encountered, or suspected, during all phases of construction, operation and decommissioning. This must be set

	out in accordance with The Crown Estate Protocol for Archaeological Discoveries Offshore Renewable Projects (2010); • Responsibilities of the Licence Holder and archaeological consultant; • Details of contractors and curators (national and local); • Archaeological analysis and reporting of survey data and investigation; • Delivery of mitigation including use of archaeological construction exclusion zones in agreement with the MMO; and • Conservation, publication and archiving duties for archaeological material. Licensed activities must not commence until the MMO has provided written approval of the WSI. *Reason: To ensure the integrity of archaeologically important items is not compromised.*
5.2.7	The licence holder must ensure that archaeological exclusions zones are established within 50 metres of the following sites WA-ID 7024; 7027; 7047; and 7098. The licence holder must ensure that archaeological exclusion zones are established within 100 metres of the following sites WA-ID 7270; 7272; 7274; 7275; 7276 and 7277. The Licence Holder must inform the MMO immediately if any additional archaeological exclusion zones are necessary. Licensed activities must not commence within archaeological exclusions zones without the written agreement of the MMO. *Reason: To ensure the integrity of archaeologically important items is not compromised.*
5.2.8	The Licence Holder must complete an OASIS (Online Access to the Index of Archaeological Investigations) form for any completed and agreed archaeological reports produced in accordance with condition 5.2.6. A copy must be submitted as a PDF file and send to EH's National Monuments Record at http://oasis.ac.uk/. *Reason: To ensure the integrity of archaeologically important items is not compromised and to ensure any final and agreed archaeological reports are recorded in a manner complementary to established practice.*
DURING LICENSED ACTIVITIES	

5.2.9	The licence holder must ensure that any chemical spills or releases into the marine environment are reported within the timeframes and format agreed within the MPCP referred to in condition 5.2.4. *Reason: To ensure that any spills are appropriately recorded and managed to minimise impact to sensitive receptors and the marine environment.*
5.2.10	The Licence Holder must install bunding/storage facilities to contain and prevent the release of fuels, oils and chemicals associated with plant, refuelling and construction equipment into the marine environment. Secondary containment must be used for a capacity of not less than 110% of the containers storage capacity. *Reason: To prevent marine pollution incidents by adopting best practice.*
5.2.11	The licence holder must ensure that all protective coatings used are suitable for use in the marine environment and, where necessary, are approved by the Health and Safety Executive. Such coatings should be used in accordance with best environmental practice. *Reason: To ensure that chemicals used are safe for use within the marine environment.*
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.12	Any equipment, temporary structures, waste and/or debris associated with licensed activities must be removed upon the completion of licensed activities. *Reason: To prevent the accumulation of unlicensed debris and potential environmental damage, safety and navigational issues associated with such materials and debris.*
5.2.13	The licence holder must notify the Source Data Receipt Team at the UK Hydrographic Office (UKHO), Taunton, Somerset, TA1 2DN (email: hdcfiles@ukho.gov.uk; Tel 01823 337900) within 2 weeks of the completion of construction, dredging and disposal activities. Copies of such notification must be provided to the MMO and MMO Coastal Office. *Reason: To reduce navigational risk by ensuring nautical charts are updated and ensure the provision of information to mariners.*
SITE1 – NEMO LINK INTERCONNECTOR SPECIFIC CONDITIONS	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	

5.2.14	The licence holder must submit a detailed Construction Methodology including Cable Burial Management and Installation Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The plan must include: • Technical specification; • Location and timings; • Burial risk assessment to ascertain burial depth; • Installation techniques; • Cable laying technique; • Cable crossing armouring methodology; and • Installation machinery failure contingency plan Licensed activities must not commence until the MMO has provided written approval of the Cable Burial Management and Installation Plan. *Reason: Reason: To ensure the methodology follows best current practices, is within the envelope assessed within the application to reduce environmental and navigational impacts.*
5.2.15	The licence holder must undertake pre-construction baseline invertebrate population surveys within the intertidal zone. The survey specification must be submitted to the MMO, for approval, no less than **4 months** prior to the survey works. The results of the surveys must be submitted to the MMO no less than **4 months** prior to the commencement of licensed activities within the intertidal zone. Licensed activities within the intertidal zone must not commence until the MMO has provided written approval of the pre-construction invertebrate monitoring reports. *Reason: To establish the baseline biotope present within the intertidal zone.*
5.2.16	The licence holder must submit a detailed saltmarsh mitigation, reinstatement and monitoring plan incorporating breeding bird mitigation plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities within the intertidal zone.

	Licensed activities must not commence until the MMO has provided written approval of the detailed saltmarsh mitigation, reinstatement and monitoring plan. *Reason: To ensure no adverse effect on the integrity of the interest features of the Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marches SSSI.*
DURING LICENSED ACTIVITIES	
5.2.17	The licence holder must ensure that, unless otherwise agreed in writing by the MMO, no licensed activities take place within the intertidal zone between **1 October and 31 March** of any given calendar year. *Reason: To avoid disturbance to saltmarsh and mudflat supporting habitat of the overwintering bird features of the Thanet Coast and Sandwich Bay Special Protection Area.*
5.2.18	The licence holder must ensure that, unless otherwise agreed in writing by the MMO, no licensed activities take place between **1 November and 31 January** of any given calendar year. *Reason: To ensure the works do not have a significant adverse effect on the reproduction and recruitment of local herring and sandeel populations.*
5.2.19	The licence holder must ensure that any rock material used for cable crossing armouring is from a recognised source, free from contaminants and contains minimal fines. *Reason: To prevent pollution by material that may come from a polluted area or potentially change the chemical balance of the environment in which it is placed.*
5.2.20	The licence holder must ensure that any rock misplaced/lost below MHWS is reported to the Coastal Marine Office within 48 hours, and located and recovered as directed by the MMO. *Reason: To manage the associated safety/navigation issues associated with rock transhipment and the potential loss of material that could cause an obstruction/hazard to other sea/sea-bed users.*
5.2.21	The licence holder must ensure that all excavation works within the intertidal zone are carried out using low pressure excavators and using bog mats or rolled steel / aluminium sheeting in accordance with the detailed saltmarsh mitigation, reinstatement and monitoring plan submitted pursuant to condition 5.2.16, unless otherwise agreed in writing by the MMO.

	Reason: To minimise ground disturbance and compaction to saltmarsh and mudflat habitat.
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.22	The licence holder must submit post construction saltmarsh monitoring reports in the agreed format under licence condition 5.2.15, 1,2,3,4 and 5 years following the completion of licensed activities within the intertidal zone unless otherwise agreed with the MMO. *Reason: To ensure no adverse effect on the integrity of the interest features of the Thanet Coast and Sandwich Bay Special Protection Area and to inform the MMO as to if any further monitoring is required.*
5.2.23	The licence holder must undertake post construction invertebrate monitoring to assess the benthic re-colonisation, community structure and species balance within the intertidal zone. Reports must be submitted to the MMO for approval 1 and 3 years following the completion of licensed activities within the intertidal zone. *Reason: To ensure the structure of the saltmarsh returns to support the same invertebrate assemblage as identified prior to construction under licence condition 5.2.15*

SITE 2 & SITE 3 DREDGE AND DISPOSAL SPECIFIC CONDITIONS	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	
5.2.24	The licence holder must submit a detailed Dredging and Disposal Methodology, for approval by the MMO, at least **4 months** prior to the commencement of dredging and disposal licensed activities. The plan must detail: Volume of material to be dredged and disposed; Disposal methodology; and Vessel capacity (including number of disposal required). *Reason: To ensure the methodology follows best current practices to reduce environmental and navigational impacts.*
DURING LICENSED ACTIVITIES	
5.2.25	The licence holder must ensure that all dredging activities are carried out using Trailer Suction Hopper Dredgers only. *Reason: To ensure dredging works are carried out in according with the methodology assessed within the Environmental Statement.*
5.2.26	The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence by the **31 January** each year for the months August to January inclusive, and by the **31 July** each year for the months February to July inclusive. *Reason: To ensure compliance with OSPAR reporting requirements.*
5.2.27	The licence holder must ensure that dredged material is disposed of to Nemo Disposal Site A (TH150), Nemo Disposal Site B (TH151) and Nemo Disposal Site C (TH152) as defined within Schedule 1 of this licence. Disposal must not exceed the quantities stated within this licence. *Reason: To ensure disposal occurs are the correct disposal site.*
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.28	The licence holder must notify the MMO within **2 weeks** of the completion of dredged material disposal works.

	Reason: To ensure disposal sites TH150, TH151 and TH152 can be closed upon completion of dredged material disposal works.

6 Compliance and enforcement

This licence and its terms and conditions are issued under the Marine and Coastal Access Act 2009.

Any breach of the licence terms and conditions may lead to enforcement action being taken. This can include variation, revocation or suspension of the licence, the issuing of an enforcement notice, or criminal proceedings, which may carry a maximum penalty of an unlimited fine and / or a term of imprisonment of up to two years.

Your attention is drawn to Part 4 of the Marine and Coastal Access Act 2009, in particular sections 65, 85 and 89 which set out offences, and also to sections 86 and 109 which concern defences. The MMO's Compliance and Enforcement Strategy can be found on our website (http://marinemanagement.org.uk/about/documents/compliance_enforcement.pdf).

ANNEX 1 Licence returns

Return number	Return description	Return deadline
1.	Licence holder to accept terms and conditions of this licence	Within 10 working days from licence date of issue.
2.	Licence holder to notify MMO and MMO Coastal Office of the first instance of licensed activities.	No less than 5 working days prior to the commencement of licensed activities.
3.	Licence holder to notify MMO of any agents, contractors or third parties.	No less than 24 hours prior to their engagement in licensed activities.
4.	Licence Holder to notify MMO of vessel details.	No less than 24 hours prior to their engagement in licensed activities.
5.	Licence holder to provide MMO and MMO Coastal Office with notification provided the UK Hydrographic Office	No less than 2 weeks prior to the commencement of licensed activities and no more than 2 weeks following the completion of licensed activities.
6.	Licence holder to provide MMO and MMO Coastal Office with copies of all Notice to Mariners.	No less than 2 weeks prior to the commencement of licensed activities and then fortnightly.
7.	Licence holder to submit detailed Construction Methodology including Cable Burial Management and Installation Plan.	No less than 4 months prior to the commencement of licensed activities.
8.	Licence holder to submit baseline invertebrate monitoring reports.	No less than 4 months prior to the commencement of licensed activities.
9.	Licence holder to submit Annex 1 surveys.	No less than 4 months prior to the commencement of

		licensed activities.
10.	Licence holder to submit saltmarsh mitigation, reinstatement and monitoring plan.	No less than 4 months prior to the commencement of licensed activities.
11.	Licence holder to submit Dredging and Disposal Methodology plan.	No less than 4 months prior to the commencement of dredging and disposal licensed activities.
12.	Licence holder to submit Marine Pollution Contingency Plan.	No less than 4 months prior to the commencement of licensed activities.
13.	Licence holder to submit Project Environmental Monitoring Plan	No less than 4 months prior to the commencement of licensed activities.
14.	Licence holder to submit Written Scheme of Archaeological Investigation.	No less than 4 months prior to the commencement of licensed activities.
15.	Licence holder to notify MMO of any unforeseen archaeological exclusions zones.	Within 24 hours of their discovery.
16.	Licence holder to notify MMO of the location and quantities of material disposed of each month under this licence.	No later than 31 January each year for the months August to January inclusive, and by the 31 July each year for the months February to July inclusive
17.	Licence holder must submit post construction saltmarsh monitoring reports.	1,2,3,4 and 5 years following the completion of licensed activities within the intertidal zone.
18.	Licence holder to submit post construction invertebrate monitoring reports.	1 and 3 years following completion of licensed activities within the intertidal zone.
19.	Licence holder to notify MMO of the completion of dredged material disposal works.	No more than 2 weeks following the completion of disposal works.

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Marine Management Organisation Marine Licence

1 Introduction

This is a licence granted by the Marine Management Organisation on behalf of the Secretary of State to authorise the licence holder to carry on activities for which a licence is required under Part 4 of the Marine and Coastal Access Act 2009.

This licence is for the licensed activities only and is subject to the terms and conditions set out in this licence.

1.1 Licence number

The licence number for this licence is L/2013/00373.

1.2 Licence holder

The licence holder is the person or organisation set out below:

Name / Company Name	National Grid Nemo Link Limited
Company registration number (if applicable)	08169409
Address	1-3 Strand London WC2N 5EH
Contact within Company	Mr Mark Pearce
Position within Company (if applicable). State if Company Officer or Director	Project Development Director

1.3 Licence date

Version	V 1.0
Licence start date	23 December 2013
Licence end date	31 December 2115
Date of original issue	23 December 2013

1.4 Licence validity

This licence is valid only once the MMO has received notification of commencement of the licensed activities as set out in the licence conditions (section 5 of this licence).

2 General

2.1 Interpretation

In this licence, terms are as defined in section 115 of the Marine and Coastal Access Act and the Interpretation Act 1978 unless otherwise stated.

a) "the 2009 Act" means the Marine and Coastal Access Act 2009
b) "licensable activity" means any activity listed in section 66 of the 2009 Act
c) "licence holder" means the person(s) or organisation(s) named in section 1 above to whom this licence is granted
d) "licensed activities" means any activities set out in section 4 of this licence
e) "MMO" means the Marine Management Organisation
f) "mean high water springs" means the average of high water heights occurring at the time of spring tides
g) "seabed" means the ground under the sea
h) All geographical co-ordinates contained within this licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless stated otherwise.

2.2 Contacts

Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence shall be:

Marine Management Organisation
Marine Licensing Team
Lancaster House
Hampshire Court
Newcastle upon Tyne, NE4 7YH

Tel: 0300 123 1032
Fax: 0191 376 2681
Email: marine.consents@marinemanagement.org.uk

Any references to any Coastal MMO Office shall be the relevant officer in the area(s) located at:

Marine Management Organisation
Fish Market
Rock-A-Nore Road
Hastings
East Sussex, TN34 3DW

Tel: 01424 424 109 or 01424 438 152
Fax: 01424 444 642
Email: hastings@marinemanagement.org.uk

3 Project overview

3.1 Project title

Nemo Link Interconnector

3.2 Project description

The Nemo Link Interconnector project is an electrical interconnector, with an approximate capacity of 1000 megawatts, which will allow the transfer of electrical power between the high voltage grid systems of Belgium and the United Kingdom. The project is being developed by National Grid Nemo Link Limited, part of the National Grid group, and Elia Asset S.A. which is part of the national transmission company in Belgium.

The proposed development consists of the installation and operation of a bundle of two High Voltage Direct Current (HVDC) cables and one fibre optic cable in English waters, dredging and disposal of materials required during the cable installation process and cable armouring at one cable crossing location.

3.3 Related marine licences

Not applicable.

4 Licensed activities

The following activities are licensed. The licensed activities are licensed only for those locations specified within the activity details below:

Site 1 – Nemo Link Interconnector		
Site location	A 500 metre width cable corridor located between mean high water springs at Pegwell Bay, Kent and the English territorial 12 nautical mile limit.	
Activity 1 – Installation and operation of HVDC submarine interconnector cables and fibre optic cable.		
Activity type	Construction	
Activity location	Longitude	Latitude
	01°21.9512'E	51°19.3049'N

	01°22.0369'E	51°19.3895'N
	01°22.0549'E	51°19.4107'N
	01°22.0586'E	51°19.4187'N
	01°22.0598'E	51°19.4266'N
	01°22.0554'E	51°19.4530'N
	01°22.0556'E	51°19.4584'N
	01°22.0585'E	51°19.4633'N
	01°22.0623'E	51°19.4657'N
	01°22.0724'E	51°19.4679'N
	01°22.1057'E	51°19.4675'N
	01°22.1157'E	51°19.4681'N
	01°22.1267'E	51°19.4704'N
	01°22.1354'E	51°19.4740'N
	01°22.1446'E	51°19.4806'N
	01°22.1532'E	51°19.4906'N
	01°22.1598'E	51°19.4962'N
	01°22.1645'E	51°19.4972'N
	01°22.1781'E	51°19.4974'N
	01°22.1845'E	51°19.4988'N
	01°22.1956'E	51°19.5037'N
	01°22.2459'E	51°19.5314'N
	01°22.9336'E	51°19.4258'N
	01°22.9582'E	51°19.4210'N
	01°23.7055'E	51°19.2441'N
	01°26.4752'E	51°18.5154'N
	01°27.0504'E	51°18.4920'N
	01°28.5614'E	51°18.5989'N
	01°30.6079'E	51°18.8600'N

	01°32.6417'E	51°19.3340'N
	01°32.6743'E	51°19.3399'N
	01°32.7122'E	51°19.3424'N
	01°36.0788'E	51°19.3862'N
	01°39.5186'E	51°19.7354'N
	01°39.8757'E	51°19.8802'N
	01°39.9102'E	51°19.8916'N
	01°39.9482'E	51°19.8989'N
	01°40.2296'E	51°19.9361'N
	01°40.2575'E	51°19.9384'N
	01°40.2913'E	51°19.9382'N
	01°40.5307'E	51°19.9244'N
	01°43.5406'E	51°19.7490'N
	01°49.2931'E	51°19.7657'N
	01°51.5986'E	51°19.7890'N
	01°51.5960'E	51°19.5193'N
	01°49.2949'E	51°19.4960'N
	01°43.5323'E	51°19.4793'N
	01°43.5112'E	51°19.4799'N
	01°40.2843'E	51°19.6678'N
	01°40.0760'E	51°19.6403'N
	01°39.7053'E	51°19.4901'N
	01°39.6800'E	51°19.4823'N
	01°39.6534'E	51°19.4766'N
	01°39.6397'E	51°19.4746'N
	01°36.1268'E	51°19.1179'N
	01°36.1028'E	51°19.1168'N
	01°32.7576'E	51°19.0733'N

	01°30.7424'E	51°18.6036'N
	01°30.7235'E	51°18.5998'N
	01°28.6237'E	51°18.3320'N
	01°27.0797'E	51°18.2227'N
	01°27.0563'E	51°18.2218'N
	01°26.4113'E	51°18.2477'N
	01°26.3840'E	51°18.2500'N
	01°26.3568'E	51°18.2545'N
	01°23.5442'E	51°18.9940'N
	01°22.8185'E	51°19.1659'N
	01°22.0070'E	51°19.2908'N
	01°21.9776'E	51°19.2968'N
	01°21.9512'E	51°19.3049'N
Description	The Nemo Link Interconnector project will consist of the installation of one bundle of submarine cable comprising two HVDC cables and one fibre optic cable. The cables will either be Cross Link Polyethylene or Mass Impregnated HVDC cable. Cable armouring will be undertaken at one location within the consented cable corridor to provide cable protection at the crossing point of the Atlantic Crossings 1 telecommunications cable.	
Methodology	A pre-lay grapnel run will be followed by cable installation in a single trench within the consented cable corridor by means of: Open trench and backfill; Jetting; Tracked or skidded plough; or Horizontal directional drilling Cable armouring will be undertaken with the final methodology and volumes confirmed once a cable crossing agreement has been finalised. Rock armouring or concrete mattress installation must not exceed a maximum footprint of 100m x 30m. Specific works methodologies and volumes for cable armouring are not yet known. However, the final methodologies, to be agreed with the MMO under	

	licence condition 5.2.14, must be within the parameters assessed within the Nemo Link UK Marine Environmental Statement (February 2013).
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016 and take up to three months to complete. Precise timings of the works must be agreed with the MMO under condition 5.2.14.

Site 2 – Nemo Link Interconnector Dredging		
Site location	Three locations between mean high water springs at Pegwell Bay and the UK / France median line.	
Activity 2 – Dredging of material from seabed prior to interconnector installation		
Activity type	Dredging	
Location	Longitude	Latitude
	Area A	
	2° 01.6030" E	51° 19.3897" N
	1° 58.2231" E	51° 19.3782" N
	1° 58.0850" E	51° 19.3982" N
	1° 57.3962" E	51° 19.3922" N
	1° 56.6467" E	51° 19.4123" N
	1° 56.4335" E	51° 19.4125" N
	1° 56.4467" E	51° 18.6643" N
	1° 57.5148" E	51° 18.6603" N
	1° 58.2178" E	51° 18.6478" N
	2° 01.8392" E	51° 18.6602" N
	2° 01.6030" E	51° 19.3897" N
	The total volume of material dredged within Area A must not exceed 24,470 m^3.	
	Area B	
	1° 48.6597" E	51° 19.4942" N

	1° 44.6077" E	51° 19.4821" N
	1° 44.6052" E	51° 19.7521" N
	1° 48.6580" E	51° 19.7638" N
	1° 48.6597" E	51° 19.4942" N
	The total volume of material dredged within Area B must not exceed 93,138 m^3.	
	Area C	
	1° 26.4752" E	51° 18.5153" N
	1° 27.0503" E	51° 18.4920" N
	1° 28.2957" E	51° 18.5808" N
	1° 28.3441" E	51° 18.3123" N
	1° 27.0580" E	51° 18.2218" N
	1° 26.3718" E	51° 18.2519" N
	1° 25.3577" E	51° 18.5180" N
	1° 25.5032" E	51° 18.7712" N
	1° 26.4752" E	51° 18.5153" N
	The total volume of material dredged within Area C must not exceed 1,170 m^3.	
Description	Dredging of the seabed to reduce the height of sandwaves along the cable corridor to aid optimal installation of the interconnector cables.	
Methodology	Dredging will be undertaken by Trailer Suction Hopper Dredger (THSD) only. Dredged material must not exceed the volumes defined within this licence and must only be conducted within Area A, B and C defined above.	
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016.	

Site 3 – Disposal of Dredged Material	
Site location	Three locations between mean high water springs at Pegwell Bay and the UK / France median line.
Activity 3 – Disposal of material dredged from Area A, Area B and Area C during	

cable installation.		
Activity type	Disposal of dredged material	
Location	Longitude	Latitude
	Nemo Disposal Site A – TH150	
	1° 57.5100" E	51° 19.6560" N
	1° 59.2140" E	51° 19.6440" N
	2° 01.8360" E	51° 19.6560" N
	2° 01.6020" E	51° 19.3860" N
	1° 58.2180" E	51° 19.3740" N
	1° 58.0800" E	51° 19.3980" N
	1° 57.3960" E	51° 19.3920" N
	1° 56.6460" E	51° 19.4100" N
	1° 56.4300" E	51° 19.4100" N
	1° 56.4420" E	51° 19.6620" N
	1° 57.5100" E	51° 19.6560" N
	The total volume of material disposed within disposal site TH150 must not exceed 24,470 m^3.	
	Nemo Disposal Site B – TH151	
	1° 48.6597" E	51° 19.4942" N
	1° 44.6077" E	51° 19.4821" N
	1° 44.6052" E	51° 19.7521" N
	1° 48.6580" E	51° 19.7638" N
	1° 48.6597" E	51° 19.4942" N
	The total volume of material disposed within disposal site TH151 must not exceed 93,138 m^3.	
	Nemo Disposal Site C – TH152	
	1° 26.4752" E	51° 18.5153" N
	1° 27.0503" E	51° 18.4920" N
	1° 28.2957" E	51° 18.5808" N

	1° 28.3441" E	51° 18.3123" N
	1° 27.0580" E	51° 18.2218" N
	1° 26.3718" E	51° 18.2519" N
	1° 25.3577" E	51° 18.5180" N
	1° 25.5032" E	51° 18.7712" N
	1° 26.4752" E	51° 18.5153" N
	The total volume of material disposed within disposal site TH152 must not exceed 1,170 m^3.	
Description	Only the disposal of material dredged under Activity 2 of this licence is permitted.	
Methodology	The final methodology and volume of material to be disposed is not yet known due to the mobility of sandwaves. The final methodology must be agreed with the MMO under licence condition 5.2.24.	
Programme of works	It is anticipated that construction of the Nemo Link Interconnector will commence between 2014 and 2016.	

5 Licence conditions

5.1 General conditions

5.1.1 Notification of commencement

The licence holder must notify the MMO **prior to** the commencement of the first instance of any licensed activity. This notice must be received by the MMO no less than five working days before the commencement of that licensed activity.

This licence is only valid once notification of commencement is received by the MMO. If a licensable activity is carried out without authority of a valid licence, enforcement action may be taken.

5.1.2 Licence returns

The licence holder must ensure that all licence returns required by these conditions are complied with. A summary of these requirements is at Annex 1.

5.1.3 Licence conditions binding other parties

Where provisions under section 71(5) of the 2009 Act apply, all conditions attached to this licence apply to any person who for the time being owns, occupies or enjoys any use of the licensed activities for which this licence has been granted.

5.1.4 Agents / contractors / sub-contractors

The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder.

5.1.5 Vessels

The licence holder must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in section 4 of this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity listed in section 4 of this licence, and that a copy of this licence is held on board any such vessel.

5.1.6 Changes to this licence

Should the licence holder become aware that any of the information on which the granting of this licence was based has changed or is likely to change, they must notify the MMO at the earliest opportunity. Failure to do so may render this licence invalid and may lead to enforcement action.

5.2 Project specific conditions

This section sets outs project specific conditions relating to licensed activities as set out in section 4 of this licence.

ALL LICENSED ACTIVITES	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	
5.2.1	The licence holder must notify the Source Data Receipt Team at the UK Hydrographic Office (UKHO), Taunton, Somerset, TA1 2DN (email: hdcfiles@ukho.gov.uk; Tel 01823 337900) of the commencement of licensed activities at least **2 weeks** prior to the commencement of licensed activities. Copies of such notification must be provided to the MMO and MMO Coastal Office. *Reason: To reduce navigational risk by ensuring nautical charts are updated and ensure the provision of information to mariners.*
5.2.2	The licence holder must ensure Notices to Mariners (NTMs) are issued at least **2 weeks** prior to commencement of licensed activities and no less than fortnightly during licensed construction, dredging and disposal activities. Copies of such notices must be provided to the MMO and MMO Coastal Office. *Reason: To ensure vessels in the vicinity of the works can safely plan and conduct their passage.*
5.2.3	The licence holder must undertake a pre-construction survey to determine the location and extent of any Annex 1 habitats within the cable corridor. The survey specification must be submitted to the MMO, for approval, no less than **4 months** prior to the survey works. The results of the survey must be submitted to the MMO no less than **4 months** prior to the commencement of licensed activities and include an assessment of the need to micro-site the cable to avoid any Annex I habitats identified. Licensed activities must not commence until the MMO has provided written approval of the pre-construction benthic monitoring reports. *Reason: To ensure that Annex I features such as Sabellaria spinulosa reef will not be subject to impact as a result of the*

	works.
5.2.4	The licence holder must submit a Marine Pollution Contingency Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The MPCP must: • Outline procedures to be implemented in the event of spills and collision incidents (including oil and chemical spills); • Be adhered to and be included within the Project Environmental Management Plan referred to in condition 5.2.10; • Take into account existing plans for all operations, including offshore installations, which may influence the MPCP; and • Detail practices used to refuel vessels at sea. *Reason: To minimise the risk of pollution incident occurring by adopting best practice techniques.*
5.2.5	The licence holder must submit a Project Environmental Management Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The PEMP must document the environmental management required for all parties involved with the project and affected by it. The PEMP must include details of: • A marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the works; • A waste management plan; and • The appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer. Licensed activities must not commence until the MMO has provided written approval of the PEMP. *Reason: To minimise the environmental impacts of the works by ensuring best practices are adopted and suitable mitigation measures are adopted.*
5.2.6	The licence holder must prepare a Written Scheme of Investigation (WSI) in consultation with English Heritage (EH) to detail archaeological assessment and mitigation works necessary to inform the detailed delivery of the project. The WSI must be agreed with the MMO, in consultation with EH, **4 months** prior to the commencement of any survey work commissioned to aid delivery of the project. The WSI must include: • An Archaeological Reporting protocol for the prompt reporting and recording of archaeological remains encountered, or suspected, during all phases of construction, operation and decommissioning. This must be set

	out in accordance with The Crown Estate Protocol for Archaeological Discoveries Offshore Renewable Projects (2010); • Responsibilities of the Licence Holder and archaeological consultant; • Details of contractors and curators (national and local); • Archaeological analysis and reporting of survey data and investigation; • Delivery of mitigation including use of archaeological construction exclusion zones in agreement with the MMO; and • Conservation, publication and archiving duties for archaeological material. Licensed activities must not commence until the MMO has provided written approval of the WSI. *Reason: To ensure the integrity of archaeologically important items is not compromised.*
5.2.7	The licence holder must ensure that archaeological exclusions zones are established within 50 metres of the following sites WA-ID 7024; 7027; 7047; and 7098. The licence holder must ensure that archaeological exclusion zones are established within 100 metres of the following sites WA-ID 7270; 7272; 7274; 7275; 7276 and 7277. The Licence Holder must inform the MMO immediately if any additional archaeological exclusion zones are necessary. Licensed activities must not commence within archaeological exclusions zones without the written agreement of the MMO. *Reason: To ensure the integrity of archaeologically important items is not compromised.*
5.2.8	The Licence Holder must complete an OASIS (Online Access to the Index of Archaeological Investigations) form for any completed and agreed archaeological reports produced in accordance with condition 5.2.6. A copy must be submitted as a PDF file and send to EH's National Monuments Record at http://oasis.ac.uk/. *Reason: To ensure the integrity of archaeologically important items is not compromised and to ensure any final and agreed archaeological reports are recorded in a manner complementary to established practice.*
DURING LICENSED ACTIVITIES	

5.2.9	The licence holder must ensure that any chemical spills or releases into the marine environment are reported within the timeframes and format agreed within the MPCP referred to in condition 5.2.4. *Reason: To ensure that any spills are appropriately recorded and managed to minimise impact to sensitive receptors and the marine environment.*
5.2.10	The Licence Holder must install bunding/storage facilities to contain and prevent the release of fuels, oils and chemicals associated with plant, refuelling and construction equipment into the marine environment. Secondary containment must be used for a capacity of not less than 110% of the containers storage capacity. *Reason: To prevent marine pollution incidents by adopting best practice.*
5.2.11	The licence holder must ensure that all protective coatings used are suitable for use in the marine environment and, where necessary, are approved by the Health and Safety Executive. Such coatings should be used in accordance with best environmental practice. *Reason: To ensure that chemicals used are safe for use within the marine environment.*
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.12	Any equipment, temporary structures, waste and/or debris associated with licensed activities must be removed upon the completion of licensed activities. *Reason: To prevent the accumulation of unlicensed debris and potential environmental damage, safety and navigational issues associated with such materials and debris.*
5.2.13	The licence holder must notify the Source Data Receipt Team at the UK Hydrographic Office (UKHO), Taunton, Somerset, TA1 2DN (email: hdcfiles@ukho.gov.uk; Tel 01823 337900) within 2 weeks of the completion of construction, dredging and disposal activities. Copies of such notification must be provided to the MMO and MMO Coastal Office. *Reason: To reduce navigational risk by ensuring nautical charts are updated and ensure the provision of information to mariners.*
SITE1 – NEMO LINK INTERCONNECTOR SPECIFIC CONDITIONS	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	

5.2.14	The licence holder must submit a detailed Construction Methodology including Cable Burial Management and Installation Plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities. The plan must include: • Technical specification; • Location and timings; • Burial risk assessment to ascertain burial depth; • Installation techniques; • Cable laying technique; • Cable crossing armouring methodology; and • Installation machinery failure contingency plan Licensed activities must not commence until the MMO has provided written approval of the Cable Burial Management and Installation Plan. *Reason: Reason: To ensure the methodology follows best current practices, is within the envelope assessed within the application to reduce environmental and navigational impacts.*
5.2.15	The licence holder must undertake pre-construction baseline invertebrate population surveys within the intertidal zone. The survey specification must be submitted to the MMO, for approval, no less than **4 months** prior to the survey works. The results of the surveys must be submitted to the MMO no less than **4 months** prior to the commencement of licensed activities within the intertidal zone. Licensed activities within the intertidal zone must not commence until the MMO has provided written approval of the pre-construction invertebrate monitoring reports. *Reason: To establish the baseline biotope present within the intertidal zone.*
5.2.16	The licence holder must submit a detailed saltmarsh mitigation, reinstatement and monitoring plan incorporating breeding bird mitigation plan, for approval by the MMO, at least **4 months** prior to the commencement of licensed activities within the intertidal zone.

	Licensed activities must not commence until the MMO has provided written approval of the detailed saltmarsh mitigation, reinstatement and monitoring plan. *Reason: To ensure no adverse effect on the integrity of the interest features of the Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marches SSSI.*
DURING LICENSED ACTIVITIES	
5.2.17	The licence holder must ensure that, unless otherwise agreed in writing by the MMO, no licensed activities take place within the intertidal zone between **1 October and 31 March** of any given calendar year. *Reason: To avoid disturbance to saltmarsh and mudflat supporting habitat of the overwintering bird features of the Thanet Coast and Sandwich Bay Special Protection Area.*
5.2.18	The licence holder must ensure that, unless otherwise agreed in writing by the MMO, no licensed activities take place between **1 November and 31 January** of any given calendar year. *Reason: To ensure the works do not have a significant adverse effect on the reproduction and recruitment of local herring and sandeel populations.*
5.2.19	The licence holder must ensure that any rock material used for cable crossing armouring is from a recognised source, free from contaminants and contains minimal fines. *Reason: To prevent pollution by material that may come from a polluted area or potentially change the chemical balance of the environment in which it is placed.*
5.2.20	The licence holder must ensure that any rock misplaced/lost below MHWS is reported to the Coastal Marine Office within 48 hours, and located and recovered as directed by the MMO. *Reason: To manage the associated safety/navigation issues associated with rock transhipment and the potential loss of material that could cause an obstruction/hazard to other sea/sea-bed users.*
5.2.21	The licence holder must ensure that all excavation works within the intertidal zone are carried out using low pressure excavators and using bog mats or rolled steel / aluminium sheeting in accordance with the detailed saltmarsh mitigation, reinstatement and monitoring plan submitted pursuant to condition 5.2.16, unless otherwise agreed in writing by the MMO.

	Reason: To minimise ground disturbance and compaction to saltmarsh and mudflat habitat.
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.22	The licence holder must submit post construction saltmarsh monitoring reports in the agreed format under licence condition 5.2.15, 1,2,3,4 and 5 years following the completion of licensed activities within the intertidal zone unless otherwise agreed with the MMO. *Reason: To ensure no adverse effect on the integrity of the interest features of the Thanet Coast and Sandwich Bay Special Protection Area and to inform the MMO as to if any further monitoring is required.*
5.2.23	The licence holder must undertake post construction invertebrate monitoring to assess the benthic re-colonisation, community structure and species balance within the intertidal zone. Reports must be submitted to the MMO for approval 1 and 3 years following the completion of licensed activities within the intertidal zone. *Reason: To ensure the structure of the saltmarsh returns to support the same invertebrate assemblage as identified prior to construction under licence condition 5.2.15*

SITE 2 & SITE 3 DREDGE AND DISPOSAL SPECIFIC CONDITIONS	
PRIOR TO THE COMMENCEMENT OF LICSENSED ACTIVITIES	
5.2.24	The licence holder must submit a detailed Dredging and Disposal Methodology, for approval by the MMO, at least **4 months** prior to the commencement of dredging and disposal licensed activities. The plan must detail: Volume of material to be dredged and disposed; Disposal methodology; and Vessel capacity (including number of disposal required). *Reason: To ensure the methodology follows best current practices to reduce environmental and navigational impacts.*
DURING LICENSED ACTIVITIES	
5.2.25	The licence holder must ensure that all dredging activities are carried out using Trailer Suction Hopper Dredgers only. *Reason: To ensure dredging works are carried out in according with the methodology assessed within the Environmental Statement.*
5.2.26	The licence holder must inform the MMO of the location and quantities of material disposed of each month under this licence by the **31 January** each year for the months August to January inclusive, and by the **31 July** each year for the months February to July inclusive. *Reason: To ensure compliance with OSPAR reporting requirements.*
5.2.27	The licence holder must ensure that dredged material is disposed of to Nemo Disposal Site A (TH150), Nemo Disposal Site B (TH151) and Nemo Disposal Site C (TH152) as defined within Schedule 1 of this licence. Disposal must not exceed the quantities stated within this licence. *Reason: To ensure disposal occurs are the correct disposal site.*
FOLLOWING THE COMPLETION OF LICENSED ACTIVITIES	
5.2.28	The licence holder must notify the MMO within **2 weeks** of the completion of dredged material disposal works.

	Reason: To ensure disposal sites TH150, TH151 and TH152 can be closed upon completion of dredged material disposal works.

6 Compliance and enforcement

This licence and its terms and conditions are issued under the Marine and Coastal Access Act 2009.

Any breach of the licence terms and conditions may lead to enforcement action being taken. This can include variation, revocation or suspension of the licence, the issuing of an enforcement notice, or criminal proceedings, which may carry a maximum penalty of an unlimited fine and / or a term of imprisonment of up to two years.

Your attention is drawn to Part 4 of the Marine and Coastal Access Act 2009, in particular sections 65, 85 and 89 which set out offences, and also to sections 86 and 109 which concern defences. The MMO's Compliance and Enforcement Strategy can be found on our website (http://marinemanagement.org.uk/about/documents/compliance_enforcement.pdf).

ANNEX 1 Licence returns

Return number	Return description	Return deadline
1.	Licence holder to accept terms and conditions of this licence	Within 10 working days from licence date of issue.
2.	Licence holder to notify MMO and MMO Coastal Office of the first instance of licensed activities.	No less than 5 working days prior to the commencement of licensed activities.
3.	Licence holder to notify MMO of any agents, contractors or third parties.	No less than 24 hours prior to their engagement in licensed activities.
4.	Licence Holder to notify MMO of vessel details.	No less than 24 hours prior to their engagement in licensed activities.
5.	Licence holder to provide MMO and MMO Coastal Office with notification provided the UK Hydrographic Office	No less than 2 weeks prior to the commencement of licensed activities and no more than 2 weeks following the completion of licensed activities.
6.	Licence holder to provide MMO and MMO Coastal Office with copies of all Notice to Mariners.	No less than 2 weeks prior to the commencement of licensed activities and then fortnightly.
7.	Licence holder to submit detailed Construction Methodology including Cable Burial Management and Installation Plan.	No less than 4 months prior to the commencement of licensed activities.
8.	Licence holder to submit baseline invertebrate monitoring reports.	No less than 4 months prior to the commencement of licensed activities.
9.	Licence holder to submit Annex 1 surveys.	No less than 4 months prior to the commencement of

		licensed activities.
10.	Licence holder to submit saltmarsh mitigation, reinstatement and monitoring plan.	No less than 4 months prior to the commencement of licensed activities.
11.	Licence holder to submit Dredging and Disposal Methodology plan.	No less than 4 months prior to the commencement of dredging and disposal licensed activities.
12.	Licence holder to submit Marine Pollution Contingency Plan.	No less than 4 months prior to the commencement of licensed activities.
13.	Licence holder to submit Project Environmental Monitoring Plan	No less than 4 months prior to the commencement of licensed activities.
14.	Licence holder to submit Written Scheme of Archaeological Investigation.	No less than 4 months prior to the commencement of licensed activities.
15.	Licence holder to notify MMO of any unforeseen archaeological exclusions zones.	Within 24 hours of their discovery.
16.	Licence holder to notify MMO of the location and quantities of material disposed of each month under this licence.	No later than 31 January each year for the months August to January inclusive, and by the 31 July each year for the months February to July inclusive
17.	Licence holder must submit post construction saltmarsh monitoring reports.	1,2,3,4 and 5 years following the completion of licensed activities within the intertidal zone.
18.	Licence holder to submit post construction invertebrate monitoring reports.	1 and 3 years following completion of licensed activities within the intertidal zone.
19.	Licence holder to notify MMO of the completion of dredged material disposal works.	No more than 2 weeks following the completion of disposal works.

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Dated 31 **December 2014**

THE NATIONAL GRID NEMO LINK LIMITED (PEGWELL BAY) COMPULSORY PURCHASE ORDER 2014

THE ELECTRICITY ACT 1989
THE ACQUISITION OF LAND ACT 1981[1]

National Grid Nemo Link Limited (company registration number 8169409 and in this order called "the acquiring authority") makes the following order--

1 Subject to the provisions of this order, the acquiring authority is under section 10 of, and paragraph 1 of Schedule 3 to, the Electricity Act 1989 ('**the 1989 Act**') hereby authorised to purchase compulsorily the new rights over land described in paragraph 2 for the purpose of carrying on the activities authorised by its licence under the 1989 Act, and more particularly for the purpose of constructing a high voltage direct current electrical interconnector, including a converter station at Richborough, Kent, and associated works, to allow the transfer of electrical power beneath the North Sea between the United Kingdom and Belgium.

2 The new rights to be purchased compulsorily over land under this order are described in the Schedule and land is shown coloured blue on the maps prepared in duplicate, sealed with the common seal of the acquiring authority and marked "Map referred to in the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014".

3 Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 are hereby incorporated with this order, and references in the said Parts 2 and 3 to "the undertaking" shall be construed as including the works to be constructed by the acquiring authority in, on and under the land subject to this order.

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[1] Acquisition of Land Act 1981 as applied to Electricity Act 1989 by virtue of Schedule 3 para. 5 of that Act and section 1(1)(a) of the Acquisition of Land Act 1981

SCHEDULE

In Table 1 of this Schedule, the following terms have the following meanings:

"the interconnector right" means all rights necessary–

(a) to place new electricity interconnector infrastructure within the land and thereafter retain, inspect, maintain, repair, alter, renew, replace, remove and use the electricity interconnector infrastructure;

(b) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

(c) to access the land and access adjoining land in connection with the electricity interconnector infrastructure; and

(d) to protect the electricity interconnector infrastructure; prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it; and

"the work compound right" means all rights necessary–

(a) to use the land as a working and compound area for construction, inspection, maintenance, repair, alteration, renewal, replacement and removal of the electricity interconnector infrastructure;

(b) to prevent any works on or use of the land which may interfere with or damage the electricity interconnector infrastructure or which interferes with or obstructs access to the interconnector infrastructure;

(c) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

(d) to access the land and access adjoining land in connection with the electricity interconnector infrastructure; and

(e) to protect the electricity interconnector infrastructure and prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it.

Table 1

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
1	Approximately 281,128.48 square metres of foreshore lying to the east of Sandwich Road, Ramsgate	Thanet District Council PO Box 9 Cecil Street Margate Kent CT9 1XZ	None	None	Owners	The interconnector right.
2	Approximately 4,656.77 square metres of foreshore lying to the east of Sandwich Road, Ramsgate	The National Trust for Places of Historic Interest or Natural Beauty Heelis Kemble Drive Swindon Wiltshire SN2 2NA	None	None	Owners	The interconnector right.
3	Approximately 19,044.35 square metres of foreshore lying to the east of Sandwich Road, Ramsgate	The National Trust for Places of Historic Interest or Natural Beauty Address as for plot 2	Kent Wildlife Trust Tyland Barn Sandling Mainstone Kent ME14 3BD	None	Lessees	The interconnector right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
4	Approximately 1,203.91 square metres of foreshore lying to the south east of Sandwich Road, Ramsgate	The Kent County Council Sessions House County Hall Maidstone Kent ME14 1XQ	None	None	Owners	The interconnector right.
5	Approximately 1.08 square metres of foreshore lying to the east of Sandwich Road, Ramsgate	Thanet District Council Address as for plot 1	None	None	Owners	The interconnector right.
6	Approximately 84.51 square metres of Foreshore lying to the east of Sandwich Road, Ramsgate	Thanet District Council Address as for plot 1	None	None	Owners	The interconnector right.
7	Approximately 2,540.75 square metres of foreshore lying to the southern side of Sandwich Road, Ramsgate	Thanet District Council Address as for plot 1 Unknown (in respect of mines and minerals)	None	None	Owners	The interconnector right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
8	Approximately 115.94 square metres of highway verge lying to the southern side of Sandwich Road, Ramsgate	The Kent County Council Address as for plot 4	Unknown	Unknown	Owners	The interconnector right.
9	Approximately 560.21 square metres of scrubland lying to the south east of Sandwich Road, Ramsgate	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.
10	Approximately 163.92 square metres of scrubland lying to the east of Sandwich Road, Ramsgate	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.
11	Approximately 12,542.99 square metres of amenity land lying to the east of Sandwich Road, Ramsgate	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.
12	Approximately 3,152.62 square metres of amenity land lying to the east of Sandwich Road, Ramsgate	The Kent County Council Address as for plot 4	None	None	Owners	The work compound right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
13	Approximately 3,318.99 square metres of rough land lying to the south east of Sandwich Road, Ramsgate	Kent Wildlife Trust Address as for plot 3	None	None	Owners	The interconnector right.
14	Approximately 38.76 square metres of hedgerow at Escana, Ramsgate Road, Sandwich CT13 9QL	Unknown	None	None	Owners	The interconnector right.
15	Approximately 1,824.14 square metres of sports ground at Escana, Ramsgate Road, Sandwich CT13 9QL	The Bay Point Club Limited Baypoint Ramsgate Road Sandwich Kent CT13 9QL	None	None	Owners	The interconnector right.
16	Approximately 1,257.69 square metres of sports ground at Escana, Ramsgate Road, Sandwich CT13 9QL	The Bay Point Club Limited Address as for plot 15	None	None	Owners	The work compound right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
17	Approximately 43.57square metres of highway verge and scrubland on the east side of Ramsgate Road, Sandwich	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.
18	Approximately 74.23 square metres of access track on the east side of Ramsgate Road, Sandwich	Unknown	None	None	Owners	The interconnector right.
19	Approximately 938.34 square metres of highway on the east side of Ramsgate Road, Sandwich	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.
20	Approximately 738.83 square metres of highway, verge and scrubland either side of Ebbsfleet Roundabout, Ramsgate	The Kent County Council Address as for plot 4	None	None	Owners	The interconnector right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
21	Approximately 183.97 square metres of woodland on the west side of Ramsgate Road, Sandwich	[redacted]	None	None	Owners	The interconnector right.
22	Approximately 699.19 square metres of anaerobic digester site lying to the north west side of Ramsgate Road Sandwich	[redacted]	[redacted]	None	Lessees	The interconnector right.
23	Approximately 71.51 square metres of stream and scrubland lying on the west side of Ramsgate Road, Sandwich	Unknown	None	None	None	The interconnector right.

Plot number on map	Extent, description and situation of the land	Qualifying persons under section 12(2)(a) of the Acquisition of Land Act 1981-- name and address				Rights to be acquired
		Owners or reputed owners	Lessees or reputed lessees	Tenants or reputed tenants (other than lessees)	Occupiers	
24	Approximately 916.9 square metres of scrubland lying on the north-west side of Ramsgate Road, Sandwich	Richborough Estates Limited 12 Queen Street Deal Kent and at Waterloo House Waterloo Street Birmingham B2 5TB The Coal Authority 200 Lichfield Lane Berry Hill Mansfield Nottinghamshire NG18 4RG (in respect of mines and minerals)	None	None	Owners	The interconnector right.

Table 2

Plot number(s) on map	Other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981		Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981--not otherwise shown in Tables 1 & 2	
	Name and address	**Description of interest to be acquired**	**Name and address**	**Description of the land for which the person in adjoining column is likely to make a claim**
1, 2, 3	None	None	Thanet Offshore Wind Limited First Floor 1 Tudor Street London EC4Y 0AH	The strip of land being 15 metres in width to the south east of Sandwich Road which is subject to rights granted and restrictive covenants contained in a Deed of Grant dated 10 December 2009.
2, 3	None	None	The Kent County Council County Council Sessions House County Hall Maidstone Kent ME14 1XQ	This land is subject to rights granted and restrictive covenants contained in a transfer of part dated 4 December 1981.
11	None	None	Unknown	A right of way on foot only over land to the south east of Sandwich Road contained in a Conveyance dated 25 September 1978.

Plot number(s) on map	Other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981		Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981--not otherwise shown in Tables 1 & 2	
			The National Trust for Places of Historic Interest or Natural Beauty Heelis Kemble Drive Swindon Wiltshire SN2 2NA	A right of way over land to the south east of Sandwich Road.
11, 12	None	None	Southern Water Services Limited Southern House Yeoman Road Worthing West Sussex BN13 3NX	The strip of land being 8 metres in width and 690 metres in length to the south east of Sandwich Road, which is subject to rights granted and restrictive covenants contained in a Deed of Grant dated 12 February 2001.
15	None	None	[redacted]	A right of way over part of Train Ferry Road.

Plot number(s) on map	Other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981		Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981--not otherwise shown in Tables 1 & 2	
15, 16	[redacted]	The land is subject to charges dated 12 September 2002 and 12 December 2012	None	None
	Kent County Council Sessions House County Road Maidstone ME14 1XQ	The land is subject to a charge dated 20 September 2013		
	General Asset Management Limited Mill Green House Mill Green Road Haywards Heath West Sussex RH16 1XJ	The land is subject to a charge dated 2 July 2014.		

Plot number(s) on map	Other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981		Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981--not otherwise shown in Tables 1 & 2	
21, 22	Lloyds TSB Bank plc Securities Operational Service Centre PO Box 6000 125 Colmore Row Birmingham B3 3SF	This land is subject to a charge dated 17 December 2012.	Southern Water Services Limited Southern House Yeoman Road Worthing West Sussex BN13 3NX	Land to the west of Ebbsfleet roundabout is subject to the rights granted in a deed dated 6 May 1993 including rights to retain landscape works on the land.
			Sunsave 1 Limited St Johns Innovation Centre Cowley Road Cambridge CB4 0WS	The land is subject to rights granted in a Lease dated 24 June 2011 including a right to lay, use, maintain etc. service media on the land.
22	None	None	Southern Water Services Limited Southern House Yeoman Road Worthing West Sussex BN13 3NX	Land to the west of Ebbsfleet roundabout is subject to rights to lay certain conducting media and rights of entry in connection with them.
24	None	None	Unknown	This land is subject to unspecified restrictive covenants contained in a Deed dated 27 November 1946.

Plot number(s) on map	Other qualifying persons under section 12(2A)(a) of the Acquisition of Land Act 1981		Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981--not otherwise shown in Tables 1 & 2	
			Unknown	This land is subject to unspecified restrictive covenants contained in a Deed dated 18 June 1948.

The common seal of National Grid Nemo Link Limited was affixed in the presence of:-

.....[redacted].....

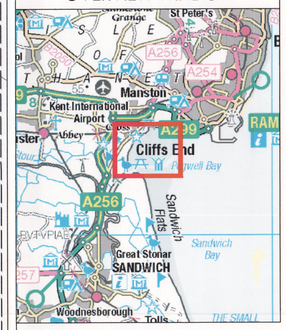
(Member of the Board Sealing Committee and Authorised Signatory)

Date: x 31/12/24

N

0 25 50 100 150 200 Metres

OVERVIEW WINDOW



LEGEND:

ORDER LIMITS

NEW RIGHTS TO BE ACQUIRED

(Member of the Board Sealing Committee and Authorised Signatory)

[redacted]

31/12/14

REVISION: REV F

CLIENT:
NATIONAL GRID

SCHEME:
NEMO LINK

TITLE:
Map referred to in the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

SCALE: 1:2,500 @ A0
SHEET 1 of 2
DATE: 23/12/2014

nationalgrid

FISHER GERMAN

Fisher German LLP. The Grange
80 Tamworth Road, Ashby de la Zouch,
Leicestershire, LE65 2BW
Telephone 01530 412821
Fax: 01530 413896

DRAWING NO:

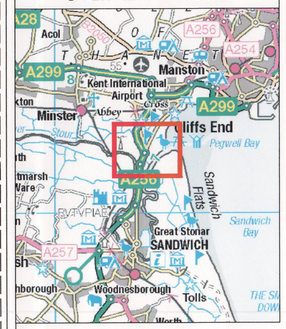
PRJNEMO-2014-10-LP-JH-Land Plan1

Sheet 2

N

0 25 50 100 150 200
Metres

OVERVIEW WINDOW



LEGEND:

- ORDER LIMITS
- NEW RIGHTS TO BE ACQUIRED

Member of the Board Sealing Committee and Authorised Signatory

[redacted]

31/12/14

REVISION: REV F

CLIENT:
NATIONAL GRID

SCHEME:
NEMO LINK

TITLE:
Map referred to in the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

SCALE: 1:2,500 @ A0
SHEET 2 of 2
DATE: 23/12/2014

nationalgrid

FISHER GERMAN

Fisher German LLP. The Grange
80 Tamworth Road, Ashby de la Zouch,
Leicestershire, LE65 2BW
Telephone 01530 412821
Fax: 01530 413896

DRAWING NO:

PRJNEMO-2014-10-LP-JH-Land Plan2

Department of Energy & Climate Change

Department of Energy & Climate Change
3rd Floor, Area C
3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5678
E: denise.libretto@decc.gsi.gov.uk
www.decc.gov.uk

Ms Lauren Spencer
Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Your ref: LKS/NJE/147833.YO70869
Our ref:

6 May 2015

Dear Ms Spencer,

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

I refer to our letter dated 1 April 2015 in which it is confirmed that the Secretary of State has accepted the above Order for confirmation.

In that letter, we indicated that we had written to all remaining objectors requesting they confirm to the Secretary of State no later than 17 April 2015, if their objection to the Order remains or if they wish to withdraw their objection. I can confirm that the following objections to the Order remain:

- National Trust
- Kent Wildlife Trust
- The Baypoint Club
- St. Nicholas Court Farms
- Alexandra and James Pace

It is the Secretary of State's intention to hold a local public inquiry into the above Order in accordance with Rule 3(2) of The Compulsory Purchase (Inquiries Procedure) Rules 2007 ("the 2007 Rules"). The Secretary of State will be appointing an Inspector from the Planning Inspectorate to conduct this inquiry on his behalf.

In accordance with Rule 10(1)(a) of the 2007 Rules, the date fixed by the Secretary of state for the holding of an inquiry shall not be later than 22 weeks after the relevant date. However Rule 10(1)(c) provides that where the Secretary of State is satisfied that in all the circumstances of the case it is impracticable to hold the inquiry within the period mentioned in sub-paragraph

(a) or (b) (as the case may be) the earliest practicable date after the end of that period. The Secretary of State will liaise with the Planning Inspectorate to set the inquiry date as soon as possible depending upon Inspector availability. The exact timing of the inquiry and any pre-inquiry meeting (if the appointed Inspector thinks this is desirable) will be notified to you and the remaining objectors in due course.

The date of this letter should be treated by Nemo Link Limited “the acquiring authority” as the "relevant date" in Rule 2 of the 2007 Rules which is defined to mean "the date of the authorising authority's notice under paragraph (2) or (3) of Rule 3."

Whilst the inquiry date is yet to be determined, I would draw your attention to Rule 7 that governs the service of the Statement of Case. Rule 7(1)(b) requires the acquiring authority to serve its Statement of Case to the remaining objectors (and to the Secretary of State as authorising authority) no later than six weeks after the "relevant date" which means **by 17 June 2015**.

It should be noted that under section 21 of the National Trust Act 1907, any land that is held inalienably by the National Trust and is intended to be compulsorily acquired, shall be subject to special parliamentary procedure under section 18(2) of the Acquisition of Land Act 1981. If National Trust’s objection remains after the local public inquiry has closed, the Order will be required to undergo special parliamentary procedure in relation to the proposed compulsory acquisition of plots 2, 3 and 11 owned by National Trust. This ultimately means that the Order would be approved (or not) by Parliament rather than by the Secretary of State before it could have effect.

The Secretary of State would strongly encourage the acquiring authority to continue their engagement with the remaining objectors to discuss proposals that may help reach a mutual agreement with parties.

Letters have been sent today to the above remaining objectors informing them of this matter. A copy is attached for your information.

Yours sincerely,

Denise Libretto

Denise Libretto
Head of Networks
National Infrastructure Consents

Department
of Energy &
Climate Change

Department of Energy & Climate Change
3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5678
E: denise.libretto@decc.gsi.gov.uk
www.decc.gov.uk

Ms Lauren Spencer
Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Your ref: LKS/NJE/147833.YO70869
Our ref:

1 April 2015

Dear Ms Spencer,

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

I enclose copies of the objections received by the Secretary of State in relation to the above Compulsory Purchase Order for your information. These objections are from:

- Kent Wildlife Trust
- National Trust
- The Baypoint Club
- St. Nicholas Court Farms
- Alexandra and James Pace

Yours sincerely,

[redacted]

Denise Libretto
Head of Networks
National Infrastructure Consents

GULLANDS

SOLICITORS

Our Ref: 104/36157.173/NSA/KWT

The Secretary of State for Energy & Climate Change
c/o Denise Libretto
Department of Energy & Climate Change
National Infrastructure Consents
2nd Floor, Kings Building
c/o 3 Whitehall Place
London SW1A 2AW

28 January 2015

Dear Sirs

Re: The National Grid Nemo Link Ltd (Pegwell Bay) Compulsory Purchase Order 2014 – dated 31 December 2014 – The Electricity Act 1989 and The Acquisition of Land Act 1981

We act on behalf of Kent Wildlife Trust.

We refer to your Notice of 6 January 2015 addressed to our client relating to the above, and received by the Trust on 7 January 2015.

The aforesaid Notice informed the Trust that you intend to compulsorily acquire rights in Plots 3 and 13 referred to in the Schedule of the Notice for the purpose of constructing new electricity interconnector infrastructure with rights ancillary thereto.

It is confirmed that the Trust are the freehold owners of Plot 13 and enjoy a leasehold interest in Plot 3.

We are writing on behalf of our client to formally object to the Order, upon the following grounds:-

a. the designated status of the land both international (RAMSAR, SAC, and SPA) and national (SSSI, Sandwich & Pegwell Bay NNR) should offer protection from potentially damaging operations;

b. rare nature of the habitats and vegetative assemblages present (inter-tidal mud flats, salt marsh, dune pasture, coastal shrub) would be lost or damaged;

c. the fragile and sensitive nature of the above mentioned habitats have a high potential for permanent damage, and insofar as such is not permanent, would have a very slow recovery rate, from the potentially damaging operations that may occur;

16 Mill Street Maidstone Kent ME15 6XT Tel: 01622 678341 Fax: 01622 757735
DX 51973 Maidstone 2 www.gullands.com mailbox@gullands.com

d. the sensitive nature of species present in particular overwintering, migrating and breeding birds which are already under considerable recreation pressure and are particularly sensitive to noise disturbance and intrusion such as would result from such works (as supported by bird studies). The site is afforded international protected status for its wetland bird populations;

e. the Environmental Statement does not satisfactorily address the managment and offset of public access;

f. the Environmental Statement does not satisfactorily address the monitoring of the impact of the project during and post scheme;

g. insufficient consideration has been given to an alternative route which could minimise the environmental impact and

h. the use of Compulsory Purchase powers is intended as a last resort in the event that attempts to acquire rights by agreement fail. In the present case National Grid Nemo Limited have failed to engage satisfactorily with the objectors concerns. This is contrary to the Governments own guidance (circular 06/04) on compulsory acquisition.

Our client does not agree that the land should be compulsory acquired for the purposes specified.

Yours faithfully

[redacted]

GULLANDS
DDI. 01622 689717
E-Mail: t.simmons@gullands.com

Received 22/1/2015
02.

Graham.deans.@nationaltrust.org.uk
Direct line: 07887 824541
19 January 2015

National Trust

Secretary of State for Energy and Climate Change
c/o Denise Libretto
Department of Energy and Climate Change
National Infrastructure Consents
2nd Floor Kings Building
c/o 3 Whitehall Place
London
SW1A 2AW

Dear Sir

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014
Dated 31st December 2014
The Electricity Act 1989 and the Acquisition of Land Act 1981

We refer to your Notice of 6th January 2015, received by the National Trust on 9th January 2015. This informed the National Trust that you intend to compulsorily acquire rights in plots 2, 3 and 11 referred to in the schedule of the notice for the purposes of constructing a high voltage direct current electrical connector.

The National Trust owns the following:

4,656.77 square metres of foreshore to the East of Sandwich Road (Plot 2)
19,044.35 square metres of foreshore to the East of Sandwich Road (Plot 3)
12,542.99 square metres of amenity land to the East of Sandwich Road (Plot 11)

We are writing to object to the Order and the Grounds of Objection are as follows:

The land in question is held inalienably by the National Trust under section 21 of the National Trust Act 1907. As such any compulsory order shall be subject to special parliamentary procedure under s.18(2) of the Acquisition of Land Act 1981. Further the fact that part of the land is leased to Kent Wildlife Trust does not mean that it is inalienable. This is merely a short lease which does not amount to a disposal of the freehold of the land.

Accordingly we do not agree that the land can be acquired compulsorily by you for the purposes specified.

National Trust
London and South East
Saunderton Hub
The Clare Charity Centre
Saunderton
High Wycombe
Buckinghamshire HP14 4BF
Tel: +44 (0)1494 569000

www.nationaltrust.org.uk

Yours faithfully

Graham Deans
Assistant Director of Operations
National Trust

Cont/d

Received 26/1/2015 DL.

G.W. FINN & SONS Incorporating Amos Dawton & Finn

Chartered Surveyors, Auctioneers,
Valuers, Planning Consultants,
Estate and Letting Agents

1 King Street, Sandwich
Kent CT13 9BY
01304 612147
Lettings 01304 614471
Fax: 01304 611919
Email: sandwich@gwfinn.com
www.gwfinn.co.uk

Also at:
Canterbury 01227 454111
Thanet 01843 848230

Our reference: JMS/HH/2678/17 & 1870/00

Your reference:

Date: 23rd January 2015

Denise Libretto
Department of Energy & Climate Change
National Infrastructure Consents
2nd Floor Kings Buildings
3 Whitehall Place
London
SW1A 2AW

Dear Madam

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

Compulsory Purchase of New Rights in Pegwell Bay, Ramsgate

We act as Agents for Alexandra Ruth Pace & James Bedford Pace (Freehold Plots 21 and 22), St Nicholas Court Farms Ltd (Leasehold in Plot 22) and the Baypoint Club Ltd (Freehold Plots 15 and 16).

The first two above mentioned clients have already submitted their objection directly to you but we enclose a further copy for your reference.

We enclose the objection on behalf of Baypoint Club Ltd.

Would you please acknowledge receipt of all three objections?

If you have any queries please do not hesitate to speak to Julian Sampson at the above office.

Yours faithfully

[redacted]

G W Finn & Sons
jms@gwfinn.com

Enc.

RICS AMC AGENT

Julian M. Sampson, M.Sc., FRICS, FAAV
James B. Pace, M.Sc., MRICS
Nicholas A. Rooke, M.Sc., MRICS

23 JAN 2015

To
The Secretary for State for Energy and Climate Change
c/o Denise Libretto
Department of Energy and Climate Change,
National Infrastructure Consents
2nd Floor Kings Building
3 Whitehall Place London SW1A 2AW

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014
Compulsory Purchase of New Rights in Pegwell Bay Ramsgate

Objectors Name	The Bay Point Club Limited (Co Reg No 7890450)
Registered Address	Ramsgate Road, Sandwich, Kent CT13 9QL
Agents address	Julian Sampson FRICS G W Finn and Sons 1 King Street Sandwich Kent CT13 9BY
Interest in the Land	Freehold in Plots 15 and 16
Date	20th January 2015

Notice of Objection

We object to the above CPO on the following grounds:-

1. The proposed works will severely affect the use of our land as a privately owned Sports Centre, particularly as National Grid have indicated that they wish to use part of it, particularly our road frontage as a compound for the purposes of thrust boring the cables under our land and other landownerships. Our site is neat, tidy and well maintained and the works will cause us loss. We will be perceived by the general public and potential customers as a contractor's site, such losses unlikely to be difficult to quantify and adequately compensated.
2. It is very difficult to quickly and properly restore sports grounds following civil works such as these – we are well aware of similar difficulties following works carried out by the Environment Agency associated with the nearby Sandwich Flood Defence Scheme. Land cannot be reinstated straight away and normal sports uses resumed.
3. The land is low lying and subject to waterlogging. There will be impact on our drainage systems.
4. The easement will reduce our future use of part of our land as activities will be restricted. This will include the planting of trees and the construction of buildings and carrying out soil level alterations, together with impacting on any underground works we may wish to do ourselves. We operate only a small site which is land hungry for extensive recreational activities, and it is vital that we preserve our ability to use our entire land to its full extent.
5. The land in question is frontage land rather than back land.
6. We will get no benefit at all from the electricity cables. Indeed the presence of the cables and their easement might well affect any plans we might have to lay services or drainage on these areas.
7. In future our land is likely to be entered for the maintenance of the cables or if any faults should occur. Our site is currently secure. We are going to be further inconvenienced in the future.
8. We are concerned about the health risks arising from the current proposed placement of the cables, albeit they are buried. We operate a Health, Fitness and Leisure centre and as such receive a large footfall of people all over the site.
9. There must be an alternative route whereby these cables can be installed without affecting our land.

This is a summary of our objection. Further details of our objection will be submitted if we have to provide evidence in due course at the CPO Inquiry.

[redacted]

Anthony Michael Harrison
Director Bay Point Club Limited

To

The Secretary for State for Energy and Climate Change
c/o Denise Libretto
Department of Energy and Climate Change,
National Infrastructure Consents
2nd Floor Kings Building
3 Whitehall Place London SW1A 2AW

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

Compulsory Purchase of New Rights in Pegwell Bay Ramsgate

Objectors Name	St Nicholas Court Farms Limited
Address	St Nicholas Court Court Road St Nicholas at Wade Birchington Kent CT7 0NJ
(Agents address	Julian Sampson FRICS G W Finn and Sons 1 King Street Sandwich Kent CT13 9BY
Interest in the Land	Leasehold in Plot 22
Date	20th January 2015

Notice of Objection

We object to the above CPO on the following grounds:-

1. The proposed works could severely affect the maintenance, future use and expansion of our land as a anaerobic digester plant because the cables are to be drilled directly under our existing building and site. Our site comprises a very modern facility but was constructed without the likelihood of having these cables underneath it. The cables pass under our building which sits on deep pile foundations.
2. The buildings and plant on the site have a value in excess of £4,500,000, and we consider that National Grid should look at an alternative route so as to avoid the chance of affecting what is a very substantial capital investment.
3. The land is low lying and potentially subject to waterlogging. There will be impact on our drainage systems.
4. The easement will restrict our future use of part of our land as activities will be restricted. This will include the planting of trees and the further construction of buildings and carrying out soil level alterations, together with impacting on any underground works we may wish to do ourselves. We operate only a small site which is land hungry for such activities, and it is vital that we preserve our ability to use our entire land to the full extent. For example if we needed to extend or enlarge our buildings, then National Grid would be likely to oppose our plans.
5. We will get no benefit at all from the electricity cables. Indeed the presence of the cables and their easement might well affect any plans we might have to lay services or drainage on these areas.
6. In future our land is likely to be entered for the maintenance of the cables or if any faults should occur,. The cables will be located under our buildings. This does not make any practical sense. We could be further inconvenienced in the future. If access is required to cables lying beyond the building footprint we have security issues as our suet is fenced and secure.

7. Despite the likely depth of the cables it seems positively dangerous to have high voltage cables running beneath a building with potentially combustible materials stored within it. Indeed use of building may change with increased human activity within them.
8. There must be an alternative route for these cables without affecting our buildgs and site

This is a summary of our objection. Further details of our objection will be submitted if we have to provide evidence in due course at the CPO Inquiry.

Signed [redacted] James Bedford Pace (Director St Nicholas Court Farms Limited)

To

The Secretary for State for Energy and Climate Change
c/o Denise Libretto
Department of Energy and Climate Change,
National Infrastructure Consents
2nd Floor Kings Building
3 Whitehall Place London SW1A 2AW

The National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

Compulsory Purchase of New Rights in Pegwell Bay Ramsgate

Objectors Name	Alexandra Ruth Pace and James Bedford Pace
Address	St Nicholas Court Court Road St Nicholas at Wade Birchington Kent CT7 0NJ
(Agents address	Julian Sampson FRICS G W Finn and Sons 1 King Street Sandwich Kent CT13 9BY
Interest in the Land	Freehold in Plots 21 and 22
Date	20th January 2015

Notice of Objection

We object to the above CPO on the following grounds:-

1. The proposed works could severely affect the maintenance, future use and expansion of our land as a anaerobic digester plant because the cables are to be drilled directly under our existing building and site. Our site comprises a very modern facility but was constructed without the likelihood of having these cables underneath it. The building under which the cable will pass has piled foundations.
2. The buildings and plant on the site has a value of in excess of £4,500,000, and we consider that National Grid should look at an alternative route so as to avoid the chance of affecting what is a very substantial capital investment.
3. The land is low lying and potentially subject to waterlogging. There will be impact on our drainage systems.
4. The easement will restrict our future use of part of our land as activities will be restricted. This will include the planting of trees, the further construction of buildings and carrying out soil level alterations, together with impacting on any underground works we may wish to do ourselves. We let only a small site which is land hungry for such activities, and it is vital that we preserve our ability to use our entire land to the full extent. For example if we needed to extend or enlarge our buildings, then National Grid would be likely to oppose our plans.
5. We will get no benefit at all from the electricity cables. Indeed the presence of the cables and their easement might well affect any plans we might have to lay services or drainage on these areas.
6. In future our land is likely to be entered for the maintenance of the cables or if any faults should occur,. The cables will be located under our buildings. This does not make any practical sense. We could be further inconvenienced in the future. If access is required to cables lying beyond the building footprint we have security issues as our suet is fenced and secure.

7. Despite the likely depth of the cables it seems positively dangerous to have high voltage cables running beneath a building with potentially combustible materials stored within it. Indeed use of building may change with increased human activity within them.
8. There must be an alternative route for the cables without affecting our buildings

This is a summary of our objection. Further details of our objection will be submitted if we have to provide evidence in due course at the CPO Inquiry.

Signed [redacted] Alexandra Ruth Pace

Signed [redacted] James Bedford Pace

CIRCULAR FROM
THE OFFICE OF THE DEPUTY PRIME MINISTER

ODPM Circular 06/2004
Office of the Deputy Prime Minister
Eland House, Bressenden Place, London SWIE 5DU

31 October 2004

COMPULSORY PURCHASE *and* THE CRICHEL DOWN RULES

INTRODUCTION

1. Part 1 of the Memorandum to this Circular provides updated and revised guidance to acquiring authorities in England on the use of compulsory purchase powers.

2. Part 2 of the Memorandum sets out revised Crichel Down Rules, with accompanying new guidance, on the disposal of surplus land in England acquired by, or under the threat of, compulsory purchase. The Rules are included for the convenience of local authorities and other statutory bodies, to whom they are commended.

3. The content of this Circular and the Memorandum has no statutory status, and is guidance only.

CANCELLATIONS

4. ODPM Circular 02/2003 *Compulsory Purchase Orders* is cancelled except to the extent that it is applicable to earlier compulsory purchase orders to which Part 1 of the Memorandum to this Circular is not applicable[1].

5. The version of the Crichel Down Rules published in 1992 by the Department of the Environment and the Welsh Office is superseded in England (and for certain land in Wales[2]) by the Rules set out in Part 2 of the Memorandum to this Circular.

STAFFING AND FINANCIAL IMPLICATIONS

6. Action in accordance with this Circular and Memorandum will have no significant effect on central or local government staffing levels or expenditure.

[1] See paragraph 9 of Part 1 of the Memorandum

[2] See Rule 2 of Part 2 of the Memorandum

LISETTE SIMCOCK

Divisional Manager
Plans, International, Compensation and Assessment Division

The Chief Executive,
Regional Development Agencies

The Chief Executive,
English Partnerships

The Chief Executive,
Urban Development Corporations

The Chief Executive,
County Councils in England
District Councils
London Borough Councils
Metropolitan Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The Chief Executive,
National Park Authorities in England

The Chief Executive, Broads Authority

MEMORANDUM

PART 1 – COMPULSORY PURCHASE

INTRODUCTION

1. Ministers believe that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.

2. The purpose of this Part of the Memorandum is to provide guidance to acquiring authorities in England making compulsory purchase orders to which the Acquisition of Land Act 1981 (as amended) applies. Its aim is to help them to use their compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory or administrative requirements, to ensure that orders progress quickly and are without defects. It is not, however, intended to be comprehensive[1]. It concentrates mainly on those policy issues, procedures and administrative requirements to which authorities need to have regard to assist the speedy handling of their orders by the relevant confirming Department, along with guidance on certain key elements of the implementation and compensation arrangements. For convenience, an Annex explaining the changes to compulsory purchase and compensation legislation made by Part 8 of the Planning and Compulsory Purchase Act 2004 is also included.

3. The main topics covered are:

4. Appendices A to W to this Part are detailed supplementary explanatory notes, and relate to powers, procedural issues and allied matters including certificates of appropriate alternative development (see list on page 20).

[1] More detailed guidance on managing the process is provided, for example, in *The Compulsory Purchase Procedure Manual*, available on subscription, price £250 including CD-ROM and access to dedicated Web-site, from The Stationery Office (TSO); telephone order line 0870 600 5522, quoting subscription category 700 30 95.

5. The content of this Part has no statutory status and is guidance only. The procedural guidance in the Appendices about submission of orders for confirmation should, however, be observed as closely as possible in the interest of avoiding delay incurred by the need to clarify details after submission.

6. The advice in this Part applies to orders which are to be confirmed by any one or more of the following:

the Deputy Prime Minister and First Secretary of State;
the Secretary of State for Transport;
the Secretary of State for Trade and Industry;
the Secretary of State for Culture, Media and Sport;
the Secretary of State for Health;
the Secretary of State for Work and Pensions;
the Secretary of State for the Home Department;
the Secretary of State for Education and Skills;
the Secretary of State for Environment, Food and Rural Affairs; or
the National Assembly for Wales (in respect of an order made for flood defence/land drainage purposes covering land in England and Wales, acting jointly with the Secretary of State for Environment, Food and Rural Affairs).

7. References in this Part to 'the confirming Minister' or 'the Department' should be read as referring to the Minister or Department responsible for confirmation. References to 'the Secretary of State' are clarified where they occur as necessary (NB, the Deputy Prime Minister acts in his formal capacity as First Secretary of State). In addition to the guidance in this Part, including any relevant Appendices, authorities should have regard to any particular requirements of the confirming Department and/or of the legislation granting the specific acquisition powers being exercised.

TERMS USED

8. In this Part (including the Appendices and Annex), meanings are as follows:

'the 1961 Act'	Land Compensation Act 1961
'the 1965 Act'	Compulsory Purchase Act 1965
'the 1973 Act'	Land Compensation Act 1973
'the 1981 Act'	Acquisition of Land Act 1981
'the 1990 Act'	Town and Country Planning Act 1990
'the Listed Buildings Act'	Planning (Listed Buildings and Conservation Areas) Act 1990
'the 1993 Act'	Leasehold Reform, Housing and Urban Development Act 1993
'the 1998 Act'	Regional Development Agencies Act 1998
'the 2004 Act'	Planning and Compulsory Purchase Act 2004
'the 1990 Inquiries Procedure Rules'	Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 (SI 1990 No. 512)
'the 2004 Prescribed Forms Regulations'	Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595)
'the 2004 Written Representations Regulations'	Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004 No. 2594)
'acquiring authority'	meaning assigned by s7(1) of the 1981 Act

TRANSITION

9. The amendments to the 1981 Act in sections 100 and 102 of the 2004 Act relating to the making and confirmation of an order do not apply to an order of which the newspaper notice under section 11 of the 1981 Act has been published before 31 October 2004 (the commencement date for those provisions). The provisions of this Part are only applicable to an order to which the amended provisions of the 1981 Act provided for in sections 100 and 102 apply. The amendments to section 226(1)(a) of the 1990 Act in section 99 of the 2004 Act are not applicable to an order made before the

date of commencement of section 99[2], being 31 October 2004. Appendix A to this Part is only applicable to such orders made on or after that date. (See paragraph 3 of the Circular for cancellations.)

RELATED CIRCULARS

10. DoE Circular 1/90 gives detailed guidance on the 1990 Inquiries Procedure Rules. Advice on the forms of orders to which the 1994 Regulations apply is given in Appendix U to this Part.

11. This Part should be read with the following:

DoE Circular 8/93: Award of costs incurred in planning and other (including compulsory purchase order) proceedings

DoT Local Authority Circular 2/97: Notes on the preparation, drafting and submission of compulsory purchase orders for highways schemes and car parks for which the Secretary of State for Transport is the confirming authority; and

PPG 15 – orders affecting historic buildings and conservation areas.

POWERS

13. An acquiring authority can only make use of the 1981 Act statutory procedures for the compulsory acquisition of land where an enabling power is provided in an enactment. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under that particular legislation and the types of acquiring authority by which it can be exercised.

14. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought; and that, in turn, will influence the factors which the confirming Minister will want to take into account in determining confirmation.

15. Authorities should look to use the most specific power available for the purpose in mind, and only use a general power where unavoidable[3]. Factors relevant to specific individual powers are considered in Appendices A to K. Those are intended to supplement, rather than to replace, the general guidelines set out in the following paragraphs.

JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER

16. It is for the acquiring authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts. The following guidance indicates the factors to which a

[2] See section 99(5) of the 2004 Act.

[3] For instance, although the courts have held that the planning compulsory purchase power in section 226(1)(b) of the 1990 Act may be used to acquire a house that has become dilapidated, the Secretary of State would normally expect such acquisitions to be made under Housing Act powers (see Appendix E).

confirming Minister may have regard in deciding whether or not to confirm an order, and which acquiring authorities might therefore find it useful to take into account.

17. A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

18. The confirming Minister has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land it is proposed to acquire compulsorily. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Part is not intended to imply that the confirming Minister will require any particular degree of justification for any specific order. Nor will a confirming Minister make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required immediately in order to secure the purpose for which it is to be acquired.

19. If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Human Rights Act reinforces that basic requirement.

Resource implications of the proposed scheme

20. In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required. It may be that the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

21. The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could

be made available immediately to cope with any acquisition resulting from a blight notice[4].

Impediments to implementation

22. In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence.

23. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld. In particular, this means that, irrespective of the legislative powers under which the actual acquisition is being proposed, the provisions of section 38(6) of the 2004 Act require that the scheme which is the subject of the planning application should be in accordance with the development plan for the area unless material considerations indicate otherwise. Such material considerations might include, for example, the provisions of the local authority's Community Strategy or supplementary planning guidance (as defined in PPS12) which has been subject to public consultation as required by regulations[5].

PREPARING AND MAKING AN ORDER

Preparatory work

24. Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

25. Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings. Early negotiations with statutory undertakers and similar bodies may pay dividends later on. Likewise where railway lands or assets are likely to be affected by proposals including the

[4] Blight notices under section 150 of the 1990 Act can only be served in the circumstances listed in Schedule 13 to that Act.

[5] The Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004 No. 2204).

use of compulsory purchase early consultation with the Strategic Rail Authority, Network Rail and the relevant Train Operating Company is advised.

Use of Alternative Dispute Resolution techniques

26. In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access **to alternative dispute resolution (ADR) techniques**. These should involve a suitably qualified independent third party and should be available wherever appropriate[6] throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed. The use of ADR can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. It also echoes the spirit of the Government's own pledge to settle legal disputes to which it is a party by means of mediation or arbitration wherever appropriate and the other party agrees[7].

Other means of involving those affected

27. Other actions which acquiring authorities should consider initiating during the preparatory stage include:

- providing full information about what the compulsory purchase process involves[8], the rights and duties of those affected and an indicative timetable of events, all in a format accessible to those affected; and

- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

28. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible. This means that the authority should be in a position to make, advertise and submit a fully documented order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the order is made correctly and under the terms of the most appropriate enabling power.

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[6] Bearing in mind that statutory objectors have a statutory right to be heard at an inquiry and claimants have a statutory right of recourse to the Lands Tribunal to determine compensation disputes.

[7] *Government pledges to settle legal disputes out of court*, Press Notice by Lord Chancellor's Dept, 117/01, 23 March 2001.

[8] To this end, authorities might find it helpful to offer copies of Booklet 1: *Compulsory Purchase Procedure* to anyone expressing concerns. It is published by ODPM as part of a series of five public information booklets on the compulsory purchase and compensation system, all of which are available on request, free of charge, from 'ODPM Free Literature', PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: odpm@twoten.press.net. Booklet 1 describes the other four booklets which are also available free of charge and which provide information on compensation relevant, respectively, to business owners and occupiers; agricultural owners and occupiers; residential owners and occupiers; and those likely to require mitigation works. Authorities may wish to acquire stocks of these to issue as required.

29. An acquiring authority may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Tribunal), including the basis on which disturbance costs would be assessed.

Making sure that the order is made correctly

30. The confirming Minister has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed order (see paragraph 50 below). This means that the confirming Department has to check that no one has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing orders in conformity with the 2004 Prescribed Forms Regulations, including recording the names and addresses of those with an interest in the land to be acquired. This is particularly important in view of the extension by the 2004 Act of the category of interests in land which give a right to be served personal notices and have objections heard at an inquiry (see the Annex to this Part, paragraph 7).

31. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to an order. Errors or omissions may occasionally emerge after an order has been made and submitted. Authorities therefore need to bear in mind that a confirming Minister's power of modification in such cases (as in all other cases – see paragraphs 51-52 below) is limited by section 14 of the 1981 Act. This provides that an order can only be modified to include any additional land or interests if all the people who are affected give their consent.

Advice from the confirming Department

32. Acquiring authorities are expected to seek their own legal and professional advice when making compulsory purchase orders. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed order, it may seek informal written comments from the confirming Minister by submitting a draft order for technical examination.

33. Experience suggests that such technical examination by the confirming Department can assist significantly in avoiding delays caused by drafting defects in orders submitted for confirmation. Any response made by a confirming Department on a draft order will, however, inevitably be subject to the caveat that its comments are without prejudice to its consideration of any order which may subsequently be submitted for confirmation. The role of the confirming Department at that stage will be confined to giving the draft order a technical examination to check that it complies with the requirements on form and content in the statutes and the Regulations, with no consideration of its merits or demerits.

Documentation to be submitted with an order for confirmation

34. Appendix Q provides a checklist of the documents to be submitted to the confirming Minister with an order. The explanatory notes in the Appendices should be consulted

when the order, the map and the supporting documents are being compiled. DoT Local Authority Circular 2/97[9] gives additional guidance on the preparation and submission of orders for highways schemes and car parks.

THE CONFIRMATION PROCESS

Statement of reasons

35. When serving notice of the making and effect of an order on each person entitled to be so served, the acquiring authority is **also** expected to send to each one a copy of the authority's *statement of reasons* for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. (See Appendix R on the contents of the statement.) This non-statutory statement of reasons should be as comprehensive as possible. It ought therefore to be possible for the acquiring authority to use it as the basis for the statement of case which is required to be served under Rule 7 of the 1990 Inquiries Procedure Rules where an inquiry is to be held (see paragraph 15 of DoE Circular 1/90.)

36. As the statement of reasons provides an early indication of the type of case, it will also help the Planning Inspectorate Agency (PINS) to consider possible manpower implications and whether the Inspector to be appointed for any inquiry or inquiries needs particular specialist skills.

Grounds of objection and objectors' statements of case

37. Section 13(3) of the 1981 Act enables the confirming Minister to require every person who makes a relevant objection to state the grounds of objection in writing. The confirming Minister can also require remaining objectors, and others who intend to appear at an inquiry, to provide a statement of case. Although it has not hitherto been general practice to do so, experience has shown that requiring statements of case is a useful device for minimising the need to adjourn inquiries as a result of the introduction of new information, and greater use may be made in the future. Under Rule 7(5) of the 1990 Inquiries Procedure Rules, a person may be required to provide further information about matters contained in any such statement of case.

Supplementary information

38. When considering the acquiring authority's order submission, the confirming Department may if necessary request clarification of particular points. Such clarification will often relate to statutory procedural matters, such as confirmation that the authority has complied with the requirements relating to the service of notices (see also Appendix T); and in such cases the information may be needed before the inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the authority or a developer to meet development costs. Where further information is needed, the confirming Department will write to the acquiring authority setting out the points of difficulty and the further information or statutory action required. The Department will copy its side of any such correspondence to remaining objectors, and requests that the acquiring authority should do the same.

[9] Entitled *Notes on the Preparation, Drafting and Submission of Compulsory Purchase Orders for Highway Schemes and Car Parks for which the Secretary of State is the Confirming Authority*.

Consideration of objections

39. Although all remaining objectors have a right to be heard at an inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting an order for confirmation, with a view to securing the withdrawal of objections. In line with the advice in paragraph 26 above, this should include employing such ADR techniques as may be agreed between the parties.

40. The 2004 Written Representations Regulations, made under section 13A of the 1981 Act, prescribe a procedure by which objections to an order can be considered in writing if all the remaining objectors agree and the confirming Minister deems it appropriate, as an alternative to holding an inquiry. The procedure is summarised in paragraph 16 of the Annex to this Part. The First Secretary of State's practice[10] is to offer the written representations procedure to objectors except where it is clear from the outset that the scale or complexity of the order makes it unlikely that the procedure would be acceptable or appropriate. In such cases an inquiry will be called in the normal way.

Appointment of programme officer

41. Acquiring authorities may wish to consider appointing a programme officer to assist the Inspector in organising administrative arrangements for larger compulsory purchase order inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the inquiry, managing the public inquiry document library and, if requested by the Inspector, arranging accompanied site inspections. A programme officer would also be able to respond to enquiries about the running of the inquiry during its course.

Timing of inquiry

42. Practice may vary between Departments but, once the need for an inquiry has been established, it will normally be arranged by PINS in consultation with the acquiring authority for the earliest date on which an appropriate Inspector is available. Having regard to the minimum time required to check the orders and arrange the inquiry, this will typically be held around six months after submission.

43. Once the date of the inquiry has been fixed it will be changed only for exceptional reasons. A confirming Department will not normally agree to cancel an inquiry unless all statutory objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the order, in sufficient time for notice of cancellation of the inquiry to be published. As a general rule, the inquiry date will not be changed because the authority needs more time to prepare its evidence, as the authority should have prepared its case sufficiently rigorously before making the order to make such a postponement unnecessary. Nor would the inquiry date normally be changed because a particular advocate is unavailable on the specified date.

[10] The practice of other confirming authorities may vary.

Scope for joint or concurrent inquiries

44. It is important to identify *at the earliest possible stage* any application or appeal associated with, or related to, the order which may require approval or decision by the same, or a different, Minister. This is to allow the appropriateness of arranging a joint inquiry or concurrent inquiries to be considered. Such actions might include, for example, an application for an order stopping up a public highway (when it is to be determined by a Minister) or an appeal against the refusal of planning permission. Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant compulsory purchase order) are carried out at the right time to enable any related applications or appeals to be processed in step.

Inquiries Procedure Rules

45. The 1990 Inquiries Procedure Rules apply to non-Ministerial compulsory purchase orders made under the 1981 Act, and to compulsory rights orders[11]. Detailed guidance is given in DoE Circular 1/90[12]. Inquiries into Ministerial compulsory purchase orders which have been published in draft are governed by the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (SI 1994 No. 3264).

Inquiry Costs & Written Representations Costs

46. Advice on statutory objectors' inquiry costs is given in Annex 6 to DoE Circular 8/93[13]. By virtue of this paragraph and paragraph 49 below, the principles of that advice will also henceforth apply to written representations procedure costs. When notifying successful objectors of the decision on the order under the 1990 Rules or the Written Representations Regulations, the First Secretary of State[14] will tell them that they may be entitled to claim inquiry or written representations procedure costs and invite them to submit an application for an award of costs.

47. Acquiring authorities will normally be required to meet the administrative costs of an inquiry and the expenses incurred by the Inspector in holding it. Likewise, the acquiring authority will be required to meet the Inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming Minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under section 13B of the 1981 Act. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used[15],

[11] See rule 2 and section 29 of, and paragraph 11 of Schedule 4 to, the 1981 Act.

[12] Entitled *Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990*.

[13] Entitled *Awards of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings*.

[14] The practice of other Departments may vary.

[15] Section 13B(6) of the 1981 Act applies section 42(2) of the Housing & Planning Act 1986 to the written representations procedure is if it were an inquiry specified in section 42(1) of that Act - which includes section 250(4) of the Local Government Act 1972.

is prescribed in the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000 (SI 2000 No. 237) made under the Housing and Planning Act 1986[16].

48. There are some circumstances in which an award of costs may be made to an unsuccessful objector or to an acquiring authority because of unreasonable behaviour by the other party (unlikely with the written representations procedure). Further advice on this is given in Annex 6 to DoE Circular 8/93.

49. In applying paragraph 2 of Annex 6 to DoE Circular 8/93 to the written representations procedure, reference to a local inquiry should be read as consideration through the written representations procedure, attendance at an inquiry should be read as submission of a written representation, and being heard as a statutory objector should be read as having a written representation considered as that of a remaining objector.

Legal difficulties

50. Whilst only the Courts can rule on the validity of a compulsory purchase order, the confirming Minister would not think it right to confirm an order if it appeared to be invalid, even if there had been no objections to it. Where this is the case, the relevant Minister will issue a formal, reasoned decision refusing to confirm the order. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the order and to any other person who made a representation.

Modification of orders

51. The confirming Minister may confirm an order with or without modifications, (but see paragraph 31 above about the limitations imposed by section 14 of the 1981 Act). There is, however, no scope for the confirming Minister to add to, or substitute, the statutory purpose(s) for which it was made[17]. The power of modification is used sparingly and not to re-write orders extensively. There is no need to modify an order solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the order. Some minor slips can be corrected, but not significant matters such as the substitution of a different, or insertion of an additional, purpose.

52. If it becomes apparent to an acquiring authority that it may wish the confirming Minister to substantially amend the order by modification at the time of any confirmation, the authority should write to him as soon as possible, setting out the proposed modification. This letter should be copied to each remaining objector, any other person who may be entitled to appear at the inquiry[18], and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the inquiry is held, the Inspector will normally wish to provide an opportunity for them to be debated.

[16] This sum was £630 per day at the date of publication of this document, but may be subject to revision from time-to-time.

[17] *Procter & Gamble Ltd* v Secretary of State for the Environment (1991) EGCS 123.

[18] Such as any person required by the confirming authority to provide a statement of case.

Confirmation in stages

53. Section 13C of the 1981 Act provides a general power for orders to which that Act applies to be confirmed in stages. Although this is a new power which can be applied irrespective of the powers under which an order is being made, it replaces similar powers previously available to Ministers confirming orders made under the enabling powers in the Welsh Development Agency Act 1975, the Local Government, Planning and Land Act 1980, the Highways Act 1980, the Housing Act 1988, the1990 Act, the 1993 Act and the 1998 Act. As with those powers, it is designed to be used, at the discretion of the confirming Minister, where he is satisfied that an order should be confirmed for part of the order land but, because of some impediment, he is unable to decide for the time being whether it ought to be confirmed so far as it relates to any other such land[19]. Where an order is confirmed in part under this power, the remaining undecided part is to be treated as if it were a separate order, and the confirming Minister will set a deadline for consideration of that remaining part. (See also paragraphs 19-21 of the Annex to this Part.)

54. The power in section 13C is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one project or scheme to be included in a single order. Furthermore, the confirming Minister will normally need to be satisfied that the scheme for which the order is being made could proceed without the necessity to acquire the remaining land whose acquisition is subject to a postponed determination. If the confirming Minister were to be satisfied on the basis of the evidence already available to him that a part of the order land should be excluded[20], he may exercise his discretion to refuse to confirm the order or, in confirming the order, he may modify it to exclude the areas of uncertainty.

Confirmation of an unopposed order by acquiring authority

55. Section 14A of the 1981 Act provides a discretionary power for a confirming authority to give the acquiring authority responsibility for deciding an order which has been submitted for confirmation if there are no unwithdrawn objections to it and certain other specified conditions are met (see paragraphs 23-27 of the Annex to this Part for a full description of the legislation).

56. A confirming authority will exercise its discretion under section 14A by serving a notice on the acquiring authority giving it the power to confirm the order. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice will indicate that if it is decided to confirm the order, it should be endorsed as confirmed with the endorsement authenticated by a person having authority to do so. The notice will suggest a form of words for the endorsement, refer to the statutory requirement to serve notice of confirmation under section 15 of the 1981 Act (Form 11 in the Schedule to the 2004 Prescribed Forms Regulations prescribes the notice of confirmation to be used by an acquiring authority which has confirmed its own order) and require that the relevant Secretary of State should be informed of the decision on the order as soon as possible with (where applicable) a copy of the endorsed order. Circumstances may arise

[19] For example, because further investigations are required to establish the extent, if any, of alleged contaminated land.

[20] For example, because it related to a separate project or scheme programmed for implementation at a later date.

where it is necessary for a confirming authority to revoke a notice giving authority to decide an order, eg. where a late objection is accepted, or where the acquiring authority fails to decide the order within a reasonable timescale. It is therefore essential that the acquiring authority should notify the confirming authority immediately once an order has been confirmed.

Notification of date of confirmation and date of section 19 certification

57. Acquiring authorities are asked to ensure that in all cases the confirming Department is notified without delay of the date when notice of confirmation of the order is first published in the press in accordance with the provisions of the 1981 Act. This is important as the six weeks' period allowed by virtue of section 23 of the 1981 Act for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Secretary of State has given a certificate under section 19 of, or paragraph 6 of Schedule 3 to, the 1981 Act, the Department giving the certificate should be notified straight away of the date when notice is first published.

IMPLEMENTATION

58. Unless it is subject to special parliamentary procedure[21], an order which has been confirmed becomes operative on the date on which the notice of its confirmation is first published in accordance with section 15 of the 1981 Act. The acquiring authority may then exercise the compulsory purchase power (subject to the operation of the order being suspended by the High Court). The advice in this Part is mainly directed towards the procedures leading to the confirmation of an order as those are the stages in which a confirming Minister is directly involved. The actual acquisition process is, however, clearly crucial for both the acquiring authority and those whose interests are being acquired. It is in the interests of both parties that it should be completed as expeditiously as possible.

Notice to treat

59. The period allowed under section 4 of the 1965 Act for the service of a notice to treat following the advertising of the notice of confirmation of the order is three years, after which the notice to treat remains effective under section 5(2A) of the 1965 Act for up to a further three years. It can be very stressful for those directly affected to know that a compulsory purchase order has been confirmed on their property. The prospect of a period of up to six years before the acquiring authority actually takes possession can be daunting. Acquiring authorities are therefore urged to keep such people fully informed about the various processes involved and of their likely timing, as well as keeping open the possibility of earlier acquisition by agreement where requested by an owner.

60. Although the whole acquisition process can be long and drawn-out, once the crucial stage of actually taking possession is reached, the acquiring authority is only required by section 11 of the 1965 Act to serve a notice giving not less than fourteen days notice of its intention to gain entry. Furthermore, although it is necessary for a notice to treat to have been served, this can be done at the same time as serving the notice of entry. Acquiring authorities are urged, however, to adopt a timetable which is more sympathetic to the needs of those being dispossessed, and even when that is not

[21] See Appendix L.

possible, to give them as much notice as possible of proposed events. Thus, for example, it would be good practice to give owners an indication at the time of serving the notice to treat of the approximate date when possession will be taken, and to consider sympathetically the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession. Authorities should be aware that agricultural landowners/tenants may need to know the notice of entry date earlier than others because of crop cycles and the need to find alternative premises. Authorities should also be aware that short notice often results in higher compensation claims.

General vesting declaration

61. As an alternative to the notice to treat procedure an acquiring authority may prefer to proceed by general vesting declaration[22]. This enables the authority to obtain title to the land without having first to be satisfied as to the vendor's title or to settle the amount of compensation[23]. It can therefore be particularly useful where some of the owners are unknown[24] or the authority wishes to obtain title with minimum delay in order, for example, to dispose of the land to developers.

62. A general vesting declaration may be made for any part or all of the land included in the order, but it will not be effective against interests in respect of which notice to treat has already been served and not withdrawn, minor tenancies, or long tenancies which are about to expire. Where, after reasonable inquiry, it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom preliminary notice[25] is to be served, service must be effected under the procedure described in section 6(4) of the 1981 Act. Where the same circumstances apply in relation to the notice which is required to be served after execution of the declaration[26], the authority should comply with section 329(2) of the 1990 Act.

63. There is uncertainty as to whether the service of a notice under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 or the executing of a general vesting declaration under section 4 of that Act constitutes the commencement of the exercise of compulsory purchase for the purposes of section 4 of the 1965 Act[27]. An authority may therefore wish to ensure that it has executed a general vesting declaration within three years of the order becoming operative.

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[22] General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981 in accordance with the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990 (SI 1990 No 497).

[23] But subject to any special procedures, eg in relation to purchase of commoners' rights: section 21 of, and Schedule 4 to, the 1965 Act).

[24] It is recommended as good practice that where unregistered land is acquired by general vesting declaration acquiring authorities should voluntarily apply for first registration under section 3 of the Land Registration Act 2002.

[25] Under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981.

[26] Under section 6 of the Compulsory Purchase (Vesting Declarations) Act 1981.

[27] In *Westminster City Council v Quereshi* [1990] P & CR 380, Aldous J. held that it was the former, whilst in *Co-operative Insurance Society Ltd v Hastings Borough Council* [1993] 91 LGR 608 Vinelott J. disagreed and ruled that it was the latter.

COMPENSATION

64. The assessment of compensation is a complex and specialised field, governed by extensive case law. Both acquiring authorities and claimants will therefore normally require specialist advice. The following points relate to issues which have arisen in the context of the fundamental review[28] of compulsory purchase procedures and compensation and which are relevant to the operation of the system as it currently stands.

65. The compensation payable for the compulsory acquisition of an interest in land is based on the principle[29] that the owner should be paid neither less nor more than his loss. It thus represents the value of the interest in land to the owner, which is regarded as consisting of:

- the amount which the interest in land might be expected to realise if sold on the open market by a willing seller (open market value)[30];
- compensation for severance and/or injurious affection[31]; and
- compensation for disturbance and other losses not directly based on the value of the land[32].

Alternatively, where the property is used for a purpose for which there is no general demand or market (eg. a church) and the owner intends to reinstate elsewhere, he may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement[33].

The date to which the assessment of compensation should relate

66. Section 5A of the 1961 Act defines for the first time in statute a valuation date – referred to as the 'relevant valuation date' – see also paragraphs 30-32 of the Annex to this Part.

67. Under the terms of section 11 of the 1965 Act interest is payable at the prescribed rate from the date on which the authority enters and takes possession until the outstanding compensation is paid. It is therefore important that the date of entry is properly recorded by the acquiring authority.

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[28] See Compulsory Purchase Policy Review Advisory Group Final Report (July 1999); *Compulsory Purchase and Compensation: delivering a fundamental change* (consultation document, December 2001); and *Compulsory Purchase Powers, Procedures and Compensation: the way forward* (policy statement, July 2002), available at www.odpm.gov.uk or on request, free of charge, from ODPM Publications, PO Box No 226, Wetherby, LS23 7NB; tel: 0870 1226 236; fax: 0870 1226 237; Email: odpm@twoten.press.net.

[29] Established by Lord Justice Scott in Horn v Sunderland Corporation [1941] 2 KB 26; [1941] All ER 480.

[30] Land Compensation Act 1961, section 5, Rule 2.

[31] Compulsory Purchase Act 1965, section 7.

[32] Land Compensation Act 1961, section 5, Rule 6.

[33] Land Compensation Act 1961, section 5, Rule 5.

Advance payments

68. If the acquiring authority takes possession before compensation has been agreed, it is obliged under section 52 of the Land Compensation Act 1973, if requested, to make an advance payment on account of any compensation which is due for the acquisition of any interest in land. The amount payable is 90% of the acquiring authority's estimate of the compensation due or, if the amount of the compensation has been agreed, 90% of that figure; and it is due to be paid within three months of the claimant's written request. Authorities are urged to adopt a responsible approach towards making such payments, in terms of adhering to the three month statutory time limits and the requirement to pay 90% of their estimate or the agreed sum, in order to help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation. Prompt and adequate advance payments will also reduce the amount of the interest ultimately payable by the authority on the outstanding compensation due.

69. Acquiring authorities should also consider making earlier payments where justified to enable claimants to proceed with reinstatement. For example, an acquiring authority which is a local authority may be able to exercise its wide-ranging powers under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It may therefore see advantage in using the power to make payments before taking possession if that seems likely to encourage early settlement to the advantage of all parties. Furthermore, section 80 of the Planning and Compensation Act 1991 gives all acquiring authorities a discretionary power to make payments on account of the compensation and interest payable under any of the provisions referred to in that section or listed in Schedule 18 to that Act. Again, authorities are urged to adopt a sympathetic approach to using these powers to alleviate obvious hardship.

70. See also paragraphs 33-34 of the Annex to this Part on advance payments to mortgagees.

Professional fees

71. Although there is no specific statutory basis for the payment of the fees incurred by a claimant in obtaining professional help in preparing and sustaining his claim for compensation, there is established case law[34] for the payment of such fees as 'any other matter' under Rule (6) of section 5 of the 1961 Act.

72. It is for the parties concerned to agree a reasonable basis for payment of professional fees. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of the more routine claims. This might make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.

[34] For example, Minister of Transport v Lee [1965] 3 WLR 553, CA (confirming (1965) 16 P&CR 62).

Appendices

[1] This is not an exhaustive list of the CPO powers available to acquiring authorities - only those powers for which guidance is considered necessary or helpful are covered.

Appendix A

Orders made under section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004)

APPROPRIATE ACQUIRING AUTHORITIES

1. Section 226 of the 1990 Act enables a local authority as defined in section 226(8) (i.e. county, district or London borough council), a joint planning board[1] or a national park authority[2] to acquire land compulsorily for 'planning purposes' as defined by section 246(1). These are the only bodies to which the powers in section 226 and, hence, the advice to acquiring authorities in this appendix, apply.

THE POWERS

2. The powers in section 226 as amended by section 99 of the Planning and Compulsory Purchase Act are intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can therefore be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. However, these powers should not otherwise be used in place of other more appropriate enabling powers[3], and the statement of reasons should make clear the justification for using the Planning Act powers. In particular, the First Secretary of State ('the Secretary of State' in this Appendix) may refuse to confirm an order if he considers that this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.

3. In preparing and submitting compulsory purchase orders under section 226, acquiring authorities with planning powers will need to have regard to the general advice in paragraphs 13 to 57 of this Part, including the guidance about planning requirements and the justification of the order in paragraphs 16 to 23. Authorities proposing to acquire land under section 226 should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. They should submit their orders for confirmation via the relevant regional Government Office.

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[1] section 244(1) of the 1990 Act.

[2] section 244A of the 1990 Act.

[3] eg. section 164 of the Public Health Act 1875, section 89 of the National Parks and Access to the Countryside Act 1949, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 239 of the Highways Act 1980, or section 17 of the Housing Act 1985. See also paragraph 8 of Appendix E, which explains that when land for housing development is being assembled under planning powers, the Secretary of State will have regard to the policies set out in that Appendix.

4. The Secretary of State takes the view that an order made under subsection (1) of section 226 should be expressed in terms of *either* paragraph (a) *or* paragraph (b) of that subsection. As these are expressed as alternatives in the legislation, the order should clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) as appropriate as part of the description of what is proposed.

Section 226(1)(a)

5. The power provided in the amended section 226(1)(a) enables acquiring authorities with planning powers to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development[4], redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. The use of the words 'on, or in relation to' means that the scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same neighbourhood.

The well-being power

6. The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. The amended power in section 226(1)(a) will assist those authorities to whom the provisions of section 2 of the Local Government Act 2000 apply to fulfil their duties under that section to promote the economic, social and environmental well-being of their area. Acquiring authorities who do not have powers under the Local Government Act 2000 can also make use of section 226(1)(a). They will also need to be able to show that the purpose for which the land is being acquired will contribute to the well-being of the area for which they are responsible. The benefit to be derived from exercising the power is also not restricted to the area subject to the compulsory purchase order, as the concept is applied to the well-being of the whole (or any part) of the acquiring authority's area.

7. In determining whether the purpose for which they propose to acquire land compulsorily under section 226(1)(a) can reasonably be expected to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, an acquiring authority may find it helpful to have regard to the statutory guidance issued by ODPM in 2001 concerning the interpretation of that power in the Local Government Act 2000[5].

[4] Under section 336(1) of the 1990 Act, 'development' has the meaning given in section 55 (including any special controls given by direction in relation to demolition and redevelopment (see DoE Circular 10/95: *Planning Controls over Demolition*)).

[5] Entitled *Power to promote or improve economic, social or environmental well-being*, and accessible on the ODPM website at: http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605709.hcsp

8. As that guidance explains, the Government's purpose in introducing the well-being power has been to relax the traditionally cautious approach adopted by many local authorities by encouraging innovation and closer joint working between local authorities and their partners to improve the quality of life of those living, working or otherwise involved in the community life of their area. As the guidance goes on to suggest, each authority will want to consider how the well-being power can be used to promote the sustainable development of its area by delivering the actions and improvements identified in its community strategy.

9. It is in this context that acquiring authorities may find the new section 226(1)(a) power useful. Section 39 of the 2004 Act requires regional and local plans to be prepared with a view to contributing to the achievement of sustainable development, and sections 1 and 17 require them to adopt a spatial planning approach. Further guidance on this is given in Planning Policy Statement 1: *Creating Sustainable Communities* [6], which points out that spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.

10. That may well include policies relating to such issues as tackling social exclusion, promoting regeneration initiatives and improving local environmental quality. All such issues can have a significant impact on land use, for example by influencing the demands on or needs for development, but they are not necessarily capable of being delivered solely or mainly through the granting or refusal of planning permission. They may require a more proactive approach by the relevant planning authority including facilitating the assembly of suitable sites, for which the compulsory purchase powers in section 226(1)(a) may provide helpful support where such acquisitions can be justified in the public interest.

11. The re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the section 226(1)(a) power might be appropriate. For example, it is likely to be more appropriate than a Housing Act power if the need to acquire and demolish dwellings were to arise as a result of an oversupply of a particular house type and/or housing tenure in a particular locality. A greater diversity of housing provision may be needed to ensure that neighbourhoods are sustainable in the long term, and improved housing quality and choice may be necessary to meet demand. This may involve acquiring land to secure a change in land use, say, from residential to commercial/industrial or to ensure that new housing is located in a more suitable environment than that which it would replace. In urban areas experiencing market renewal problems, the outcome may be fewer homes in total.

Planning matters

12. Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a) powers as a means of furthering the well-being of the wider area. Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes including with

[6] Consultation draft published in February 2004 and accessible on the ODPM website at: http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_027494.pdf

those whose property is directly affected. The Regional Spatial Strategy provides the regional planning context with which local development documents have to be in general conformity under section 24 of the 2004 Act and which will set out more detailed proposals. Where there is a conflict between policies in any of these documents section 38 provides that the conflict must be resolved in favour of the document most recently adopted, approved or published.

13. The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in a development plan document which has been through the consultation processes but has either not yet been examined or is awaiting the recommendations of the Inspector, this will be given due weight.

14. Where the local plan is out-of-date and local development documents are still in preparation, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the local development framework at the appropriate time. Such proposals may relate, for instance, to accommodating the need for further growth in an area. Or they might be in the form of detailed proposals for handling the consequences of low housing demand. Such proposals might, for example, be in the form of masterplans or other detailed delivery mechanism prepared by the relevant local authority and giving a spatial dimension to the prospectuses of market renewal pathfinders. Where such proposals are being used to provide additional justification and support for a particular order, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to have them taken into account by the body promoting that plan, whether or not that is the authority making the order.

15. It is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order. Furthermore, in cases where the proposed acquisitions form part of a longer-term strategy which needs to be able to cope with changing circumstances, it is acknowledged that it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end-use proposed for the particular areas of land included in any particular CPO. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.

Confirmation

16. Any decision about whether to confirm an order made under section 226(1)(a) of the 1990 Act will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

    (i) whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area or, where no such up-to-date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community;

(ii) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;

(iii) the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time-limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position;

(iv) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its re-use. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.

Section 226(1)(b)

17. Section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The potential scope of this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme.

Section 226(3)

18. In addition to land to which section 226(1) applies ('the primary land'), section 226(3) provides that an order made under section 226(1) may also provide for the compulsory purchase of

(a) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or

(b) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An authority intending to acquire land for either of these purposes in connection with the acquisition of land under subsection (1) must therefore specify *in the same order*, the appropriate subsection (3) acquisition power and purpose.

Section 226(4)

19. This subsection provides that it is immaterial by whom the authority propose that any activity or purpose mentioned in subsections (1) or (3)(a) of section 226 should be

undertaken or achieved. In particular, the authority need not propose to undertake an activity or achieve a purpose themselves.

Section 245 of the 1990 Act

20. Section 245(1) provides the Secretary of State with the right to disregard objections to orders made under section 226 which, in his opinion, amount to an objection to the provisions of the development plan.

21. Sections 245(2) and (3) have been repealed and replaced by section 13C of the Acquisition of Land Act 1981 as inserted by section 100 of the Planning and Compulsory Purchase Act (see paragraphs 19 to 21 of the Annex to this Part).

INTERESTS IN CROWN LAND

22. Sections 293 and 296 of the 1990 Act apply where an acquiring authority with planning powers proposes to acquire land compulsorily under section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that that interest may, therefore, be included in the order. Further advice about the purchase of interests in Crown land is given in Appendix N.

Appendix B

Orders made by Regional Development Agencies under section 20 of the Regional Development Agencies Act 1998

1. Regional Development Agencies (RDAs) were created throughout England by the Regional Development Agencies Act 1998 ('the 1998 Act'), and their purposes are set out in section 4 of that Act (listed in paragraph 5 below). Section 20(1) empowers an RDA to acquire land by agreement or compulsorily for its purposes or for purposes incidental thereto. 'New rights over land' as defined in section 20(8) may also be compulsorily acquired for such purposes under section 20(2). The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by an RDA is currently the Secretary of State for Trade and Industry (referred to as 'the Secretary of State' in this Appendix).

2. In preparing and submitting compulsory purchase orders, RDAs need to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. RDAs should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part of the Memorandum. RDAs should submit orders for confirmation via the relevant regional Government Office.

3. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables an RDA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling an RDA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers in the 1998 Act, and further advice is provided in paragraphs 28 to 29 of the Annex to this Part. Section 21(1) of the 1998 Act provides RDAs with rights of entry for the purposes of surveying land and estimating its value.

4. The Secretary of State previously had a power to confirm an order in two stages under paragraph 1 of Schedule 5 to the 1998 Act. However, this has now been replaced by a general power inserted as section 13C of the Acquisition of Land Act 1981 by section 100 of the 2004 Act, and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of another part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.

PURPOSES OF AN RDA

5. The purposes of an RDA as set out in section 4 of the 1998 Act are:

- to further the economic development and the regeneration of the area;
- to promote business efficiency, investment and competitiveness in the area;
- to promote employment in the area;
- to enhance the development and application of skills relevant to employment in the area; and
- to contribute to the achievement of sustainable development in the United Kingdom where it is relevant to its area to do so.

EXERCISING COMPULSORY PURCHASE POWERS

6. It is for each RDA to decide how best to use its land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by their sponsoring Department. However, it seems likely that such powers will generally be of greatest value in fulfilling the economic development and regeneration purpose. The fact that the powers have been expressed in wide and general terms reflects the national importance of the task facing RDAs. It is also intended to assist with the practical problems of ensuring that land can speedily be turned to beneficial use. While RDAs should make every effort to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

7. Most RDAs will have land within their areas which is not in effective use. This may be derelict and/or under-used, and will frequently include buildings in need of replacement or refurbishment. Such land is unattractive to existing or potential residents, developers or investors, and therefore needs the catalyst of public sector commitment to turn it round. The fact that the RDA takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to RDAs to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.

8. Examples of the reasons why an RDA might consider it appropriate to exercise its land acquisition powers include (but are not limited to):

- the regeneration of worn out, vacant or derelict property;
- the assembly of previously used land for new development to provide housing, employment, shopping, open space, leisure and other facilities;
- the cleansing of contaminated land;

- the provision of infrastructure and services to encourage development;
- the provision of sites for nationally important inward investment;
- securing routes for major transport infrastructure[1]; and
- the proper and effective management of land and the protection of investment.

9. It is often likely to be the case that RDAs will justify the use of their compulsory purchase powers by showing that such action will be of benefit to a regeneration priority area, although there may be other equally valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in the RDA's Regional Economic Strategy or in its corporate plan, preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen the RDA's case for compulsory acquisition, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes[2].

10. In some circumstances it may make sense for the RDA to make a compulsory purchase order so as to ensure a comprehensive approach to redevelopment and regeneration where this will generate a greater overall benefit than a piecemeal approach based on competing schemes from individual land owners. Such an approach will be strengthened if it has been formulated in a masterplan or development brief which has been adopted by the relevant local planning authority or authorities as one of their Local Development Framework (LDF) documents.

11. As RDAs do not have planning powers, they will often need to work in partnership with the relevant local authorities. It will be for each RDA, in conjunction with its local authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which the RDA takes responsibility for land assembly are likely to be of greater regional significance than those promoted by local authorities. They are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of the RDA's purpose of regenerating its area.

12. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, an RDA can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always be feasible or

[1] This might be appropriate, for example, to secure corridors for Light Rapid Transit routes which cross Local Authority boundaries.

[2] In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

sensible (for example, where time is of the essence) to wait for full planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with the RDA to demonstrate that there are no planning, or other, barriers to the scheme.

13. Furthermore, it may sometimes be appropriate in furtherance of its statutory purposes for an RDA to assemble land for which it has no specific detailed development proposals. It would be unusual for an RDA to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for an RDA to seek to predetermine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration and/or economic development proceeds. Nevertheless, the RDA will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its acquisition by the RDA is in the public interest.

CONFIRMATION

14. In reaching a decision about whether to confirm an order made under section 20 of the 1998 Act, the Secretary of State will have in mind the statutory purposes of the RDA and will, amongst other things, consider:

    (i) whether the RDA has established the basis and justification for its actions through its adopted strategy and any related action plan (including any reviews thereof) which should be in general accordance with regional and local planning policies;

    (ii) whether the RDA has demonstrated that the land is in need of regeneration or is needed for such other purposes of the RDA as have been put forward as justification, or for purposes incidental thereto;

    (iii) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the proposals advocated by the other parties may conflict with the RDAs proposals as regards the timing and nature of the regeneration of the wider area concerned;

    (iv) whether regeneration (or such other purposes of the RDA as are given in the order) is, on balance, more likely to be achieved if the land is acquired by the RDA, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;

    (v) whether, if the RDA intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development

or investment, and that the aims of the agency cannot be achieved by any other means;

(vi) the condition of the land and its recent history; and

(vii) the quality of, and proposed timetable for completing, both the proposals for which the RDA is proposing to acquire the land and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for an RDA to have specific proposals for the land concerned beyond any broad indications in its general framework for the area. Although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still, however, want to be reassured that there is a reasonable prospect of the project proceeding as proposed; and the RDA will need to be able to show that the proposed exercise of its compulsory purchase powers is clearly in the public interest.

Appendix C

Orders made by English Partnerships (as the Urban Regeneration Agency) under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993

1. English Partnerships ('EP') in its present form was created administratively in May 1999 by bringing together the Commission for the New Towns ('CNT') and the national structure of the Urban Regeneration Agency ('URA'). EP is therefore able to utilise the powers compulsorily to acquire land and new rights over land given to the URA respectively by sections 162(1) and (2) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). The purpose for which those powers may be used is the achievement of the URA's objectives (or purposes incidental thereto). The confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by the URA is currently the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).

2. The objects of the URA (and therefore the purposes for which EP may exercise compulsory powers) are set out in section 159 of the 1993 Act and are to secure:

    - the regeneration of land in England which is within one or more of the following descriptions:

        – land which is vacant or unused;

        – land which is situated in an urban area and which is under-used or ineffectively used;

        – land which is contaminated, derelict, neglected or unsightly; and

        – land which is likely to become derelict, neglected or unsightly by reason of actual or apprehended collapse of the surface as the result of the carrying out of relevant operations which have ceased to be carried out (section 159(1)(a));

    - the development of land in England which the Agency (having regard to guidance and acting in accordance with any directions given by the Secretary of State under section 167 of the 1993 Act) determines to be suitable for development under the URA's powers and to which the Secretary of State consents (section 159(1)(b) and (3)).

3. The Government has outlined a new role for EP (Parliamentary statement of the Deputy Prime Minister – 24 July 2002). This identified EP as a key delivery agency in the Government's sustainable communities agenda to regenerate the towns, cities and rural areas of England and as the national catalyst for property led regeneration and

development. It is charged with delivering urban renaissance and helping the Government meet its targets for accommodating household growth on brownfield land. EP is clearly in a position to utilise the URA's compulsory powers to assist it in fulfilling this role.

4. In preparing and submitting compulsory purchase orders as the URA, EP needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23. EP should also have regard to the procedural changes introduced in the Planning and Compulsory Purchase Act 2004 and described in the Annex to this Part. EP should submit orders for confirmation via the relevant regional Government Office.

5. The Secretary of State previously had a power to confirm an order in two stages under paragraph 2(1) of Schedule 20 to the 1993 Act. However, this has now been replaced by a general power inserted as section 13C of the 2004 Act and which is explained in paragraphs 19 to 21 in the Annex to this Part. This power could be of assistance in permitting implementation to proceed for part of the area covered by an order while, for example, planning impediments to the development of the other part are being resolved. However, it would only be relevant where part of the scheme could be implemented as a separate project independent of the remainder. Furthermore, the Secretary of State would not take such a course of action without first consulting the acquiring authority about the implications of such a course of action for the success of the proposed scheme as a whole.

6. Section 105 of the 2004 Act inserts sections 5A and 5B into the Acquisition of Land Act 1981. Section 5A enables the URA to require the names and addresses to be provided of persons occupying or having an interest in land for the purpose of enabling the URA to acquire the land when it is entitled to exercise a power of compulsory purchase. Such a power may be exercised with a view not only to the compulsory purchase of the land, but also to negotiate a purchase. Section 5B specifies offences for failure to provide information or where the information provided is false. These new powers have been introduced partly to remedy the lack of any such powers on the 1993 Act, and further advice is provided in paragraphs 28 and 29 of the Annex to this Part. Section 163(1) of the 1993 Act provides the URA with rights of entry for the purposes of surveying land and estimating its value.

EXERCISING COMPULSORY PURCHASE POWERS

7. It is for EP to decide how best to use the URA's land acquisition powers to fulfil its purposes and in accordance with any guidance which may be issued from time to time by its sponsoring Department. The fact that the powers have been expressed in wide and general terms, together with the Government's statement mentioned above, reflects the national importance of the task facing EP. While EP should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to use the URA's CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

8. EP is charged with securing the regeneration of types of land which may be unattractive to existing or potential residents, developers or investors, and therefore need the catalyst of public sector commitment to turn them round. The Government's statement identified EP as the *national* catalyst for this type of initiative. The fact that EP takes steps to acquire land in an area can stimulate confidence that regeneration and/or economic development will take place, and this in itself can help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. Thus, the power available to the URA to acquire and merge plots of land in different ownerships provides a vital instrument for implementing regeneration projects for the public benefit and at a realistic cost.

9. EP must justify the use of its URA compulsory purchase powers by showing that such action is in fulfilment of its statutory purposes, although there may be other additional valid reasons for the proposed acquisition. Whatever the justification, it should normally have been included in EP's Corporate Plan or other form of general framework (or in the development plan, local development frameworks, Community Plans, Supplementary Planning Guidance, Regional Planning Guidance, or in the RDA's Regional Economic Strategy or corporate plan), preferably backed up by a more detailed development framework. Not only does this, in itself, strengthen EP's case for using the URA's compulsory acquisition powers, it also provides a means of ensuring that the proposal becomes a 'material consideration' for statutory development planning and development control purposes[1].

10. EP's planning powers are restricted to those available to CNT under section 7 of the New Towns Act 1981 and Part III of the Town and Country Planning Act 1990 within parts of the Milton Keynes area, it will need to work in partnership with the relevant local authorities. It will be for EP, in conjunction with the relevant local planning authority and other partners, to formulate the most effective strategy to take forward regeneration initiatives. In general, the schemes for which EP takes responsibility for land assembly are likely to be of greater regional or cross-regional significance than those promoted by local authorities. Indeed, the Government has identified a role for EP which makes it responsible for promoting strategic sites and sites of national importance, and hence the compulsory acquisitions necessary to assemble those sites are more likely to be undertaken by EP, using its URA powers, than by the RDAs. Sites are likely to cover wider areas, with a significant commitment of financial and other resources. The scale of dereliction may well also be greater, and the need for speed and flexibility will be of the utmost importance. However, the fact that the parties may agree that the local authority is best placed to take a particular scheme forward because it is of purely local significance should not be taken as implying that regeneration initiatives of a local scale cannot be regarded as part of EP's objectives.

11. Where the land is required for a defined end use, or for the provision of strategic infrastructure such as roads and sewers to facilitate regeneration or economic development, EP can normally be expected to have reasonably firm proposals before embarking on making any associated compulsory acquisitions under its URA powers, and so to have resolved so far as is practicable any major planning difficulties before submitting the order for confirmation. However, it is recognised that it may not always

[1] In order to be able to demonstrate that there are no obvious impediments to the granting of planning permission for the proposed scheme, which might in turn have a bearing on the confirming Minister's decision on a compulsory purchase order, the provisions of section 38(6) of the 2004 Act require it to be in accordance with the development plan for the area unless material considerations indicate otherwise.

be feasible or sensible (for example, where time is of the essence), particularly for schemes of strategic or national importance, to wait for planning permission for the replacement scheme, or for all the other statutory procedures to have been completed, before embarking on the statutory compulsory purchase procedures. In such circumstances, the onus will rest with EP to demonstrate that there are no planning, or other, barriers to the scheme.

12. Furthermore it may sometimes be appropriate in furtherance of the URA's statutory purposes for EP to assemble land which is in need of regeneration for which it has no specific detailed development proposals. It would be unusual for EP to undertake extensive building development itself, and more likely that it would seek to fulfil its objectives by stimulating as much private sector investment as possible. It could therefore be counter-productive for EP to seek to pre-determine what private sector development should take place once the land has been assembled. Land will often be suitable for a variety of developments and the market may change rapidly as implementation proceeds. Nevertheless, in exercising its compulsory purchase powers as the URA, EP will still need to be able to show that the land is being acquired in furtherance of a clearly defined and deliverable objective and that its compulsory acquisition is in the public interest.

13. When assembling land for redevelopment, a URA may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the URA. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the URA.

CONFIRMATION

14. In reaching a decision about whether to confirm an order made under section 162 of the 1993 Act the Secretary of State will have in mind the statutory purposes of the URA and will, amongst other things, consider:

    i) whether EP has established the basis and justification for its actions through its Corporate Plan and any related action plan, (including any reviews thereof), which should be in general accordance with regional and local planning policies and other guidance referred to in paragraph 9 above;

    ii) whether, where appropriate, EP has demonstrated that the land is in need of regeneration;

    iii) any directions and guidance which may be given under section 167 and (in the case of development) any consent under section 159(3);

    iv) what, if any, alternative proposals have been put forward by the owners of the land or by other persons for the use or re-use of the land; whether such proposals are likely to be, or are capable of being, implemented, (including consideration of the experience and capability of the landowner or developer and any previous track record of delivery); what planning applications have been submitted and/or determined; how long the land has been unused; and the extent to which the

proposals advocated by the other parties may conflict with EP's proposals as regards the timing and nature of the regeneration of the wider area concerned;

v) whether the proposed development or regeneration is, on balance, more likely to be achieved if the land is acquired by EP, including consideration of the contribution which acquiring the land is likely to make to stimulating and/or maintaining the long-term regeneration of the area;

vi) whether, if EP intends to carry out direct development, it will not thereby, without proper justification, displace or disadvantage private sector development or investment, and that the aims of the URA cannot be achieved by any other means;

vii) the condition of the land and its recent history;

viii) the quality of, and proposed timetable for completing, both the proposals for which EP is proposing to acquire the land under the URA's compulsory purchase powers and any alternative proposals.

15. Where the land is being acquired to stimulate private sector investment, the Secretary of State will also have regard to the fact that it will not always be possible or desirable for EP to have specific proposals for the land concerned beyond any broad indications in its Corporate Plan or other general framework, the RDA's Regional Economic Strategy or corporate plan, or in the development plan for the area. This would be the more so with projects of strategic or national importance where extremely rapid action may be essential. However, although this means that detailed land use planning and other factors may not necessarily have been resolved before making the order, the Secretary of State will still want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe; and EP will need to be able to show that the proposed exercise of its compulsory purchase powers as the URA is clearly in the public interest.

Appendix D

Orders made by Urban Development Corporations under section 142 of the Local Government, Planning and Land Act 1980.

1. DoE Circular 23/88 *Compulsory Purchase Orders by Urban Development Corporations* was cancelled on 20 January 1998[1] following the winding-up of the last of the Urban Development Corporations (UDCs) originally designated under section 134 of the Local Government, Planning and Land Act 1980 ('the 1980 Act'). However, following the establishment of the first of a new generation of Urban Development Corporations (UDCs) at Thurrock on 29 October 2003 and London Thames Gateway on 26 June 2004 and, subject to Parliamentary processes, the establishment of a UDC for West Northamptonshire later this year, the need for guidance to UDCs on the exercise of their compulsory purchase powers has again become relevant. The following sets out an updated version of the original guidance. The relevant confirming authority (under the terms of the 1981 Act) for a compulsory acquisition by a UDC is currently the Deputy Prime Minister and First Secretary of State ('the Secretary of State').

PURPOSES OF A UDC

2. A UDC is set up under section 135 of the 1980 Act with the object, as set out in section 136(1), of securing the regeneration of the relevant UDA. A UDA is likely to have been designated because it contains significant areas of land not in effective use. Some of these areas may have suffered extensive dereliction and include buildings in need of refurbishment. In this state, UDAs are unattractive to existing or potential residents, and to developers and investors. The acquisition of land and buildings, whether by compulsory purchase or other means, is one of the main ways in which a UDC can take effective steps to secure its statutory objectives.

3. Section 136(2) of the 1980 Act indicates that regeneration can be achieved particularly by

   – bringing land and buildings into effective use;

   – encouraging the development of existing and new industry and commerce;

   – creating an attractive environment; and

   – ensuring that housing and social facilities are available to encourage people to live and work in the area.

[1] Paragraph 7 of DETR Circular 01/98.

EXERCISING COMPULSORY PURCHASE POWERS

4. Subject to any limitations imposed under section 137 or 138, section 136(3) of the 1980 Act empowers a UDC to acquire, hold, manage, reclaim and dispose of land, and to carry out a variety of incidental activities. The compulsory purchase powers of a UDC are then set out in section 142. They cover both land and 'new rights' over land (as defined in section 142(4)) and, in the circumstances described in section 142(1)(b) and (c), their exercise may extend outside the UDC's area.

5. It is for each UDC to decide how best to use its land acquisition powers to fulfil its purposes, having regard to any guidance which may be issued from time to time by its sponsoring Department. The compulsory purchase powers available to UDCs are expressed in wide and general terms, reflecting both the national importance of the task of urban regeneration and the practical problems of ensuring that wide areas of dereliction or under-use can speedily be returned to beneficial use. While a UDC should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary for a UDC to use its CPO power to make an order at the same time as attempting to purchase by agreement. Indeed, it is sometimes only the fact that powers are available, and there is a clear intent to use them, that provides a basis for reasonable negotiation.

6. In pursuance of its objectives, it may in some instances be necessary for a UDC to assemble land for which it has no specific, detailed development proposals. UDCs do not generally carry out extensive building development themselves, as they are expected to achieve their objectives largely by stimulating and attracting greater private sector investment. It may, therefore, be counter-productive for a UDC to seek to predetermine what private sector development should take place. Land will often be suitable for a variety of developments and the market may change rapidly as regeneration proceeds. Moreover, ownership by a UDC of land in an area can stimulate confidence that regeneration will take place, and in this way help to secure investment. It also facilitates a coherent and comprehensive approach to regeneration. UDCs will often best be able to bring about regeneration by assembling land and providing infrastructure over a wide area in order to secure or encourage its development by others.

7. In cases where existing users are affected by a compulsory purchase order relating to their premises, the UDC will be expected to indicate how it proposes to assist these users to relocate to a site either within or outside the UDA. Section 146(2) of the 1980 Act specifically encourages UDCs, so far as practicable, to assist persons or businesses whose property has been acquired, to relocate to land currently owned by the UDC.

8. When assembling land for redevelopment, a UDC may need to acquire compulsorily a particular site as part of a project to realise the development potential of a larger area. The Secretary of State recognises that the eventual sale of the assembled site will in many cases generate receipts in excess of the cost of the land to the UDC. In such cases, the receipts generated can make an important contribution to reclamation costs incurred by the UDC.

9. In preparing and submitting compulsory purchase orders, a UDC needs to have regard to the general advice in paragraphs 13-57 of this Part of the Memorandum, including the guidance about planning requirements and the justification for the order in paragraphs 16-23.

CONFIRMATION

10. In reaching a decision on whether to confirm a section 142 order, the Secretary of State will have in mind the statutory objectives of the UDC set out in paragraph 3 above and will, amongst other things, wish to consider -

    (i) whether the UDC has demonstrated that the land is in need of regeneration;

    (ii) what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration;

    (iii) whether regeneration is on balance more likely to be achieved if the land is acquired by the UDC;

    (iv) the recent history and state of the land;

    (v) whether the land is in an area for which the UDC has a comprehensive regeneration scheme; and

    (vi) the quality and timescale of both the UDC's regeneration proposals and any alternative proposals.

11. The Secretary of State recognises that in the special circumstances in which UDCs operate, and given their specific duty to regenerate their areas, it will not always be possible or desirable for them to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and that therefore the detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where land is required for a defined end use, or for the provision of strategic infrastructure such as roads or sewers to facilitate regeneration, a UDC will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, it is accepted that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order; and this will not in itself be regarded as an impediment to the Secretary of State's consideration of the order.

12. Where a UDC does not advance detailed proposals for redevelopment, it will nevertheless be expected to demonstrate the case for acquisition in the context of its development strategy. The UDC needs to be able to show that the proposed exercise of it compulsory purchase powers is clearly in the public interest and the Secretary of State will want to be reassured that there is a realistic prospect of the land being brought into beneficial use within a reasonable timeframe. The Secretary of State will therefore expect the statement of reasons accompanying the submission of the order to him to include a summary of the broad framework for the regeneration of the UDA, and the UDC will need to be in a position to present evidence at the public inquiry to support its case for the proposed compulsory acquisition.

13. Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary to consider carefully whether such proposals are likely to be, or are capable of being, implemented. Factors

which the Secretary of State will need to consider include the planning position, how long the land has been unused, and the extent to which these alternative proposals may conflict with the UDC's proposals as regards the timing and nature of regeneration in the area concerned.

Appendix E

Orders made under housing powers.

INTRODUCTION

1. This Appendix provides guidance to local authorities considering whether to make compulsory purchase orders under the Housing Acts. Such orders are subject to confirmation by the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix). This Appendix also provides guidance on the information which should be submitted in support of applications for the confirmation of housing orders in addition to the general requirements described in this Part of the Memorandum.

2. Housing compulsory purchase orders submitted for confirmation will be considered on their merits both in the light of any objections received and the general policy, described in this Part of the Memorandum, that orders should not be made unless there is a compelling case in the public interest. The further policies and requirements in this Appendix apply to compulsory purchase orders made under the Housing Acts.

HOUSING ACT, 1985: PART II

Circumstances in which powers may be used

3. Section 17 of the Housing Act 1985 ('the 1985 Act') empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.

4. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties. Current practice is for authorities acquiring land or property compulsorily to dispose of it to the private sector, Housing Associations or owner-occupiers.

Information to be included in Applications for confirmation of orders

5. When applying for the confirmation of a compulsory purchase order made under Part II of the 1985 Act the authority should include in its statement of reasons for making the order information regarding needs for the provision of further housing accommodation in its area. This information should normally include the total number of dwellings in the district, unfit dwellings[1], other dwellings in need of renovation and vacant dwellings; the total number of households and the number for which, in the authority's view, provision needs to be made. Details of the authority's housing stock, by type, may also be helpful, particularly where the case advanced for compulsory purchase turns on a need to provide housing of a particular type. Where a compulsory purchase order is made with a view to meeting special housing needs, such as those of single persons, the elderly, disabled or homeless, specific information about these needs should also be included.

6. The authority should also provide information about its proposals for the land or property it is seeking to acquire. Where, as will normally be the case, it proposes to dispose of the land or property concerned, the authority should submit where possible information regarding the prospective purchaser; the purchaser's proposals regarding the provision of housing accommodation; and when these will materialise. Information regarding any other statutory consents required for the proposals will also be relevant. It is recognised that in some cases it may not be possible to identify a prospective purchaser at the time a compulsory purchase order is made. Negotiations may be proceeding or the authority may propose to sell on the open market. In such cases the authority should submit information about its proposals to dispose of the land or property; its grounds for considering that this will achieve the provision of housing accommodation; and when the provision will materialise. Where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner.

Acquisition of land for housing development

7. The acquisition of land for housing development is an acceptable use of compulsory purchase powers, including where it will make land available for private development, or development by Housing Associations. Section 17(4) of the 1985 Act provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years. The Secretary of State would not normally regard compulsory purchase as justified where development will not be completed within 3 years of acquisition.

8 Where an authority has a choice between the use of housing or planning compulsory purchase powers (referred to in Appendix A) the Secretary of State will not refuse to confirm a compulsory purchase order solely on the grounds that it could have been made under another power. Where land is being assembled under planning powers for housing development, the Secretary of State will have regard to the policies set out in this Appendix.

Acquisition of empty properties for housing use

9. Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought into residential use. Authorities will first wish to encourage the owner to restore the property to full occupation. When considering whether to confirm a compulsory purchase order the Secretary of State will normally wish to know how long the property has been vacant; what steps the authority has taken to encourage the owner to bring it into acceptable use; the outcome; and what works have been carried out by the owner towards its re-use for housing purposes. Cases may, however, arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only method of acquiring the land.

[1] The Housing Bill which is before Parliament at the time of publication proposes to replace the housing fitness test with assessment under the Housing Health and Safety Rating System as the basis for action against unacceptable housing standards. On implementation of the proposed system the quantity of housing with Category 1 or 2 hazards would become relevant.

Acquisition of sub-standard properties

(a) General use of Power

10. Compulsory purchase of sub-standard properties may also be justified as a last resort in cases where a clear housing gain will be obtained; the owner of the property has failed to maintain it or bring it to an acceptable standard; and other statutory measures, such as the service of statutory notices, have not achieved the authority's objective of securing the provision of acceptable housing accommodation. In considering whether to confirm a compulsory purchase order the Secretary of State will wish to know what are the alleged defects in the order property; what other measures the authority has taken to remedy matters (eg. service of a notice on the owner under section 215 of the Town and Country Planning Act 1990 requiring him or her to remedy the loss of amenity that such a property causes); the outcome; and the extent and nature of any works carried out by the owner to secure the improvement and repair of the property. The Secretary of State will also wish to know the authority's proposals regarding any existing tenants of the property.

11. The Secretary of State would not expect an owner-occupied house, other than a house in multiple occupation, to be included in a compulsory purchase order unless the defects in the property adversely affected other housing accommodation.

(b) Houses in multiple occupation

12. Cases may arise where an authority wishes to make a compulsory purchase order following a control order[2] under section 379 of the 1985 Act in respect of a house in multiple occupation. Guidance on the relevant statutory provisions is given in paragraphs 4.8.1 – 4.10.4 of the Memorandum accompanying DOE Circular 12/93 *Houses in multiple occupation: guidance to local authorities on managing the stock in their area*. It is recognised that a compulsory purchase order may be justified where there is no realistic possibility of returning a property to the owner at the expiry of the control order.

13. Where a compulsory purchase order is made under Part II of the 1985 Act within 28 days of the control order, Part IV of Schedule 13 provides that the authority need not prepare or serve a Management Scheme until it is notified of the Secretary of State's decision whether or not to confirm the compulsory purchase order. A compulsory purchase order may be made after the 28 day period has elapsed, but the authority will then remain under the duty to prepare a Management Scheme. It should also be borne in mind that where a property has been improved following a control order, there may be less justification for compulsory purchase to secure improved housing accommodation. Where the control order has been in force for a significant period of time, evidence of the previous management of the property, on which the case for compulsory purchase may have to depend, may no longer be current. Authorities who wish to resort to compulsory purchase may therefore find it advisable to do so as soon as possible after the control order has been made.

[2] The Housing Bill before Parliament at the time of publication proposes that no new control orders (and management schemes) made under the provisions of the Housing Act 1985 should be permitted. Instead, in certain circumstances the authority will be required or permitted to make an Interim Management Order. The making of such an order will not affect an authority's power to make a compulsory purchase order under Part II of the Housing Act 1985.

14. Difficulties have arisen where authorities wishing to take advantage of the 28 day provision have prepared compulsory purchase documents hastily and then found the compulsory purchase order to be defective and incapable of confirmation. Therefore, in making a control order, an authority may at the same time want to anticipate the possible use of compulsory purchase procedures and prepare accordingly.

(c) Limitations

15. The Department is advised that the powers under Part II of the 1985 Act to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement in the case of *R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea* (1987) it may, however, be possible for authorities to resort to compulsory purchase under Part II where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the compulsory purchase order. Such an order could be justified as achieving a housing gain.

16. Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with Section 106A of the 1985 Act. The Secretary of State cannot give consent for the disposal if it appears to him that a majority of the tenants are opposed. An authority contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

Acquiring authority undertakings not to implement compulsory purchase orders

17. Where they are seeking to acquire compulsorily an empty and neglected property some acquiring authorities have adopted the practice of offering to the owner an undertaking that if he (or she) withdraws his objection and agrees to improve the property and bring it into acceptable use within a specified period, the confirmed order will not be implemented. Such undertakings are a matter between the acquiring authority and owner, and the Secretary of State has no involvement. A compulsory purchase order the subject of such an agreement will still be considered by the Secretary of State on its individual merits as described in paragraphs 9 and 10 above. The Secretary of State has no powers to confirm an order subject to conditions.

HOUSING ACT 1985: PART IX

Clearance areas

18. General guidance on clearance areas is given in Annex B to DoE Circular 17/96 *Private Sector Renewal: a Strategic Approach*[3]. Advice on use of clearance area compulsory purchase powers is set out below.

[3] see footnote 1 on replacement of basis for action on unacceptable housing conditions. Declaration of a clearance area will remain an option, though this would be on the basis of risk assessment under the HHSRS. Draft HHSRS enforcement guidance for consultation was published in December 2003, which can be found on the ODPM website via www.housing.odpm.gov.uk

19. Clearance area CPOs are made under section 290 of the Housing Act 1985. In addition to the general requirements set out in this Part of the Memorandum, an authority submitting a clearance area order will be expected to deal with the following matters in their statement of reasons:

- the declaration of the clearance area and its justification, having regard to the Code of Guidance for dealing with unfit premises in Annex G to the Housing Renewal Guidance.

- the unfitness of buildings in the clearance area: incorporating a statement of the authority's principal grounds for being satisfied that the buildings are unfit as required by Rule 22(2) in the 1990 Inquiries Procedure Rules;

- the justification for acquiring any added lands included in the order;

- proposals for re-housing and for re-locating commercial and industrial premises affected by clearance; and

- the proposed after-use of the cleared site. Where it is not practicable to table evidence of planning permission, the authority should demonstrate that their proposals are acceptable in planning terms and that there appear to be no grounds for thinking that planning consent will not materialise.

20. Authorities promoting clearance area orders will need to demonstrate that they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors regarding that.

LOCAL GOVERNMENT AND HOUSING ACT 1989: PART VII

Renewal areas

21. General guidance on renewal areas is given in Annex E and appendix 1 to ODPM Circular 05/2003 *Housing Renewal Guidance*. Annex E, Appendix 1 gives guidance on acquisition of land and property in relation to renewal areas, and for ease of reference is reproduced at paragraphs 22-28 below.

22. Section 93(2) of the Local Government and Housing Act 1989 (the 1989 Act) empowers authorities to acquire by agreement or compulsorily premises consisting of, or including, housing accommodation to achieve or secure their improvement or repair; their effective management and use; or the well-being of residents in the area. They may provide housing accommodation on land so acquired.

23. Section 93(2) of the 1989 Act also provides that authorities may acquire by agreement or compulsorily properties for improvement, repair or management by other persons. Authorities acquiring properties compulsorily should consider subsequently disposing of them to owner-occupiers, housing associations or other private sector interests in line with their strategy for the Renewal Area (RA).

[4] see footnote 3.

24. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall RA strategy. In exercising their powers of acquisition authorities will need to bear in mind the financial and other (eg. manpower) resources available to them and to other bodies concerned.

25. Section 93(4) of the 1989 Act empowers authorities to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in an RA. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the authority or by a housing association or other development partner. Where projects involve the demolition of properties, regard should be had to any adverse effects on industrial or commercial concerns.

26. The powers in sections 93(2) and 93(4) of the 1989 Act are additional powers and are without prejudice to other powers available to local housing authorities to acquire land which might also be used in RAs.

27. The extent to which acquisitions will form part of an authority's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Secretary of State would not expect to see authorities acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by an authority, they should first attempt to do so by agreement.

28. As explained in this Part of the Memorandum, compulsory purchase orders are considered on their merits but should not be made unless there is a compelling case in the public interest. Where an authority submit a compulsory purchase order under section 93(2) or 93(4) of the 1989 Act, their statement of reasons for making the order should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the RA. It should also set out the relationship of the proposals for which the order is required to their overall strategy for the RA; their intentions regarding disposal of the property; and their financial ability, or that of the purchaser, to carry out the proposals for which the order has been made

OTHER HOUSING POWERS

29. Compulsory purchase orders made by local authorities under other Housing powers (sections 29 and 300 of the 1985 Act and section 34 of the Housing Associations Act 1985) fall to be considered on their merits in the light of the general requirement that there should be a compelling case for compulsory purchase in the public interest. The Secretary of State will also have regard to the policies set out in this Appendix where applicable.

Appendix F

Orders made under Part VII of the Local Government Act 1972 for purposes of other powers

INTRODUCTION

1. Some of the powers in legislation for local authorities to acquire land by agreement for a specific purpose do not include an accompanying power of compulsory purchase. The general power of compulsory purchase at section 121 of the Local Government Act 1972 can (subject to certain constraints) be used by local authorities in conjunction with such powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.

2. Section 121 can also be used to achieve compulsory purchase in conjunction with section 120 of the 1972 Act. Section 120 provides a general power for a principal council[1] to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power (see examples at paragraph 9 below), or where land is intended to be used for more than one function.

3. The normal considerations in relation to making and submission of a compulsory purchase order, as described in this Part of the Memorandum, would apply to orders relying upon section 121. These include the requirement that compulsory purchase should only be used where there is a compelling case in the public interest.

4. Section 125 of the 1972 Act (as amended by section 43 of the Housing and Planning Act 1986) is a general power for a district council to acquire land compulsorily (subject to certain restrictions) on behalf of a parish council which is unable to purchase by agreement land needed for the purpose of a statutory function.

5. The confirming authority for orders under Part VII of the 1972 Act is the Deputy Prime Minister in his capacity as First Secretary of State (referred to as 'the Secretary of State' in this Appendix).

ACQUISITION AND ENABLING POWERS

6. When an order is made by a principal council under section 121 of the 1972 Act, or by a district council on behalf of a parish council under section 125 of that Act, paragraph 1 of the order should cite the relevant acquisition power and state the purpose of the order, by reference to the Act ('enabling Act') under which the purpose may be achieved.

7. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted into the prescribed form of the order (see Note (f) to Forms 1 to 3 in the Schedule to the 2004 Regulations). For example -

[1] defined in section 270 of the 1972 Act as a county, district, or London borough council.

'……. the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the parish council of ……] the land described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.'

8. As mentioned above, authorities should note that sections 121 and 125 of the 1972 Act are subject to some constraints. Section 121(2) sets out certain purposes for which principal councils may not purchase land compulsorily under section 121. These are as follows:-

(a) for the purposes specified in section 120(1)(b), ie. the benefit, improvement or development of their area

(b) for the purposes of their functions under the Local Authorities (Land) Act 1963; or

(c) for any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, eg. section 9(a) of the Open Spaces Act 1906.

There are similar limitations in section 125(1) in relation to orders made by district councils on behalf of parish councils.

9. An enabling power (see paragraph 1) may or may not also contain a power to acquire land. Section 164 of the Public Health Act 1875 (public walks and pleasure grounds) is an example of a power to acquire land which itself has no provision for the use of compulsion, but which can be exercised in conjunction with the power of compulsory purchase at section 121.

10. Other powers which do not include a land acquisition power (see paragraph 2) but which can be used in conjunction with sections 120 and 121 of the 1972 Act to achieve compulsory purchase include the following:

(i) public conveniences – section 87, Public Health Act 1936;

(ii) cemeteries and crematoria – section 214 of the 1972 Act (see also paragraph 15 below);

(iii) recreational facilities – section 19, Local Government (Miscellaneous Provisions) Act 1976 (used in the example in paragraph 7 above);

(iv) refuse disposal sites – section 51, Environmental Protection Act 1990; and

(v) land drainage – section 62(2), Land Drainage Act 1991.

ORDERS MADE ON BEHALF OF PARISH COUNCILS

11. If a parish council have been unable to acquire by agreement and on reasonable terms, they may make representations to the district council to make an order under section 125. The district council should have regard to this and to all the other matters set out in section 125, some of which are mentioned in paragraph 13 below.

12. A district council may not acquire land compulsorily on behalf of a parish council for a purpose for which a parish council is not, or may not be, authorised to acquire land, eg. section 226 of the Town and Country Planning Act 1990 (see subsections (1) and (8) of section 226).

13. Section 125 does not apply where the purpose of the order is to provide allotments under the Smallholdings and Allotments Act 1908. In such a case, by virtue of section 39(7) of the 1908 Act, the district council should purchase the land compulsorily, on behalf of the parish council, under section 25 of that Act.

14. If the district council refuse to make an order under section 125, or do not make one within 8 weeks of the parish council's representations or within such an extended period as may be agreed between the two councils, the parish council may petition the Secretary of State, who may make the order. Where an order is made by the Secretary of State in such circumstances, section 125 and the 1981 Act apply as if the order had been made by the district council and confirmed by the Secretary of State.

JOINT ORDERS AND MIXED PURPOSES

15. A single order may be made under section 121 of the 1972 Act by more than one council and, as mentioned in paragraphs 1 and 2 above, for more than one purpose. Where this would involve more than one confirming authority, the order may be submitted to one Secretary of State but it has to be processed through all the relevant government departments (or departments and relevant Government Office, as appropriate), involving concerted action by them. Where an inquiry is required or is considered to be appropriate, the Inspector's report will be submitted to each of them simultaneously and the decision will be given by the relevant Ministers acting together.

16. A district council may also make an order on behalf of more than one parish council. Such an order might, for example, be made under section 125, for the purposes of section 214, on behalf of several parish councils which form a joint burial committee in the area of the district council. (See also paragraph 10(ii) above.)

COSTS AND COMPENSATION

17. A parish council should consider very carefully whether it has the necessary resources to carry out a compulsory purchase of land. A district council which makes an order on behalf of a parish council may (and, in the case of an order made under the Allotments Act 1908, shall) recover from the parish council the expenses which it has incurred. This involves the administrative expenses and costs of the inquiry; the inquiry costs awarded to successful statutory objectors, should the order not be confirmed, or confirmed in part (see also paragraphs 46-49 of this Part of the Memorandum); statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled; or any compensation for injurious affection payable to adjoining owners who may be entitled to claim.

18. When considering whether to confirm or make an order, the Secretary of State will have regard to questions concerning the ability of the parish council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the order has been or would be made.

Appendix G

Orders made under section 89(5) of the National Parks and Access to the Countryside Act 1949

1. Section 89(5) of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') includes powers for a local planning authority to acquire land compulsorily in order to:

   - plant trees to preserve or enhance the natural beauty of their area (section 89(1)); or

   - carry out works to enable land in their area which appears to them to be (a) derelict, neglected or unsightly, or (b) is likely to become so by reason of actual or apprehended collapse of the surface as the result of underground mining operations (other than coal mining) (section 89(2) as amended), to be reclaimed or improved or brought into use.

2. The confirming authority for orders under section 89(5) in the Secretary of State for Environment, Food, and Rural Affairs (referred to as 'the Secretary of State' in this Appendix).

3. If an authority doubt whether the powers under section 89 should be used, or where various uses are proposed, it is open to them to consider acquisition under section 226 of the Town and Country Planning Act 1990 (see Appendix A). The various other powers under which local authorities can acquire and develop land for particular purposes, such as for housing or public open space, can also be exercised in relation to land which is derelict, neglected or unsightly.

4. When considering whether to make an order under section 89(5) of the 1949 Act, or when preparing their case in support of such an order, authorities may find it helpful to have the Secretary of State's view about the meaning of the words 'derelict, neglected or unsightly' for these purposes.

5. The phrase 'derelict, neglected or unsightly' is used in connection with the specific powers of reclamation given to a local authority under section 89(2) of the 1949 Act. There are no statutory definitions of these words and so they are to be given their natural, common-sense meaning. It is preferable, where possible, to consider the words taken together, as there is a considerable overlap between all three words. The word 'unsightly' is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be 'neglected' without having been the subject of any operations by man (such as building, dumping or excavating), but it may be inappropriate to describe such land as 'derelict'.

6. It may be that land is being put to some slight use but is still properly described as 'derelict' or 'neglected' when its condition is considered in the light of the potential use of the land. It is not the purpose of section 89, however, to enable a local authority to

carry out works or to acquire land compulsorily solely because they consider that they have a better use for the land than the present one.

Appendix H

Orders for educational purposes, and for public libraries and museums

EDUCATION – LOCAL EDUCATION AUTHORITIES' COMPULSORY PURCHASE POWERS

1. Section 530 (as amended) of the Education Act 1996 ('the 1996 Act') gives power to the local education authority (LEA) to acquire compulsorily land which is required for the purposes of its functions, including the purposes of any LEA-maintained or assisted school or institution.

2. Orders made by LEAs under section 530 of the 1996 Act should be submitted for confirmation to the Secretary of State for Education and Skills ('the Secretary of State' in paragraphs 1-9 of this Appendix) at the address given in Appendix W. LEAs may seek guidance, if necessary, from that Department on the form of draft orders where there is doubt about a particular point.

3. Before making an order under section 530 of the 1996 Act, the LEA should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.

THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998

4. The LEA may wish to acquire land compulsorily in conjunction with proposals under section 28 or 31 of the School Standards and Framework Act 1998 ('the 1998 Act'). In such circumstances the LEA should publish the 1998 Act proposals before making and submitting any compulsory purchase order under section 530 of the 1996 Act.

5. The relevant school organisation committee or adjudicator will consider the application for approval of the 1998 Act proposals on its merits and independently from consideration by the Secretary of State of the case for confirming the compulsory purchase order. Where the relevant body is minded to approve the proposals, it should do so conditionally under regulation 9(1)(b) of the Education (School Organisation Proposals) (England) Regulations 1999 (as amended) on condition that the relevant site is acquired. The LEA will be informed of the decision so that it may then make and submit the order. If the Secretary of State decides to confirm the order he will seal it and return it to the LEA. When the purchase of the site has been effected, the condition of the approval is thereby met and the approval of the proposals becomes final with no further action required.

6. If the decision is to reject the 1998 Act proposals, however, the LEA should not make the order since, in these circumstances it would be inappropriate for the Secretary of State to confirm it.

THE EDUCATION ACT 2002

7. Sections 70 and 72 of the Education Act 2002 introduce new arrangements for the publication of proposals for additional secondary schools, and for the Learning and Skills Council for England to publish proposals for the restructuring of school sixth form education. The final decision on whether to approve both categories of proposals will be made by the Secretary of State. The need for a compulsory purchase order will be taken into account by the Secretary of State when he considers the statutory proposals, and any decision to approve them will be conditional upon the acquisition of the site. The LEA will be informed of the decision on the proposals so that it may then make and submit the necessary compulsory purchase order. The Secretary of State will consider the order separately. If the order is confirmed, the proposals will be fully approved when the site purchase is completed. If the order is not confirmed the proposals will fall when the condition is not met.

VOLUNTARY AIDED SCHOOLS

8. Where compulsory purchase orders are made for voluntary aided schools, the following documents, additional to those specified in Appendix Q, should accompany, or be submitted as soon as possible after, the order:

   (a) a completed copy of form SB1 (obtainable from Department for Education and Skills at the address in Appendix W); and

   (b) a qualified valuer's report.

EDUCATION – SECRETARY OF STATE'S COMPULSORY PURCHASE POWERS

9. Paragraph 3 of Schedule 35A to the Education Act 1996 gives power to the Secretary of State to acquire compulsorily land which is required by an Academy. The Secretary of State may exercise this power where the LEA has disposed of land, without prior consent, which has been used wholly or mainly for the purposes of a county or community school at any time in the period of eight years ending with the day on which the disposal was made. On completion of the purchase the Secretary of State must transfer the land to the person concerned with the running of the Academy.

PUBLIC LIBRARIES AND MUSEUMS

10. Land for public libraries and museums may be acquired compulsorily under section 121 of the Local Government Act 1972 in conjunction with an appropriate enabling power (see also Appendix F). Orders for these purposes should be submitted to the Secretary of State for Culture, Media and Sport at the address given in Appendix W. Such orders should be accompanied by the following additional documents:

    (a) a completed copy of form CP/AL1 (obtainable from the Department for Culture, Media and Sport, Libraries Division); and

    (b) a qualified valuer's report.

11. Authorities are reminded of the general advice in paragraph 7 of this Part of the Memorandum that all orders should be made having due regard to statutory requirements and to any guidance from the relevant Department.

Appendix J

Orders for airport Public Safety Zones

1. Department for Transport Circular 1/2002 *Control of Development in Airport Public Safety Zones* includes a policy on the purchase of property within the 1 in 10,000 individual risk contour. The nature of the area within this contour is such that the annual individual third party risk of being killed as a result of an aircraft accident exceeds 1 in 10,000.

2. The Secretary of State for Transport's policy is that there should be no occupied residential properties or all-day workplaces within the 1 in 10,000 contour. He therefore expects airport operators to offer to purchase such property by agreement, with compensation being payable under the Compensation Code. Although Public Safety Zones are a non-statutory designation, if purchase by agreement is not possible the Secretary of State will be prepared to consider applications for compulsory purchase by airport operators with powers under section 59 of the Airports Act 1986.

3. The airport operator will need to demonstrate that the property to be acquired falls into the categories described above and that it has not been possible to purchase by agreement.

4. When acquired, airport operators will be expected to demolish any buildings and to clear the land.

5. Compulsory purchase orders made for this purpose should be sent to the Secretary of State for Transport at the address given in paragraph 8 of Appendix W.

Appendix K

Orders made under section 47 of the Listed Buildings Act – Listed Building in need of repair

1. Sections 47, 48 and 50 of the Listed Buildings Act relate to the compulsory acquisition by the appropriate authority of a listed building in need of repair; service on the owner of a repairs notice; and inclusion in the order of a direction for minimum compensation.

2. At least two months before making an order under section 47 of the Listed Buildings Act the acquiring authority must, under section 48, serve a repairs notice on the owner as defined in section 91(2) of the Listed Buildings Act. Advice about repairs notices is found in Chapter 7 of PPG 15.

3. In order to comply with regulation 4 of the 2004 Prescribed Forms Regulations all personal notices must include additional paragraphs 3 and 5 of Form 8 in the Schedule to the Regulations. If the acquiring authority have included a direction for minimum compensation under section 50 of the Listed Buildings Act, they must also insert additional paragraph 4 of Form 8.

4. Optional paragraph 4 of Form 1 in the Schedule to the 2004 Prescribed Forms Regulations sets out the terms for a minimum compensation direction. This paragraph can instead be incorporated into orders drafted using Form 2 or 3 as appropriate to the circumstances of the order.

5. Note (p) to Form 8 in the Schedule to the Regulations states that the Notice should refer to a place (eg. 'below' or 'in the attached note') where the meaning of the direction is explained, as required by section 50(3). The explanation should normally include the text of subsections (4) and (5) of section 50.

6. When an order made under section 47 of the Listed Buildings Act is submitted to the Secretary of State for Culture, Media and Sport for confirmation, a copy of the repairs notice served in accordance with section 48 must be included with all the supporting documents listed in Appendix Q to this Part of the Memorandum.

7. A local authority which has made an order under section 47 of the Listed Buildings Act should notify the Department for Culture, Media and Sport immediately they become aware of any application to a magistrates' court either under section 47(4) or section 50(6). Depending on the circumstances, it may be necessary to hold the order in abeyance until such time as the court has considered the application.

Appendix KA

Exercise of compulsory purchase powers at the request of the community

1. From time to time, authorities may receive requests from the community (by petition or otherwise) to acquire community assets that are in danger of being lost to the detriment of that community. If the owner is unwilling to sell, the implication is that the community would ask the authority to use its compulsory purchase powers to acquire the asset.

2. Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

3. As with any compulsory purchase, local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the Compulsory Purchase Order process either from their own resources, or with a partial or full contribution from the requesting organisation (see paragraphs 20 – 23 of Part 1 of the Memorandum to this Circular).

4. In order to assess whether there is a compelling case in the public interest for compulsory acquisition, local authorities should ask those making the request for such information that is necessary for them to do so. This could include the value of the asset to the community; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed. This list is not exhaustive, but the level of detail required should be tailored to the circumstances.

Special kinds of land

1. Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by provision that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure[1]. The 'special kinds of land' are those set out in Part III of, and Schedule 3 to, the 1981 Act (see also Appendix U, paragraph 17):

   (a) land acquired by a statutory undertaker (as defined in section 16 of the 1981 Act) for the purposes of their undertaking (section 16 and Schedule 3, paragraph 3);

   (b) local authority owned land; or land acquired by any body except a local authority who are, or are deemed to be, statutory undertakers (as defined in section 17 of the 1981 Act) for the purposes of their undertaking (section 17 and Schedule 3, paragraph 4);

   (c) land held by the National Trust inalienably (section 18 and Schedule 3, paragraph 5); and

   (d) land forming part of a common, open space, or fuel or field garden allotment (section 19 and Schedule 3, paragraph 6).

Structure of this Appendix

2. Section 1 of this Appendix covers orders to which paragraphs (a) and (b) above apply, section 2 provides guidance on orders which include National Trust land held inalienably or land forming part of a common, open space etc. (paragraphs (c) and (d)), and Section 3 contains some basic details concerning special parliamentary procedure.

3. Unless stated otherwise:

   – advice in this Appendix about the compulsory purchase of the special kinds of land mentioned in Part III of the 1981 Act also applies to the compulsory acquisition of new rights over such land and to the corresponding paragraph, or paragraphs, in Part II of Schedule 3;

   – any reference to statutory undertakers' land means land which has been acquired by statutory undertakers for the purposes of their undertaking.

SECTION 1

Statutory undertakers

4. Section 8(1) defines 'statutory undertakers' for the *general* purposes of the 1981 Act. Paragraphs 10 and 11 below explain the effects of section 17, for the purposes of which

[1] see paragraphs 29-30.

other bodies (eg. housing action trusts) may be defined as, or deemed to be, statutory undertakers. Gas transporters, electricity licence holders who can exercise compulsory purchase powers, the Environment Agency, Regional Development Agencies, English Partnerships and water and sewerage undertakers are deemed to be statutory undertakers for the purposes of the 1981 Act. British Telecom are not statutory undertakers for the purposes of the Act. Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the Act. Where their operations are carried out under the specific authority of an Act, however, such operators will fall within the definition in section 8(1) of the 1981 Act.

Protection for statutory undertakers' land

5. Sections 16 and 17 provide protection for statutory undertakers' land. In both cases, the land must have been acquired for the purposes of the undertaking and these provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the appropriate Minister under section 16, or an objection in respect of land to which they think section 17 applies (but see paragraphs 10 and 11 below), undertakers should take particular care over the status of the land which the acquiring authority propose to acquire, have regard to the provisions of the relevant Act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the protection under sections 16 and 17 would not apply in relation to non-operational land held by one, eg. a redundant, manufactured gas works. In the circumstances, the land is not held for the purpose of the statutory provision namely the conveyance of gas through pipes to any premises or to a pipe-line system operated by a gas transporter.

Section 16 of the 1981 Act

6. Under section 16, statutory undertakers who wish to object to the inclusion in a compulsory purchase order of land which they have acquired for the purposes of their undertaking, may make representations to 'the appropriate Minister'. This is the Minister operationally responsible for the undertaker, eg in the case of a gas transporter or electricity licence holder, the Secretary of State for Trade and Industry[2]. Such representations must be made within the period stated in the public and personal notices, ie. not less than twenty-one days, as specified in the Act.

7. A representation made by statutory undertakers under section 16 is quite separate from an objection made within the same period to the confirming authority ('the usual Minister'). Where the appropriate Minister is also the confirming authority the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a section 16 representation and an objection. The appropriate Minister would also be the confirming authority where, for example, an airport operator under Part V of the Airports Act 1986 makes a section 16 representation to the Secretary of State for Transport about an order made under section 239 of the Highways Act 1980.

[2] DTI have prepared a guidance note about section 16 representations by gas and electricity undertakers, which is available from the address given in Appendix W.

8. Subject to advice in paragraph 9 below about orders to which section 31 applies, where a section 16 representation is not withdrawn, the order to which it relates may not be confirmed (or made, where the acquiring authority is a Minister) so as to include the interest owned by the statutory undertakers unless the appropriate Minister gives a certificate in the terms stated in section 16(2). These are either (16(2)(a)) that the land can be taken without serious detriment to the carrying on of the undertaking, or (16(2)(b)) that if taken it can be replaced by other land without serious detriment to the undertaking.

Joint confirmation

9. By virtue of section 31(2) of the 1981 Act, an order made under any of the powers referred to in section 31(1) may still be confirmed where a representation has been made under section 16(1) without an application for a section 16(2) certificate, or where such an application is refused, if that confirmation is undertaken jointly by the appropriate Minister and the usual Minister.

Section 17 of the 1981 Act

10. Section 17(2) provides that for an order acquiring land owned by a local authority or statutory undertaker, in the event that such an authority or undertaker objects, any confirmation would be subject to special parliamentary procedure. Section 17(3), however, excludes the application of section 17(2) if the acquiring authority is one of the bodies referred to in section 17(3) which include a local authority and statutory undertaker as defined in section 17(4). The application of section 17(2) will therefore be very limited.

11. The Secretary of State may by order under section 17(4)(b) extend the definition of statutory undertaker for the purposes of section 17(3) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of section 17(3) by primary legislation. Examples of such provisions are:

    (a) a housing action trust – Housing Act 1988, section 78 and Schedule 10, paragraph 3;

    (b) Regional Development Agencies – Regional Development Agencies Act 1998 section 20(4) and Schedule 5, paragraph 2; and

    (c) English Partnerships (the Urban Regeneration Agency) – Leasehold Reform, Housing and Urban Development Act 1993 section 169 and Schedule 20, paragraph 3.

SECTION 2

Section 18 of the 1981 Act

12. Where an order seeks to authorise the compulsory purchase of land belonging to and held inalienably by the National Trust (as defined in section 18(3)), it will be subject to special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land so held.

Section 19 of the 1981 Act

13. Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the 1981 Act:

- 'common' includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green[3]. The definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965;

- 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and

- 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.

14. An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17) gives a certificate under section 19 indicating his satisfaction that either:

- section 19(1)(a) – exchange land is being given which is no less in area and equally advantageous as the land taken; or

- section 19(1)(aa) – that the land is being purchased to ensure its preservation or improve its management; or

- section 19(1)(b) – that the land is 250 sq yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway **and** that the giving of exchange land is unnecessary.

15. Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under Schedule 3, paragraph 6. See Appendix M paragraphs 10-14.

16. As to the form of order, see Appendix U, paragraphs 17 to 24 and Appendix M, paragraphs 13 to 16.

Application for a section 19 certificate

17. An acquiring authority which will require a certificate from the relevant Secretary of State under section 19 and/or Schedule 3, paragraph 6, should apply as follows:

- common land – the Secretary of State for Environment, Food and Rural Affairs (Countryside (Landscape and Recreation) Division, see Appendix W for details);

- open space – Deputy Prime Minister/First Secretary of State, at the appropriate regional Government Office (see Appendix W for addresses);

[3] Where rights of common are extinguished by an order, acquiring authorities should also consider the need to seek consent under section 22 of the Commons Act 1899. Further information can be obtained from the DEFRA address given in Appendix W, paragraph 5.

– fuel or field garden allotments – Deputy Prime Minister/First Secretary of State, Office of the Deputy Prime Minister (LSC Division, see Appendix W for details)

Applications for certificates should be made when the order is submitted for confirmation (or, in the case of an order prepared in draft by a Minister, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

18. The land, including any new rights, should be described in detail, by reference to the compulsory purchase order, and all the land clearly identified on an accompanying map. This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land. The acquiring authority should also provide copies of the order, including the Schedules, and order map. For a particularly large order, they may provide: (a) copies of the order and relevant parts or sheets of the map; and (b) a copy, or copies, of the relevant extract or extracts from the order Schedule or Schedules, which include the following:

(i) the plot(s) of common, open space etc. which they propose to acquire or over which they propose to acquire a new right ('the order land'); and

(ii) any land which they propose to give in exchange ('the exchange land').

(Where Schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute 'the rights land' and 'the additional land' for the definitions given in (i) and (ii) above, respectively.)

19. When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 Act or of paragraph 6(4) of Schedule 3 to that Act.

20. It must be specified under which sub-section(s) an application for a certificate is made – eg. section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.

21. In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:

- the name of the common or green involved (including CL/VG number);
- the plots numbers and their areas, in square metres;
- details of any rights of common registered, or rights of public access, and the extent to which they are exercised;
- the purpose of the acquisition;

- details of any special provisions or restrictions affecting any of the land in the application; and

- any further information which supports the case for a certificate.

22. In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his *intention* to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the Inspector at the inquiry into the compulsory purchase order.

23. Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the Inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the Inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an Inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.

24. The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.[4]

Exchange land

25. Where a certificate would be in terms of section 19(1)(a), the exchange land must be **no less** in area than the order land; and must be equally advantageous to any persons entitled to rights of common or to other rights, and to the public. Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraphs 5 and 6 of Form 2 in the Schedule to the 2004 Regulations.) But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exist at that date. Other issues may arise involving questions of the respective merits of order and exchange land. The latter may not possess the same character and features as the order land, and it may not offer the **same** advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be

[4] *[1994] J. P. L. 607.*

disadvantageous to the persons concerned. There may be some cases, where a current use of proposed exchange land is temporary, eg. pending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The relevant Secretary of State will examine any such case with particular care.

Meaning of the 'the public' in section 19

26. With regard to exchange land included in an order, the Secretary of State takes the view that 'the public' means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

Section 19(1)(aa)

27. In some cases, the acquiring authority may wish to acquire land to which section 19 applies, eg. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be 'improvement' within the sense of section 226(1)(a) of the 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Appendix G), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie. where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Appendix U, paragraph 24.

Section 19(1)(b)

28. A certificate can only be given in terms of section 19(1)(b) where the Secretary of State concerned is persuaded that both the criteria set out in paragraph 14 third bullet are met. He will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of section 19(1)(a).

SECTION 3

Special parliamentary procedure

29. In the event that an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965. The confirming authority will give full instructions at the appropriate time.

30. Described briefly for information, special parliamentary procedure is as follows: following the confirming authority's decision to confirm, the order is laid before Parliament, after giving 3 days notice in the London Gazette. If a petition of general objection or amendment is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve. If no petition is lodged, the confirmation is usually approved without such referral.

Appendix M

Compulsory purchase of new rights and other interests

1. This appendix gives some general advice[1] about the compulsory acquisition of new rights over land where full land ownership is not required eg. the compulsory creation of a right of access.

2. Such compulsory acquisition of rights over land by creation of new rights is, by virtue of section 28 of the 1981 Act, subject to the provisions of Schedule 3 to that Act. It can only be achieved using a specific statutory power. Powers include (with the bodies by whom they may be exercised) the following:

   (i) Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities);

   (ii) Highways Act 1980, all highway authorities may acquire rights under Part XII by virtue of section 250. (Guidance on the use of these powers is given in Department of Transport Local Authority Circular 2/97.);

   (iii) Water Industry Act 1991, section 155(2) (water and sewerage undertakers); Water Resources Act 1991, section 154(2) and Environment Act 1995, section 2(1)(a)(iv) (Environment Agency);

   (iv) Leasehold Reform, Housing and Urban Development Act 1993 section 162(2) (English Partnerships);

   (v) Regional Development Agencies Act 1998, section 20(2) (regional development agencies);

   (vi) Electricity Act 1989, Schedule 3 (electricity undertakings); and

   (vii) Gas Act 1986, Schedule 3 (gas transporter undertakings).

ORDER HEADING

3. For an order which relates solely to new rights, the order heading should mention the appropriate enabling power, together with the Acquisition of Land Act 1981. For an order which includes new rights and land to be acquired for other purposes, the order heading should refer to the appropriate enabling Act, any other Act(s), and the 1981 Act, as required by the Regulations. See Note (b) to Forms 1, 2 and 3 in the Schedule to the 2004 Prescribed Forms Regulations.

[4] Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is referred to within this appendix as an an example. Where in practice a different power is used, eg section 250 of the Highways Act 1980, the authority should take into account any special requirements which may apply to the use of that power.

ORDERS SOLELY FOR NEW RIGHTS

4. Where an order relates solely to new rights and does not include other interests in land which are to be purchased outright, paragraph 1 of the order should identify the purpose for which the rights are required, eg. 'for the purpose of providing an access to a community centre which the Council are authorised to provide under section 19 of the 1976 Act'.

ORDERS FOR NEW RIGHTS AND OTHER INTERESTS

5. Where an order relates to the purchase of new rights and of other interests in land under different powers, paragraph 1 of the prescribed form of the order should describe all the relevant powers and purposes. Where the purpose is the same for both new rights and other interests, it may be relatively straightforward. For example:

'. . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and

(b) under section 13 of the said Act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose.

[etc., as in Form 1 of the Schedule to the Regulations].

6. Where also the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the prescribed form of the order should describe all of the relevant powers under, and purposes for which, the order has been made. For example:-

'. . . . . the acquiring authority is hereby authorised to compulsorily purchase

(a) under section 89 of the National Parks and Access to the Countryside Act 1949 the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use,; and

(b) under section 13 of the Local Government Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the above-mentioned land for [*the authority*] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.

7. The acquiring authority's statements of reasons and case should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where an order includes new rights, the acquiring authority are also asked to bring that fact to the attention of the confirming authority in the letter covering their submission.

SCHEDULE AND MAP

8. The land over which each new right is sought should be shown as a separate plot in the order Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, eg. where there are a number of new rights, they could be shown together in the Schedule with appropriate cross-referencing between the related plots.

9. The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See Note (*g*) to Forms 1, 2 and 3 or Note (*d*) to Forms 4, 5 and 6.)

SPECIAL KINDS OF LAND (see also Appendices L and U)

10. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc.). The order will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17 of Appendix L) gives a certificate, in the relevant terms, under paragraph 6(1) and (2).

11. A certificate may be given in the following circumstances:

paragraph 6(1)(a) – the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or

paragraph 6(1)(aa) – the right is being acquired in order to secure the preservation or improve the management of the land (but see paragraph 13 below); or

paragraph 6(1)(b) – additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the Act; or

paragraph 6(1)(c) -

(i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or,

(ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway,

and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.

12. The same compulsory purchase order may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of

such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.

13. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Appendix U, paragraph 24; and Appendix L, paragraph 27.

14. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land ('the additional land') in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the Schedule to the 2004 Prescribed Forms Regulations (see Note (s)). The land over which the right is being acquired ('the rights land') and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2 (ii) should be adapted as necessary. (See also Appendix U, paragraphs 20 and 21 and Appendix L, paragraph 18.)

15. Where additional land which is not being acquired compulsorily is to be vested in the owners) of the rights land, the additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the order. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.

16. An order which does not provide for the vesting of additional land but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired, should comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6) to land over which the new right is acquired. (See also paragraph 13 above.)

Appendix N

Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

GENERAL POSITION

1. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land . If it is proposed to include such land in an order, careful consideration should be made of the enabling legislation.

EXCEPTIONS TO GENERAL POSITION

2. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land. Section 327 of the Highways Act 1980 provides for a highway authority and the appropriate Crown authority to specify in an agreement that certain provisions of the 1980 Act – including the compulsory purchase powers – shall apply to the Crown. Section 32 of the Coast Protection Act 1949 enables the compulsory purchase powers under Part I of that Act to apply to Crown land with the consent of the 'appropriate authority' .

3. The enactments listed below also provide that interests in Crown land **which are not held by or on behalf of the Crown** *may* be acquired compulsorily if the appropriate authority agree:

   – section 296 of the Town and Country Planning Act 1990;

   – section 83 of the Planning (Listed Buildings and Conservation Areas) Act 1990;

   – section 25 of the Transport and Works Act 1992; and

   – section 221 of the Housing Act 1996 (applicable to the Housing Act 1985, the Housing Associations Act 1985, Part III of the Housing Act 1988 and Part VII of the Local Government and Housing Act 1989).

ISSUES FOR CONSIDERATION

4. From the foregoing, therefore, a Crown interest in land should generally not be included in an order unless -

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[1] Under various provisions, eg s283(1) of the Town and Country Planning Act 1990 and s83(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is 'Crown land'.

[2] As appropriate, the Government Department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

[3] This is not an exhaustive list.

(a) there is an agreement under section 327 of the Highways Act 1980 which provides for the use of compulsory purchase powers; or

(b) the order is made under a power to which the provisions mentioned in paragraph 3 above relate, or under any other enactment which provides for compulsory acquisition of interests in Crown land.

5. Where (b) above applies, Crown land should only be included where the acquiring authority has obtained (or is, at least, seeking) agreement from the appropriate authority. The confirming authority will have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.

6. Where the appropriate authority have entered into an agreement with a highway authority so as to permit the inclusion in a compulsory purchase order of the Crown's interest or interests, the land may be included and described as for any privately owned land. Where an order is made under powers other than the Highways Act 1980, however, the acquiring authority should identify the relevant Crown body in the appropriate column of the order Schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the order Schedule should specify that 'all interests' in [*describe the land*] except the interest(s) held by [*the relevant Crown body*]' are being acquired. (See also Appendix U, paragraph 14).

Appendix P

Land Compensation Act 1961

Certificates of appropriate alternative development

INTRODUCTION

1. Part II of the Land Compensation Act 1961 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, sections 14-16 of the 1961 Act provide for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

2. Where, however, existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, Part III of the 1961 Act provides a mechanism for indicating the kind of development (if any) for which planning permission can be assumed by means of a so called 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

CERTIFICATE SYSTEM

4. Section 17(1) of the 1961 Act provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Circumstances in which certificates may be required include:

   (a) where there is no adopted development plan covering the land to be acquired;

   (b) where the adopted development plan indicates a 'green belt' or 'area of special landscape value' or leaves the site without specific allocation; and

   (c) where the site is allocated in the adopted development plan specifically for some public purpose, eg. a new school or open space.

5. The local planning authority is required to respond by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. Section 17(4) requires the certificate to state either:

   – planning permission would have been given for development of one or more specified classes and for any development for which the land is to be acquired, but would not have been granted for any other development (a 'positive certificate'); or

– planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development (a 'nil' or 'negative' certificate).

Where the planning authority consider that permission would only have been granted subject to conditions or at a future time, or both, they are required to specify those conditions and/or that future time, as the case may be. 'Classes' here merely means types of development and is not limited to development within the classes listed in the Town and Country Planning (Use Classes) Order 1987. Planning authorities are not restricted to consideration of the classes specified by the applicant.

6. The applicant must state whether or not he considers that there are any classes of development which either immediately or at a future time would be appropriate for the land if it were not being acquired by an authority possessing compulsory purchase powers. If the applicant considers that there are such classes of development he must say what they are and when they would be appropriate. An applicant must give his grounds for the opinions expressed in his application, ie, the onus is on the applicant to substantiate the reasons why he considers certain alternative development to be appropriate. Acquiring authorities are able to apply for a 'nil' certificate indicating that no development would have been permitted.

7. The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers. That event is defined in section 22(2) of the 1961 Act, and so the relevant date will be:

(i) ***acquisition by private or hybrid Parliamentary Bill***—the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;

(ii) ***acquisition by compulsory purchase order*** – the date of notice of making of the order (or date of publication of the draft compulsory purchase order, if the acquiring authority is a Government Department);

(iii) ***acquisition by Transport and Works Act order*** – the date of notice of the making of the order;

(iv) ***acquisition by blight notice or a purchase notice*** – the date on which 'notice to treat' is deemed to have been served;

(v) ***acquisition by agreement*** – the date of the written offer by the acquiring authority to negotiate for the purchase of the land; or

(vi) ***vesting in the Urban Regeneration Agency (English Partnerships)*** – the date the draft vesting order is laid before Parliament.

Thereafter application may be made at any time, except that after a case has been referred to the Lands Tribunal an application may not be made unless both parties agree, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

8. The First Secretary of State ('the Secretary of State') considers it important as far as possible that the certificate system should be operated on broad and common-sense lines; it should be borne in mind that a certificate is not a planning permission but a statement to be used in ascertaining the fair market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Secretary of State would expect the local planning authority to exercise its planning judgement, on the basis of the absence of the scheme, taking into account those factors which would normally apply to consideration of planning applications eg. the character of the development in the surrounding area, any general policy of the development plan, and national planning policy along with other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard. Only those forms of development which for some reason or other are inappropriate should be excluded. Local planning authorities will note from section 17(7) that their certificate can be at variance with the use shown by the development plan for the particular site.

9. Where there is no adopted development plan, regard should be had to the draft plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development.

MAKING AN APPLICATION FOR A CERTIFICATE

10. The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 5 and 6 of the Land Compensation Development Order 1974 (SI 1974 No. 539) as amended (by SI 1986 No 435). Article 3(3) of the order requires that if a certificate is issued otherwise than for the class or classes of development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal to the Secretary of State (see paragraph 15 below). Article 3(4) requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued:

11. Attention is drawn to the following points-

    (a) acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly;

    (b) it may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some

development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie. in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world'); and

(c) a certificate once issued must be taken into account in assessing compensation for the compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

ADDITIONAL INFORMAL ADVICE

12. In order that the valuers acting on either side may be able to assess the fair open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. For example, they may be asked to assist in interpreting the relevant provisions of the development plan in a case falling within section 16. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should -

(a) give any such advice to both parties to the negotiation;

(b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.

DISREGARDING THE ACQUISITION AND THE UNDERLYING SCHEME (THE 'NO SCHEME WORLD')

13. As referred to in paragraph 5 above, section 17(4) of the 1961 Act requires the local planning authority (or the Secretary of State in relation to an appeal) to certify the alternative development (if any) for which planning permission would have been granted 'in respect of the land in question, *if it were not proposed to be acquired by an authority possessing compulsory purchase powers*'. For this reason, the purpose for which land is being acquired must always be disregarded, as must any other purpose involving public acquisition. It is not sufficient to ignore the fact of acquisition—the underlying public purpose of the scheme must also be disregarded. This principle was settled by the House of Lords in *Grampian Regional Council and others -v- Secretary of State for Scotland and others* [1983] 1 WLR 1340. The approach to be adopted is considered at paragraph 18 below.

14. Section 17(7) of the 1961 Act provides that a certificate may not be refused for a particular class of development solely on the grounds that it would be contrary to the relevant development plan. The purpose of this provision is to avoid the whole purpose of the certificate system being defeated, where land is allocated in the development plan

for the use for which it is being acquired. It follows that the local planning authority (or the Secretary of State as the case may be) must ignore development plan policies with no function beyond the acquisition scheme—for example, policies that earmark land for a road or school. But the decision maker may take account of broader policies—for example, Green Belts and countryside protection policies—if these imply that the classes of alternative development suggested by the applicant or appellant would not have been acceptable in the 'no scheme world'.

APPEALS

15. The right of appeal against a certificate under section 18 of the 1961, exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the Secretary of State[1]. He may confirm, vary or cancel it, or cancel it and issue a different certificate in its place, as he considers appropriate. Before determining an appeal he must, if required by either party, give both parties and the local planning authority an opportunity to be heard. Article 4 of the Land Compensation Development Order 1974, as amended, requires that written notice of an appeal must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued. The Secretary of State has no power to extend the appeal period. After notice of appeal has been given, however, the appellant has a further month to provide the Secretary of State with a copy of the application to the planning authority, a copy of the certificate issued (if any) and a statement of the grounds of appeal. The Secretary of State does have the power to extend this period, but only if he receives the request to do so before it expires. If the required documentation is not received within the required time scale, the appeal has to be treated as withdrawn. Any person aggrieved by the Secretary of State's decision on the appeal may challenge its validity in the High Court within a period of six weeks from the date of the decision.

RELEVANT DATE FOR APPRAISAL OF APPLICATIONS AND APPEALS

16. As can be concluded from the foregoing, there are three main issues in reaching a decision on any application or appeal—

    (a) the physical considerations—that is, the state of the land and the area in which it is situated;

    (b) the current and reasonably foreseeable planning policies; and

    (c) identifying and disregarding the planning consequences of the acquisition scheme and the underlying public purpose for it.

[1] Appeals should be addressed to him at the Planning Inspectorate Special Appeals and Call-ins Branch, 3/17 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB.

17. Case law, as established by the judgement of the House of Lords in *Fletcher Estates (Harlescott) Ltd -v- the Secretary of State for the Environment and the Secretary of State for Transport and The Executors of J V Longmore -v- the Secretary of State for the Environment and the Secretary of State for Transport* [2000] 11 EG 141, determined that all these issues must be considered at the date when the interest in land is proposed to be acquired by an authority with compulsory purchase powers – the section 22(2) event as described at items (1)-(6) of paragraph 7 above.

18. For issue (c) in paragraph 16 above, the consequences of the scheme underlying the acquisition should be disregarded as they stood at the section 22(2) date, as if the scheme had been cancelled at that date (rather than as if it had never existed at all). And if the method of acquisition changes during the life of the scheme, the relevant date is that of the earliest section 22(2)(a) event.

Check list of documents to be submitted to the confirming authority[1]

The following documents should be submitted to the confirming authority with the compulsory purchase order for confirmation:

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Orders and maps		
	sealed order	1
Appendix V	sealed map	2
	unsealed order	2
	unsealed map	2
Certificates		
Appendix T	general certificate in support of order submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: - an order made on behalf of a parish council; - Church of England property; or - a listed building in need of repair.	1
Appendix S	protected assets certificate giving a nil return or a positive statement for each category of assets protection referred to in paragraph 3 of Appendix S (except for orders under section 47 of the Listed Buildings Act).	1

[1] See also paragraph 34 of this Part of the Memorandum.

CATEGORY AND PART 1 REF.	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Statements		
Appendix R	Statement of Reasons sent by acquiring authority with personal notices, enclosures to the statement of reasons, and wherever practicable any other documents referred to therein. Statement of Reasons must include a statement concerning the planning position (see paragraphs 22-23 of this Part of the Memorandum).	2
Notices		
Appendix J	Where the order is made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990), a copy of the repairs notice served in accordance with section 48	1

Appendix R

Preparing the statement of reasons

The statement of *reasons* (see paragraphs 35-36 of this Part of the Memorandum) should include the following (adapted and supplemented as necessary according to the circumstances of the particular order):

(i) a brief description of the order land and its location, topographical features and present use;

(ii) an explanation of the use of the particular enabling power (see paragraphs 13-15 of this Part of the Memorandum):

(iii) an outline of the authority's purpose in seeking to acquire the land;

(iv) a statement of the authority's justification for compulsory purchase, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human rights, and Article 8 if appropriate (see paragraphs 16-18 of this Part);

(v) a description of the proposals for the use or development of the land (see paragraph 19 of this Part);

(vi) a statement about the planning position of the order site (see paragraphs 22-23 of this Part and, for planning orders, Appendix A);

(vii) information required in the light of Government policy statements where orders are made in certain circumstances, eg. as stated in Annex E where orders are made under the Housing Acts (including a statement as to unfitness[1] where unfit buildings are being acquired under Part IX of the Housing Act 1985); or such information as may be required by any of the other documents mentioned in paragraph 11 of this Part;

(viii) any special considerations affecting the order site, eg. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc;

(ix) details of how the acquiring authority seeks to overcome any obstacle or prior consent needed before the order scheme can be implemented, eg. need for a waste management licence;

(x) details of any views which may have been expressed by a Government department about the proposed development of the order site;

[1] see footnotes to Appendix E concerning Housing Bill proposals to replace housing fitness test with Housing Health and Safety Rating System assessments.

(xi) any other information which would be of interest to persons affected by the order, eg. proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained;

(xii) details of any related order, application or appeal which may require a co-ordinated decision by the confirming Minister, eg. an order made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application; and

(xiii) if, in the event of an inquiry, the authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place.

Appendix S

Protected assets certificate and related information

1. Confirming authorities need to ensure that the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of the order.

2. Every order submitted for confirmation (except orders made under section 47 of the Listed Buildings Act[1]) should therefore be accompanied by a protected assets certificate which includes for each category of buildings or assets protection referred to in paragraph 3 **either**:

   a nil return for that category of protection

   or

   a positive statement in the appropriate format set out in paragraph 3 (or any combination, as required) **and** the additional details described in paragraph 4.

3. The forms of positive statement to be submitted are as follows (numbers in brackets refer to the Notes at the end, * = delete as appropriate):-

   (a) **Listed buildings** (*1*)

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Listed Buildings Act [*insert order reference, list reference, address*].

   (b) **Buildings subject to building preservation notices**

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which is/are* the subject(s)* of (a) building preservation notice(s) made by the……[*insert name of authority*] ……on……..[*insert date(s) of notice(s)*].

   (c) **Other buildings which may be of a quality to be listed**

   The proposals in the order will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in Planning Policy Guidance Note 15, *Planning and the Historic Environment* 'PPG 15'.

[1] For such orders, which are submitted to DCMS for confirmation, only a copy of the repairs notice under section 48 of the Listed Buildings Act is required - see Appendix J.

(d) **Buildings within a conservation area** (*2*)

The proposals in the order will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 (or, as the case may be, section 70) of the Listed Buildings Act.

(e) **Scheduled Monuments**

The proposals in the order will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to the Department for Culture, Media and Sport.

(f) **Registered parks/gardens/historic battlefields**

The proposal in the order will involve the demolition/alteration/extension* of the following park(s)/garden(s)/historic battlefield(s)* which is/are* registered under section 8C of the Historic Buildings and Ancient Monuments Act 1953.

Notes

(1) This refers to buildings listed by the Secretary of State for Culture Media and Sport only (not other forms of listing).

(2) A direction of the Secretary of State, currently in paragraph 31 of Department of the Environment, Transport and the Regions Circular 01/2001 applies for the purposes of sections 74 and 75 of the Listed Buildings Act. The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 3(d) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of an article 4 direction, the permitted development right has been withdrawn and a planning application required.

4. Any positive statement under paragraph 3 above should also be accompanied by the following details:

- particulars of the asset or assets;

- any action already taken, or action which the acquiring authority propose to take, in connection with the category of protection, eg. consent which has been, or will be, sought; and

- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available.

5. Where a submitted order entails demolition of any building which is subsequently included in a conservation area, the confirming authority should be notified as soon as possible.

Appendix T

General certificate in support of order submission[1]

The certificate should be submitted in the following form:

THE ……. COMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered……in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No. 2595) was published in two issues[2] of the …….. dated ……. 20…. and …… 20.... The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was…….. …… 20.... A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on …….. 20.... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being …… 20....

2. Notices in the Form numbered ……. in the said Regulations were duly served on

   (i) every owner, lessee, tenant and occupier of all land to which the order relates;

   (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and

   (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry.[3]

   The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was …….. 20.... The notices were served by one or more of the methods described in section 6(1) of the 1981 Act.

3. [*Where the order includes land in unknown ownership*] Notices in the Form numbered …….. in the said Regulations were duly served by one or more of the methods described in section 6(4) of the 1981 Act. The time allowed for objections in each of

[1] This certificate has no statutory status, but is intended to provide reassurance to the confirming authority that the acquiring authority has followed the proper statutory procedures - see paragraph 38 of this Part of the Memorandum.

[2] The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the Department.

[3] For an order made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the 2004 Prescribed Forms Regulations.

the notices was not less than 21 days and the last date is/was …….. 20.... .

4. A copy of the order and of the map were deposited at …… on …… 20.... and will remain/remained available for inspection until …….. .

5. (1) A copy of the authority's statement of reasons for making the order has been sent to:

(a) all persons referred to in paragraph (i), (ii) and (iii) above (see paragraph 35 of this Part of the Memorandum);

(b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.

(2) Two copies of the statement of reasons are herewith forwarded to the Secretary of State.

6. [*Where the order includes ecclesiastical property*] Notice of the effect of the order has been served on the Church Commissioners (section 12(3) of the 1981 Act).]

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds which here acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a 'faculty') is required for material alteration to consecrated land. (See Faculty Jurisdiction Measure 1964; Care of Churches and Ecclesiastical Jurisdiction Measure 1991.)

Appendix U

Preparing and serving the order and its associated notices.

PRESCRIBED FORM

1. The order and Schedule should comply with the relevant form as prescribed by regulation 3 of, and shown in the Schedule to, the Compulsory Purchase of Land (Prescribed Forms)(Ministers) Regulations 2004 (SI 2004 No. 2595). In accordance with the notes to the prescribed forms, the title and year of the Act authorising compulsory purchase must be inserted. Each acquisition power must be cited and the purpose(s) clearly stated in paragraph 1 of the order. For orders made under section 17 of the Housing Act 1985, the purpose of the order may be described as 'the provision of housing accommodation'. Where there are separate compulsory acquisition and enabling powers, each should be identified and the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. (See Appendices A and M for examples of how orders made under certain powers may be set out. Appendix F contains guidance on orders where the acquisition power is section 121 or section 125 of the Local Government Act 1972 and on orders for mixed purposes.)

TITLE OF ORDER

2. The Regulations require that the title of the order should be at the head of the order, before the titles and years of the Acts. The order title should begin with the name of the acquiring authority, followed in brackets by the general area within which the order land is situated (note (*a*), to Forms 1-6) (see also paragraph 7 below). The title to an order should include the current year, ie. the year in which the order is actually made and not the year in which the authority resolved to make it, if different.

PLACE FOR THE DEPOSIT OF THE MAPS

3. A certified copy of the order map should be deposited for inspection at an appropriate place within the locality, eg. the local authority offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed order maps are forwarded to the offices of the confirming authority (see Appendix Q).

INCORPORATION OF THE MINING CODE

4. Parts II and III of Schedule 2 to the 1981 Act, relating to mines ('the mining code'), may be incorporated in a compulsory purchase order made under powers to which the Act applies. The incorporation of both Parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the order; but it does enable the acquiring authority, if the order becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Since this may result in the sterilisation of minerals (including coal reserves), the mining code should not be incorporated automatically or indiscriminately.

5 Therefore, authorities are asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence. The advice of the Valuation Office Agency's regional mineral valuers is available to authorities when considering the incorporation of the code. In areas of coal working notified to the local planning authority by the Coal Authority under paragraph (j) of article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (GDPO), authorities are asked to notify the Coal Authority[1] and relevant licensed coal mine operator if they make an order which incorporates the mining code.

EXTENT, DESCRIPTION AND SITUATION OF LAND SCHEDULED

6. The prescribed order formats require, subject to the flexibility to adapt them permitted by Regulation 2, that the extent of the land should be stated. Therefore the area of each plot, eg. in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the order, because section 14 of the 1981 Act prohibits the modification of an order on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.

7. Each plot should be described in terms readily understood by a layman, and it is particularly important that local people can identify the land described. The Regulations require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map. (See notes to prescribed Forms 1 to 6 and paragraph 2 above.)

8. Simple descriptions in ordinary language are to be preferred. For example, where the land is agricultural it should be described as 'pasture land' or 'arable land'; agricultural and non-agricultural afforested areas may be described as 'woodland' etc.; and, if necessary, be related to some well-known local landmark, eg. 'situated to the north of School Lane about 1 km west of George's Copse'.

9. Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

10. Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the order when read with the order map fails to clearly

[1] The Coal Authority, 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG, e-mail: thecoalauthority@coal.gov.uk

identify the extent of the land to be acquired, the confirming authority may refuse to confirm the order even though it is unopposed.

COMPULSORY ACQUISITION OF NEW RIGHTS

11. See Appendix M.

COMPULSORY ACQUISITION WHERE AUTHORITY ALREADY OWNS INTERESTS

12. Except for orders made under highway land acquisition powers in Part XII of the Highways Act 1980, to which section 260 of that Act applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule in the usual way but qualify the description as follows; 'all interests in [*describe the land*] except interests already owned by the acquiring authority'. The remaining columns should be completed as described in sub-paragraphs (l) to (n) in paragraph 16 below. This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, eg. a Regional Development Agency might decide it wishes to exclude its own interests *and* local authority interests from an order.

13. Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a General Vesting Declaration (see this Part of the Memorandum, paragraphs 61-63). Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their preliminary statement of reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the confirming Minister may modify an order to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

14. A similar form of words to that described in paragraph 12 above may be appropriate where the acquiring authority wish to include in the order Schedule an interest in Crown land which is held otherwise than by or on behalf of the Crown. (In most cases, the Crown's own interests cannot be acquired compulsorily.) Further guidance on this subject is given in Appendix N.

SCHEDULED INTERESTS

15. The Schedule to the order should include the names and addresses of every qualifying person as defined in section 12(2) of the 1981 Act and upon whom the acquiring authority is required to serve notice of the making of the order. A qualifying person is –

    (i) every owner, lessee, tenant, and occupier (section 12(2)(a) of the 1981 Act);

    (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat (section 12(2A) of the 1981 Act); and

(iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act if the order is confirmed and compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry[2] (section 12(2B) of the 1981 Act).

16. The following points should be noted in connection with service of notice and the compilation of the order Schedule:

(a) the Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, eg. persons who have entered into a contract to purchase a freehold or lease;

(b) the names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agree that service may be upon a person whom they designate to accept service on their behalf. Notice served upon the partner who habitually acts in the partnership business is probably valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain;

(c) service should be effected on the Secretary or Clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, ie. as owner, lessee etc. (section 6(2) and (3) of the 1981 Act);

NB Under Company Law requirements, notices served on a company should be addressed to the Secretary of the company at its principal or registered office.

(d) individual trustees should be named and served;

(e) in the case of unincorporated bodies, such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the Secretary;

NB The land may be vested in the trustees and not the Secretary, but the trustees may be somewhat remote from the running of the club etc.; and since communications should normally be addressed to its Secretary, it is considered to be reasonable that the Secretary should also be served. However, service solely on the Secretary of such a body is not sufficient unless it can be shown that the Secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.

(f) in the case of land owned by a charitable trust it is advisable for notice of the making of the order to be served on the Charity Commissioners at their headquarters address as well as on the trustees;

[2] See paragraph 16(p) below.

(g) where land is ecclesiastical property, ie. owned by the Church of England, notice of the making of the order must be served on the Church Commissioners[3] as well as on the owners etc. of the property (see section 12(3) of the 1981 Act);

(h) where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, authorities should, at an early stage and with sufficient details to identify the site, contact the Historic Buildings and Monuments Commission for England (otherwise known as 'English Heritage'), or the County Archaeologist, according to the circumstances shown below:

(1) in respect of a *scheduled* ancient monument – English Heritage, Fortress House, 23 Savile Row, London W1S 2ET; or

(2) in respect of an unscheduled ancient monument or other object of archaeological interest – the County Archaeologist.

This approach need not delay other action on the order or its submission for confirmation, but the authority should refer to it in the letter covering their submission;

(i) where orders include land in a national park, acquiring authorities are asked to notify the National Park Authority. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify, respectively, the Countryside Agency or English Nature;

(j) when an order relates to land being used for the purposes of sport or physical recreation, the appropriate Regional Office of Sport England should be notified of the making of the order;

(k) where a person is served at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make sure that the person to be served has furnished this address or has authorised service in this way; where known, the served person's home or current address should also be shown;

(l) owners or reputed owners (column (3) of Table 1) – where known the name and address of the owner or reputed owner of the property should be shown. If there is doubt whether someone is an owner, he or she should be named in the column and a notice served on him/her. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in the sub-column and a notice served on each. Questions of title can be resolved later. If the owner of a property cannot be traced the word 'unknown' should be entered in the column. An order may include covenants or restrictions which amount to interests in land and which can, therefore, be acquired or extinguished compulsorily. Where land owned by the authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make an order to discharge the land from it. In any such circumstances, where the owner or occupier of the land and the person benefiting

[3] The Church Commissioners for England, 1, Millbank, Westminster, London, SW1P 3JZ.

from the right would not normally have been shown in the order Schedule, either (a) the Schedule should include the relevant owner or occupier, or (b) the statement of reasons should explain that authority is being sought to acquire or extinguish the relevant interest. Where the encumbrance affects land in which the acquiring authority have a legal interest, the description in the Schedule should refer to the right etc. and be qualified by the words 'all interests in, on, over or under [*the land*] except those already owned by the acquiring authority'. This should avoid giving the impression that the authority have no interest to acquire.

(m) lessees, tenants, or reputed lessees or tenants (column (3) of Table 1) – where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown;

(n) occupiers (column (3) of Table 1) – the sub-column should be completed in all cases. Where a named owner, lessee, or tenant is the occupier, the word 'owner', 'lessee' or 'tenant' should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly.

(o) Although most qualifying persons will be owners, lessees, tenants or occupiers, the possibility of there being anyone falling within one of the categories in section 12(2A) and (2B) set out in paragraph 15(ii) and (iii) above should not be ignored. The name and address of a person who is a qualifying person under section 12(2A) who is not included in column (3) of the order Schedule should be inserted in column (5) together with a short description of the interest to be acquired. An example of a person who might fall within this category is the owner of land adjoining the order land who has the benefit of a private right of way across the order land, which the acquiring authority have under their enabling power a right to acquire[4] which they are seeking to exercise. Similarly the name and address of a person who is a qualifying person under section 12(2B) who is not included in columns (3) and (5) of the order Schedule should be inserted in column (6), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of the reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the order as a result of implementing the acquiring authority's proposals.

(p) In determining the extent to which it should make 'diligent' enquiries, an authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the Compulsory Purchase Act 1965, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry[5]. An acquiring authority does not have any statutory power under section 5A of the 1981 Act to requisition information about land other than that which it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the1981 Act provides an additional means

[4] An example of this is section 18(1) of the National Parks and Access to the Countryside Act 1949 which empowers the Nature Conservancy Council to acquire an 'interest in land' compulsorily which is defined in section 114(1) to include any right over land.

[5] Popplewell J. in *R v Secretary of State for Transport ex parte Blackett [1992]* JPL 1041

of alerting people who might feel that they have grounds for inclusion in column (6) and who can then identify themselves.

SPECIAL CATEGORY LAND (see also appendices L and M)

17. Land to which sections 17, 18 and 19 of the 1981 Act apply, (or paragraphs 4, 5 and 6 of Schedule 3 to the 1981 Act in the case of acquisition of a new right over such land) should be shown both in the order Schedule and in the list at the end of the Schedule, in accordance with the relevant Notes. But in the case of section 17 of the 1981 Act (or, for new rights, Schedule 3, paragraph 4) it is only necessary to show land twice if the acquiring authority is not mentioned in section 17(3) or paragraph 4(3) of Schedule 3 (see also Appendix L paragraph 10). In the event that an order erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the confirming Minister may need to consider whether confirmation should be refused as a result.

COMMONS, OPEN SPACES ETC.

18. An order may provide for special category land to which section 19 applies ('order land') to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange ('exchange land'). Such orders must be made in accordance with the appropriate prescribed form (Forms 2, 3, 5 or 6) adapted, in compliance with the notes, to suit the particular circumstances.

19. The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the order. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (eg. in green) on the order map and described in Schedule 2 to the order. If the exchange land is not being acquired compulsorily it should be described in Schedule 3. See paragraph 22 below.

20. When an authority make an order in accordance with Form 2, if the exchange land is also acquired compulsorily, the order should include paragraph 2(ii), adapted as necessary, and cite the relevant acquisition power, if different from the power cited in respect of the order land. Paragraph 2(ii) of the Form also provides for the acquisition of land for the purpose of giving it in part exchange, eg. where the acquiring authority already own some of the exchange land.

21. In Form 2, there are different versions of paragraphs 5 and 6(2) (see Note (s)). Paragraph 5 of Form 2 defines the order land by reference to Schedule 1 and either:

    (a) where the order land is only part of the land being acquired, the specific, 'numbered' plots; or

    (b) where the order land is all the land being acquired, the land which is 'described'.

    But if the acquiring authority seek a certificate under paragraph 6(1)(b) of Schedule 3 to the 1981 Act, because they propose to provide additional land in respect of new rights being acquired (over 'rights land'), the order should include paragraph 6(1) and the appropriate paragraph 6(2) of the Form (see Note (s)). Paragraph 6 becomes

paragraph 5 if only new rights are to be acquired compulsorily. (See Appendix M paragraph 14 in relation to additional land being given in exchange for a new right.)

22. Where Form 2 is used, the order land, including rights land, must always be described in Schedule 1 to the order. Exchange and additional land should be described in Schedule 2 to the order where it is being acquired compulsorily; in Schedule 3 to the order where the acquiring authority do not need to acquire it compulsorily; or both Schedules may apply, eg. the authority may only own part of the exchange and/or additional land. Schedule 3 becomes Schedule 2 if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.

23. Paragraph 5 of Form 3 should identify the order land, by referring to either:

(a) paragraph 2, where the order land is all the land being acquired; or

(b) specific, numbered plots in the Schedule, where the order land is only part of the land being acquired.

This Form may also be used if new rights are to be acquired but additional land is not being provided. An order in this Form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

24. An order may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of section 19(1)(aa) of or paragraph 6(1)(aa) of Schedule 3 to the 1981 Act. (See also Appendix L, paragraph 27 and Appendix M, paragraph 13.) Note that the extinguishment of rights of common over land acquired compulsorily may require consent under section 22 of the Commons Act 1899.

SEALING, SIGNING AND DATING

25. All orders should be made under seal, duly authenticated and dated at the end (after the Schedule). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The order map(s) should similarly be sealed, signed and dated on the same day as the order. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure that this is achieved.

Appendix V

The order map(s)

1. The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words 'map referred to in [*order title*]' should be included in the actual heading or title of the map(s).

2. Land may be identified on order maps by colouring or any other method (see Note (*g*) to Forms 1, 2 and 3 and, in relation to exchange land, Note (*q*) to Form 5 in the 2004 Prescribed Forms Regulations) at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.

3. The use of a sufficiently large scale, Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests that the scale should be at least 1/500, and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master 'location plan' should indicate how the various sheets are interrelated.

4. Care should be taken to ensure that where it is necessary to have more than one order map, there are appropriate references in the text of the order to all of them, so that there is no doubt that they are all order maps. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the order map and *not* the location plan which identifies the boundaries of the land to be acquired. Therefore whilst the order map would be marked 'Map referred to in... 'in accordance with the prescribed form[1], a location map might be marked 'Location plan for the Map referred to in...' Such a location plan would not form part of the order and order map, but be merely a supporting document.

5. It is also important that the order map should show such details as are necessary to relate it to the description of each parcel of land in the order Schedule or Schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

6. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order Schedule(s). (For orders which include new rights, see paragraphs 8 and 9 of Appendix M.) Land which is delineated on the map but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.

[3] see Form 1 in the Schedule to the 2004 Prescribed Forms Regulations 2004.

7. There should be no discrepancy between the order Schedule(s) and the map or maps, and no room for doubt on anyone's part as to the precise areas of land which are included in the order. Where there is a minor discrepancy between the order and map confirming, the authority may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the confirming authority may refuse to confirm all or part of the order.

Appendix W

Addresses to which orders, applications and objections should be sent

1. Most compulsory purchase orders should be submitted to the Government Offices (GOs) for the Regions at the addresses shown in paragraph 3 below. The special cases mentioned in paragraphs 4-12 below should, however, be noted.

ORDERS FOR WHICH THE DEPUTY PRIME MINISTER AND FIRST SECRETARY OF STATE IS THE CONFIRMING AUTHORITY:

2. Where the Deputy Prime Minister and First Secretary of State is the confirming authority, the correspondence should be addressed 'The Deputy Prime Minister and First Secretary of State, Government Office for the [*region concerned*]' at the relevant address shown in paragraph 3, and identified by '(Planning)' or '(Housing)', as appropriate.

3. The Government Offices' addresses are-

North East
Citygate, Gallowgate, Newcastle upon Tyne NE1 4WH

North West
Sunley Tower, Piccadilly Plaza, Manchester M1 4BE

Yorkshire and Humberside
City House, New Station Street, Leeds. LS1 4US

West Midlands
77 Paradise Circus, Queensway, Birmingham. B1 2DT

East Midlands
The Belgrave Centre, Stanley Place, Talbot Street, Nottingham. NG1 5GG

South West
2 Rivergate, Temple Quay, Bristol BS1 6ED

East
Eastbrook, Shaftesbury Road, Cambridge CB2 2DF

South East
Bridge House, 1 Walnut Tree Close, Guildford, Surrey. GU1 4GA

London
Riverwalk House, 157-161 Millbank, London. SW1P 4RR

SECTION 19 CERTIFICATES

4. Applications for certificates relating to open space under section 19 of, or paragraph 6 of Schedule 3 to, the Acquisition of Land Act 1981, should be addressed to the Deputy Prime Minister and First Secretary of State at the Government Office (Planning) to which a compulsory purchase order would normally be sent for decision.

5. Applications for certificates relating to common land, town or village greens should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Countryside (Landscape and Recreation) Division, Common Land Branch, Zone 1/05, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6EB.

6. Applications for certificates relating to fuel or field garden allotments should be sent to the Deputy Prime Minister and First Secretary of State, Office of the Deputy Prime Minister (ODPM), Liveability and Sustainable Communities Division Branch C, Zone 4/G5, Eland House, Bressenden Place, London SW1E 5DU.

HIGHWAYS AND ROAD TRAFFIC ORDERS

7. Orders made under the Highways Act 1980 or the Road Traffic Regulation Act 1984 should be addressed to the Secretary of State for Transport at the Government Office for the North East, Local Authority Orders Section, at the address given in paragraph 3. above.

AIRPORTS, AIRPORT SAFETY ZONES, AND CIVIL AVIATION ORDERS

8. Airports, and airport Public Safety Zones orders should be addressed to the Secretary of State for Transport at Airports Policy Division, Zone 1/26,Great Minster House, 76 Marsham Street, London SW1P 4DR. Civil aviation orders under the Civil Aviation Act 1982 and the Airports Act 1986 should be addressed to the Secretary of State for Transport at Civil Aviation Division, Department for Transport, Zone 1/22 Great Minster House, at the same address.

WASTE DISPOSAL ORDERS

9. Orders for *waste disposal* purposes should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Waste Strategy Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

WATER & SEWERAGE UNDERTAKER ORDERS

10. Orders made by *water or sewerage* undertakers should be addressed to the Secretary of State for Environment, Food and Rural Affairs, Water Supply and Regulation Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

LOCAL AUTHORITY SEWERAGE OR FLOOD DEFENCE ORDERS AND DRAINAGE BOARD ORDERS

11. Orders made under section 62(2) of the Land Drainage Act 1991, relating to sewerage or flood defence (land drainage) functions by a local authority, and Orders made by internal drainage boards under section 62(1)(b) of that Act, should be sent to the

Department for Environment, Food and Rural Affairs, Flood Management Division, Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

FLOOD DEFENCE ORDERS AND COAST PROTECTION ORDERS

12. Orders made by the Environment Agency in relation to its flood defence functions, or by local authorities under Part I of the Coast Protection Act 1949 relating to coast protection work, should be sent to the Secretary of State for Environment, Food and Rural Affairs, Flood Management Division, Area 3C, Ergon House, Horseferry Road, London SW1P 2AL.

OTHER CONFIRMING AUTHORITIES

13. For other confirming authorities (see also paragraph 6 of this Part of the Memorandum) the correspondence should be addressed to the appropriate Secretary of State. The following addresses may be helpful:

Department	Address
Department for Education and Skills	Schools Assets Team, Mowden Hall, Staindrop Road, Darlington, Co. Durham DL3 9BG
Department of Health	(for NHS), NHS Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE (for civil estate, occupied by DH), Richmond House, 79 Whitehall, London SW1A 2NS
Home Office	50 Queen Anne's Gate, London SW1H 9AT
Department for Culture, Media & Sport	2-4 Cockspur Street, London SW1Y 5DH
Department for Work and Pensions	(for Benefits Agency), BA Estates, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AB
Department of Trade and Industry	(electricity and gas undertakings), Onshore Electricity Development Consents. Licensing and Consents Unit, Bay 2123, 1 Victoria Street, London SW1H 0ET. (See guidance in Appendix B, paragraph 2 on submitting RDA orders)

Planning and compulsory purchase act 2004

Part 8: Compulsory purchase

INTRODUCTION

1. Part 8 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') came into force on 31 October 2004[1]. For non-Ministerial compulsory purchase orders, it makes changes to the statutory provisions governing compulsory purchase and compensation which fall into three broad categories:

   - changes to the planning compulsory purchase power in section 226(1)(a) of the 1990 Act – section 99 of the 2004 Act;

   - changes to the procedures for authorising compulsory purchase in the 1981 Act – sections 100[2], 102 and 105 of the 2004 Act; and

   - changes to compensation arrangements – definition of the valuation date in section 104 and provisions for a new 'loss payment' regime in sections 106 -109 of the 2004 Act.

2. Section 110 of the 2004 Act provides that the Secretary of State can by order amend certain enactments so that they correspond with the provisions in Part 8 of the Act or apply any such provisions or corresponding provisions. These enactments are those providing for the compulsory acquisition of an interest in land, for the interference with, or otherwise affecting, any right in relation to land, and for the compensation payable as a result. The provision is intended to cover enactments to which the procedure in the 1981 Act does not apply. Section 111 in Part 9 of the 2004 Act then provides that amendments made by, or by virtue of, Part 8 apply to the Crown to the extent that the enactments amended so apply.

CHANGES TO SECTION 226(1)(A) OF THE TOWN AND COUNTRY PLANNING ACT 1990

3. Section 99 of the 2004 Act amends section 226(1)(a) of the 1990 Act to substitute a new power for the compulsory acquisition of land for planning purposes. Under the new power, local authorities, joint planning boards and National Park authorities can acquire land compulsorily for the purposes of development, redevelopment or improvement if they think that –

   - the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, that land; and

[1] SI 2004 No. 2593.

[2] Section 101 makes similar changes to those in section 100 for orders published in draft and then made by Ministers (and the National Assembly for Wales).

- the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area.

These provisions do not affect any order made before 31 October 2004. *Appendix A provides additional guidance on the application of this power.*

PROCEDURES FOR THE MAKING AND CONFIRMATION OF NON-MINISTERIAL COMPULSORY PURCHASE ORDERS UNDER THE 1981 ACT

Procedure for orders made by non-Ministerial authorities

4. Section 100 of the 2004 Act amends the procedure for the making and confirmation of non-Ministerial compulsory purchase orders. Amendments and insertions are made to sections 6, 11, 13 and 15 of the 1981 Act and sections 13A, 13B and 13C are inserted. It only applies to orders for which the newspaper notices required under section 11 of the 1981 Act are published after 31 October 2004.

Service of notices to unknown owners

5. Section 6(4) of the 1981 Act provides that order documents can be regarded as having been properly served where it has not been possible to identify the name or address of an owner, lessee, or occupier by addressing them to the 'owner', 'lessee', or 'occupier' and delivering them to some person on the land, or by leaving them on or near the land. Section 100(2) of the 2004 Act extends this provision to apply to *unidentified tenants* by addressing the documents to the 'tenant'. This is necessary because the category of persons who qualify to be served with a notice of the making of an order has been extended under section 100(5) (see paragraph 10 below).

Site notices of making of orders

6. Section 100(4) of the 2004 Act inserts subsections (3) and (4) into section 11 of the 1981 Act requiring notices of the making of an order to be fixed on or near the order land and maintained there for a minimum of 21 days. These notices repeat the matters required to be included in the newspaper notices, giving at least twenty one days from the date of fixing the notice during which objections can be made to the confirming Minister.

Entitlement to receive notices and have objections heard

7. Section 100(5) of the 2004 Act amends section 12 of the 1981 Act to extend the categories of persons who are entitled to be served with notice of the making of an order. Such a person is referred to as a qualifying person. In addition to an owner, lessee and occupier, a qualifying person includes:

- a tenant whatever the period of the tenancy;

- a person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give notice to treat; and

- a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the 1965 Act (compensation for injurious affection) if the order is confirmed and the compulsory purchase takes place, so far as he is known to the acquiring authority after making diligent inquiry.

8. An objection made by a qualifying person is defined by section 13(6) of the 1981 Act as a relevant objection, subject to an exception. If a person is a qualifying person by virtue only of the provisions of the last bullet point of the last paragraph above, but the confirming Minister thinks that he is not likely to be entitled to make a claim under section 10 of the 1965 Act, any objection he makes will not be a relevant objection.

9. If a relevant objection is neither withdrawn nor disregarded, it will be a remaining objection (section 13A(1) of the 1981 Act). If a person has made a remaining objection, the confirming Minister must either hold a public inquiry or give every person who has made a remaining objection the opportunity of being heard by a person appointed to hear representations (section 13A(3) of the 1981 Act).

10. The categories of persons entitled to be served with notice of the making of an order has been extended to enable all those with an interest in the land to be acquired to have a right to have their objections heard. However, not all such persons may be identifiable by an acquiring authority after diligent inquiry, for instance, those who may claim to enjoy prescriptive rights across the land. The new requirements in section 11(3) and (4) of the 1981 Act to affix site notices therefore provide an additional means of informing those likely to have relevant interests.

Confirmation of orders

11. Section 100(6) amends sections 13 and 15 of the 1981 Act, setting out the procedure for confirming an order and giving notice of confirmation. In summary, these amended sections together with sections 13A, 13B and 13C of the 1981 Act provide that :

- objections to an order can be considered by means of a written representations procedure to be prescribed by regulations, as an alternative to an inquiry or hearing, where all those with remaining objections give their consent;

- awards of costs can be made where the written representations procedure is followed;

- confirmation of orders can be made in stages; and

- notice of confirmation of an order is also to be given by fixing a notice on or near the order land.

Unopposed orders

12. The amended subsections (1) and (2) of section 13 of the 1981 Act provide for the appropriate Minister to confirm an unopposed order with or without modifications so long as he is satisfied that the notice requirements have been complied with and either:

- no relevant objection is made; or

- every relevant objection made is withdrawn or disregarded (as defined in new section 13(7)).

Section 102 of the 2004 Act inserts section 14A of the 1981 Act which enables the acquiring authority to exercise the power to confirm an unopposed order in certain limited circumstances where the confirming Minister has notified it to that effect. These provisions are described in more detail in paragraphs 23 to 27 below.

Opposed orders – written representations procedure or inquiry

13. The new section 13A of the 1981 Act applies to the confirmation of a compulsory purchase order where there is at least one remaining objection which has not been either withdrawn or disregarded.

14. Section 13A(2) provides that the confirming Minister can proceed under the written representations procedure where everyone who has made a remaining objection consents in the prescribed manner. There are, however, exceptions. The order must not be subject to special parliamentary procedure (for example, where open space or common land is being acquired without providing other equivalent land in exchange). Nor, unless a certificate relating to statutory undertaker's land has been given under section 16(2) of the 1981 Act, can an order to which section 16 applies[3] be determined by written representations. This is because, if no such certificate has been given, there may need to be a joint inquiry with the Minister responsible for sponsoring the statutory undertaker's business in order to consider the issue of taking the undertaker's operational land.

15. Section 13A(3) provides that in cases where the written representations procedure cannot be used, or the confirming Minister decides that it would be inappropriate, a public local inquiry must be called. Alternatively, every person with a remaining objection can be given an opportunity to be heard in person by someone appointed by the confirming Minister for that purpose[4]. Whichever procedure is followed, section 13A(5) gives the confirming Minister the power to confirm an order, with or without modification, after he has considered any objections and the report arising from an inquiry or hearing.

16. Section 13A(6) enables a written representations procedure to be prescribed. Such a procedure is now set out in the Compulsory Purchase of Land (Written Representations) (Ministers) Regulations 2004 (SI 2004 No [2595]). In summary, these regulations provide that, once the confirming Minister has indicated that the procedure will be followed (following the consent of all remaining objectors), the acquiring authority have 15 working days to make additional representations in support of the case it has already made for the order in its Statement of Reasons. Once these have been copied to the objectors, they will also have 15 working days to make representations to the confirming Minister. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors' representations but cannot raise new issues.

[3] Where the land concerned had been acquired by a statutory undertaker for the purposes of its undertaking and that undertaker makes representations to the appropriate Minister objecting to the compulsory acquisition.

[4] However, hearings are not normally used to consider objections to compulsory purchase orders because objectors are normally entitled to be heard in a public forum.

17. The Inspector then considers all the evidence, including these various representations, and makes his report to the confirming Minister. The confirming Minister can decide to call an inquiry at any time during this process. Objectors cannot withdraw their consent to the written procedure once it has been given, but they can request the confirming Minister to exercise his discretion to call an inquiry instead. More detailed information about the written representations procedure is given in 'Compulsory Purchase Procedure' (see footnote 10 to Part 1 of the Memorandum).

18. Where the written representations procedure is followed, section 13B of the 1981 Act gives the confirming Minister the power to make orders as to the costs of the parties making those representations, specifying which parties must pay the costs. A costs order can be made a rule of the High Court on the application of anyone named in the order to enable those costs to be recoverable as a civil debt. The acquiring authority can be required to pay the confirming Minister's costs if so directed, in which case the amount certified by the confirming Minister is recoverable as a civil debt.

Confirmation in stages

19. Section 13C of the 1981 Act provides a general power for a compulsory purchase order to be confirmed in relation to part only of the land included in it. This replaces similar powers applicable to specific types of acquiring authorities[5], which have been repealed.

20. To confirm in part, the confirming Minister will need to be satisfied that the proposed scheme or schemes underlying the need for the order can be independently implemented over that part of the order land to be confirmed, regardless as to whether the remainder of the order is ever confirmed. In addition, the confirming Minister has to be satisfied the statutory requirements for the service and publication of notices have been followed. A Minister may confirm part of an order prior to holding a public inquiry or following the written representations procedure but, to be able to do so, there must be no remaining objections relating to the part to be confirmed.

21. The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The remaining part is then treated as if it were a separate order. The notices of confirmation of the confirmed part of the order, which have to be published, displayed and served in accordance with section 15 of the 1981 Act, must include a statement indicating the effect of that direction.

Notices after confirmation of an order

22. Section 100(7) of the 2004 Act amends section 15 of the 1981 Act dealing with notices of the confirmation of an order. In addition to the existing provisions, section 15 now requires the confirmation notice to state that a person aggrieved by the order may apply to the High Court for it to be quashed[6]. This is not a new right, but the requirement to refer to it in the confirmation notice has been added in order to ensure that all those

[5] Section 245 of the 1990 Act; paragraph 2 of Schedule 4 to the Welsh Development Agency Act 1975; Schedule 28 to the Local Government, Planning and Land Act 1980 (re urban development corporations); section 259 of the Highways Act 1980; paragraph 2 of Schedule 10 to the Housing Act 1988 (re housing action trusts); Schedule 20 to the Leasehold Reform Housing and Urban Development Act 1993 (re Urban Regeneration Agency); and paragraph 1 of Schedule 5 to the Regional Development Agencies Act 1990 (re RDAs)

[6] as provided for in section 23 of the 1981 Act

with an interest in the land are made aware of it. The other new requirement is for a confirmation notice to be fixed on or near the land covered by the compulsory purchase order. This is to be addressed to persons occupying or having an interest in the land and must, so far as is practicable, be kept in place by the acquiring authority for six weeks beginning with the date on which the order becomes operative[7].

Confirmation by an acquiring authority

23. Section 14A of the 1981 Act (inserted by section 102 of the 2004 Act) enables an acquiring authority to exercise the power to confirm an order if the confirming Minister has notified the acquiring authority to that effect, and such notice has not been revoked. The confirming Minister may only give such notice if there are no objections at all to the order and certain other conditions are met. There is no obligation on the confirming Minister to issue such a notice if he considers that it would be inappropriate to do so. It is intended to help to speed up the confirmation of unopposed orders, and should be particularly helpful where, as part of a wider land assembly exercise, an acquiring authority needs to exercise its compulsory purchase powers in order to acquire title to land in unknown ownership. This power is only exercisable in respect of compulsory purchase orders for which the newspaper notices required under section 11 of the 1981 Act were published after 31 October 2004.

24. The power of the confirming Minister to issue such notice is excluded in cases where either:

- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the Minister responsible for sponsoring its business and he is satisfied that the land to be taken is used for the purposes of the undertaking[8]; or

- the land to be acquired forms part of a common, open space, or fuel or field garden allotment[9].

The reason for this is that confirmation of an order in these circumstances is contingent on other ministerial decisions.

25. The confirming Minister must also be satisfied that all the statutory requirements as to the service and publication of notices have been complied with; there are no outstanding objections to the order; and it is capable of being confirmed without modification[10]. These limitations avoid the acquiring authority having to decide potentially contentious matters on which it may not be in a wholly impartial position.

26. The acquiring authority's power to confirm a compulsory purchase order does not extend to being able to modify the order or to confirm the order in stages. If the

[7] The operative date is defined in section 26 of the 1981 Act as the date on which the confirmation notice is published. The need for the notice to remain visible for six weeks from that date relates to the period specified in section 23(4) of the 1981 Act during which an application can be made to the High Court to quash the order.

[8] Section 16(1) of the 1981 Act

[9] Section 19 of the 1981 Act

[10] This might not be possible if, for example, the acquiring authority has made mistakes in preparing the map or schedule accompanying the order.

acquiring authority considers that there is a need for a modification, for example, to rectify drafting errors, it will have to ask the confirming Minister to revoke the notice given under these provisions.

27. An acquiring authority exercising the power to confirm must notify the confirming Minister as soon as reasonably practicable of its decision. Until such notification is received, the confirming Minister can revoke the acquiring authority's power to confirm. Such revocation might be necessary, for example, if the confirming Minister received a late objection which raised important issues, or if the acquiring authority were to fail to decide whether to confirm within a reasonable time and those affected by the order were to make representations to the confirming Minister about the delay.

Power to obtain information on interests in land to be acquired

28. Section 105 of the 2004 Act inserts sections 5A and 5B into the 1981 Act. These ensure that acquiring authorities with statutory powers to acquire land compulsorily (to which the 1981 Act applies) can obtain the information about ownership and occupation which they may need in order to proceed with negotiations for the purchase of such land by agreement and/or compulsorily. Some types of acquiring authorities already have powers to do this[11] and, as these alternative powers have not been repealed, any authority needing to obtain information will need to make sure that they quote the correct powers and the correct penalties pertaining to those powers. The new powers are aimed mainly at ensuring that the Regional Development Agencies, Urban Development Corporations and English Partnerships (as the Urban Regeneration Agency) are no longer hampered by the fact that they have not hitherto enjoyed such powers.

29. Section 5A enables acquiring authorities to require details of the names and addresses of any person believed to be an owner, lessee, tenant or occupier, or believed to have an interest in the land which they are seeking to acquire. The persons from whom the acquiring authority can require such information are restricted to the occupier of the land; anyone having an interest in the land as a freeholder, mortgagee or lessee; anyone who receives rent for the land, whether directly or indirectly; and anyone who is authorised to manage the land or its letting by an agreement with someone having an interest in the land. Section 5B makes failure to provide such information without reasonable excuse or knowingly to provide false information an offence subject to a fine on level 5 on the standard scale.

CHANGES TO COMPENSATION ARRANGEMENTS

Section 103 of the 2004 Act – Assessment of compensation: valuation date

30. Section 103 of the 2004 Act inserts section 5A into the Land Compensation Act 1961. This new section establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that

[11] Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 empowers local authorities to requisition for such information with a view to performing a function conferred on them by any enactment. Local planning authorities have similar, but not identical, powers under section 330 of the 1990 Act exercisable for the purpose of enabling them to perform functions under that Act. Highways authorities have powers to require information under section 297 of the Highways Act 1980.

such a valuation is to be based on market values prevailing as at the valuation date and on the condition of the relevant land and any structures on it on that date.

31. Where an acquiring authority is following the notice to treat procedure, the relevant valuation date is the date on which the acquiring authority enters and takes possession of the land. Alternatively, where title to the land is being vested in the acquiring authority automatically by means of a general vesting declaration, the relevant valuation date is the date on which title to the land vests in the authority (the 'vesting date'). The only statutory variation from these dates arises if the compensation payable has already been determined by the Lands Tribunal before either such trigger date has been reached. In such a case, the date on which the compensation is determined by the Lands Tribunal becomes the relevant valuation date. It also remains open to the person whose land is being acquired to agree compensation with the acquiring authority at any time in accordance with the provisions of section 3 of the Compulsory Purchase Act 1965.

32. Section 5A(5) of the 1961 Act makes it clear that the relevant valuation date for the *whole* of the land included in any single notice of entry is to be the date on which the acquiring authority first takes possession of any *part* of that area of land. This means that compensation becomes payable to the claimant for the whole site from that date; and section 5A(6) gives him the right to receive interest on the compensation due to him in respect of the value of the whole site from that date until full payment is actually made.

Advance payments of compensation to mortgagees

33. Section 104 of the 2004 Act amends sections 52 and 52A of the Land Compensation Act 1973 and inserts sections 52ZA, 52ZB and 52ZC into that Act. Their effect is that, once possession has been taken and so long as certain conditions are fulfilled, a claimant mortgagor can require the acquiring authority to make advance payments of compensation direct to his mortgagee. Advance payments relating to the amount owing to the mortgagee can only be made direct to the mortgagee, and can only be made with his consent. Payments can be made to more than one mortgagee, but no payment can be made to any mortgagee until the interest of any other mortgagee whose interest has priority has been released.

34. Section 52ZA enables an acquiring authority to make an advance payment to a claimant's mortgagee where the total amount of the mortgage principal outstanding does not exceed 90% of the estimated total compensation due to the claimant. Alternatively, section 52ZB applies where the principal exceeds 90% of the total estimated compensation due to the claimant. The conditions relating to both types of payments are complex and, in order to protect the interests of all three parties, it will be advisable for an acquiring authority to work closely with both the claimant and his mortgagee(s) in determining the amount of the advance payable.

Loss payments

35. Sections 106-109 of the 2004 Act insert sections 33A to 33K into the Land Compensation Act 1973 to provide a new statutory scheme which, with certain exclusions, provides for 'loss payments' to be paid to those with an interest in a property being compulsorily acquired and who are not already entitled to receive payments under

the home loss scheme in sections 29 to 33 of the 1973 Act. Loss payments are additional to the compensation due on the basis of the value of the claimant's interest in the land being acquired, any compensation due for severance and injurious affection and compensation to cover disturbance costs.

36. The new regime applies both to compulsory acquisitions and, by virtue of section 33J, to situations where the land is being acquired by agreement by an authority which has the power to acquire it compulsorily. The intention behind this is to provide an additional incentive to encourage early voluntary negotiations between acquiring authorities and landowners, possibly even avoiding the need to initiate the statutory acquisition procedures. Loss payments can only be made in respect of the compulsory acquisition of any interest in land resulting from a compulsory purchase order made[12] after 31 October 2004. In the case of voluntary acquisitions, though, such payments can be made in respect of any acquisition agreed from that date.

Repeal of farm loss payments

37. As the new loss payments regime includes compensation for the loss of agricultural land, the farm loss payments scheme under sections 34 to 36 of the 1973 Act has been repealed from 31 October 2004.

Basic loss payments

38. Section 33A of the 1973 Act provides for the payment of a *basic loss payment* to any person who has a qualifying interest in land being acquired under compulsory purchase powers and in respect of which he or she is not entitled to receive a home loss payment. This payment is assessed at the rate of 7.5% of the value of the claimant's interest in the property to be acquired, subject to a maximum of £75,000. This means that the maximum becomes payable where the value of the claimant's interest in the property being acquired is £1 million. No minimum sum is specified.

39. If any part of a claimant's interest is a dwelling for which he is entitled to receive a home loss payment, the value of that dwelling (as assessed for entitlement to a home loss payment) has to be subtracted from the value of the entire interest before calculating the basic loss payment due for the remainder.

40. Where a claimant's compensation has been assessed on the basis of equivalent reinstatement, the open market value is deemed to be nil. This means that no basic loss payment is payable. Nevertheless, the claimant would be entitled to claim an occupier's loss payment (referred to below) if in occupation.

Occupiers' loss payments

41. Section 107 inserts sections 33B and 33C into the 1973 Act providing for *occupier's loss payments* to be made to any person who satisfies the conditions for the basic loss payment and has also occupied the land to be acquired for the qualifying period.

42. Section 33B provides for occupier's loss payments in respect of *agricultural land* and section 33C provides for occupier's loss payments in respect of *other land*. Subject to a

[12] made in draft in the case of a Ministerial compulsory purchase order (or a compulsory purchase order made by the National Assembly for Wales).

maximum of £25,000, the occupier's loss payment is assessed either on the basis of 2.5% of the value of the claimant's interest in the land being acquired or, where to do so would be more advantageous to the claimant, on the basis of one of two alternative formulae. One of these relates to the area of *land* being taken and the other to the floor space of the *building* from which the claimant is being displaced. Whichever of these three alternative approaches is adopted, the maximum amount payable for an occupier's loss payment is £25,000. This means that the maximum TOTAL loss payment to an owner-occupier is £100,000[13].

Occupier's loss payments – land amounts

43. Where it is advantageous to the claimant to calculate his entitlement to a loss payment on the basis of the area of land being taken, section 33B(8) specifies that for agricultural land, this is to be £100 per hectare for the first 100 hectares taken, and then £50 per hectare for the next 300 hectares or part of a hectare. A minimum payment of £300 is also specified to benefit those whose land-take is less than 3 hectares.

44. Where land other than agricultural land is being taken, section 33C(8) specifies that the land amount is to be £2,500 or, if it would yield a higher amount, £2.50 per square metre (or part of a square metre). This is substantially higher than the land amount payable in respect of agricultural land to reflect the differential in the range of typical values between agricultural and other land. The minimum threshold of £2,500 is intended to ensure that a claimant whose interest is not very valuable will still receive a meaningful sum to compensate for the upset and inconvenience caused by being displaced. Hence, if only part of a claimant's land is being taken so that he is not being displaced, section 33C(9) stipulates that the minimum payable is to be £300.

Occupier's loss payments – buildings amounts

45. Section 33B(9) specifies that the basis for calculating the alternative buildings amount for agricultural land is to be £25 per square metre (or part of a square metre) of the external gross floor space of any buildings on the land. This is identical to the buildings amount for the occupiers' loss payments in respect of other land, as provided for in section 33C(10), as the upset and inconvenience caused by being displaced from operational buildings is likely to be similar whatever the purpose to which they are being put.

Exclusions from entitlement to loss payments

46. Section 108 of the 2004 Act inserts section 33D into the 1973 Act to specify exclusions from entitlement to loss payments where the compulsory acquisition has been triggered by the owner's failure to comply with the terms of one of the statutory notices or orders specified in that section. This is aimed at persons who have either deliberately or neglectfully allowed their property to deteriorate to the point where, following their failure to comply with a statutory requirement to remedy the situation, it has to be compulsorily purchased in order to bring it into beneficial use. The section includes a regulation-making power to enable the Minister to add any new statutory remedial actions which may be created in the future and to delete any of the current remedial powers if they were to be repealed.

[13] £75,000 for the basic loss payment plus an occupier's loss payment of £25,000.

PART 2 – THE CRICHEL DOWN RULES

RULES AND PROCEDURES

1. This Part of the Memorandum sets out the revised non-statutory arrangements ('Crichel Down Rules') under which surplus Government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the Annex to this Part below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this Part all bodies to whom any one or more of the Rules apply or are commended are referred to as 'departments', whether they are Government Departments, including Executive Agencies, other non-departmental public bodies ('NDPBs'), local authorities or other statutory bodies. See paragraphs 3 and 4 below. The Annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the Department, the Rules apply in a mandatory manner.

2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK Government Department. Similar rules have been issued by the National Assembly for Wales. Departments disposing of land in Scotland should follow the procedures set out in circular SODD 38/1992: *Disposal of Surplus Government Land – The Crichel Down Rules* and in Northern Ireland they should follow the guidance produced by the Central Advisory Unit of the Valuation and Lands Agency.

3. Detailed guidance on the general procedures to be followed when disposing of surplus land are set out in Annex 24.2 to Chapter 24 of Government Accounting 2000 (Disposal of land and buildings and other land transactions on the open market). Disposing departments should, where appropriate, also have regard to the advice in *Revised Guidance on Securing the Better Use of Empty Homes* issued in August 1999 by the Department of the Environment, Transport and the Regions.

4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.

5. It is the view of the Government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of PFI/PPP projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the PFI/PPP contract.

6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water

Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

THE LAND TO WHICH THE RULES APPLY

7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

8. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter II in Part VI of, and Schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.

9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

THE GENERAL RULES

10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have 'materially changed' where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11. Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

INTERESTS QUALIFYING FOR OFFER BACK

12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. 'Successor' means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

TIME HORIZON FOR OBLIGATION TO OFFER BACK

14. The general obligation to offer back will not apply to the following types of land:

(1) agricultural land acquired before 1 January 1935;

(2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;

(3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

EXCEPTIONS FROM THE OBLIGATION TO OFFER BACK

15. The following are exceptions to the general obligation to offer back:-

(1) Where it is decided on specific Ministerial authority that the land is needed by another department (i.e. that it is not, in a wider sense, surplus to Government requirements).

(2) Where it is decided on specific Ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.

(3) Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile.

(4) Where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.

(5) Where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:-

(i) land acquired under sections 16, 84 or 85 of the Agriculture Act 1947;

(ii) land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those Acts, and which is resold for private industrial use;

(iii) where dwellings are bought for onward sale to a Registered Social Landlord (RSL);

(iv) sites purchased for redevelopment by English Partnerships or a regional development agency (RDA).

(6) Where a disposal is in respect of either:-

(i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or

(ii) a site which consists partly of land which has been materially changed in character and part which has not;

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (i.e. its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

(7) Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department's professionally qualified valuer and specifically agreed by the responsible Minister.

16. Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17. In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

DWELLING TENANCIES

18. Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this Part) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

PROCEDURES FOR DISPOSAL

19. Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

Where former owner's address is known

20. Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21. Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22. Advertisements inviting the former owner to contact the disposing department will be placed as follows:-

    (a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department's web site;

    (b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

    Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23. Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

24. Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED

25. The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

TERMS OF RESALE

26. Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department's professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell houses to tenants with the right to buy.

27. As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Government's or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

RECORDING OF DISPOSALS

28. Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.

Appendix A

(see paragraph 18 of the Rules)

SITTING TENANTS

1. In the context of the Rules, the expression 'sitting tenant' was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property which is to be sold as surplus to a department's requirements is not, as a tenant of the Crown, in occupation by virtue of a statutory form of tenancy under the Rent Act 1977 or the Housing Act 1988. However, when deciding whether a person is a sitting tenant for the purposes of paragraph 18 of the Rules, the department concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.

2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of paragraph 18 of the Rules if the tenancy is analogous to either:-

   (a) a regulated tenancy under the Rent Act 1977, (i.e. a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or

   (b) an assured tenancy under the Housing Act 1988, (i.e. a tenancy begun on or after that date, but excluding an assured shorthold tenancy).

3. Without prejudice to paragraph 15(6) of the Rules, therefore, paragraph 18 of the Rules does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:-

   (a) a protected shorthold tenancy under the Housing Act 1980, including any case where a person who held such a tenancy, or his or her successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or

   (b) an assured shorthold tenancy under the Housing Act 1988.

4. It is recognised, however, that some tenants who fall within paragraph 3 above, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B

(see paragraph 25 of the Rules)

SPECIAL PROCEDURES WHERE BOUNDARIES OF AGRICULTURAL LAND HAVE BEEN OBLITERATED

(a) Each former owner will be asked whether he or she wishes to acquire any land.

(b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.

(c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.

(d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Departments should, however, make every effort to offer each interested former owner at least one lot.

(e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, departments will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.

Annex

(see paragraph 1 of the Rules)

Guidance for departments

CHANGES FROM THE 1992 RULES

1. Several changes have been made to the Rules following the recommendations in the research report 'The Operation of the Crichel Down Rules' (Gerald Eve with the University of Reading, DETR July 2000), the comments received on them and in response to the ODPM consultation exercise of September 2003. A significant change is the provision of this guidance, which is intended to provide clarification even where the terms of a particular Rule remained unaltered.

2. Substantive changes have been made to the following Rules:-

- **Rule 2** a new Rule to set out the territorial application of the revised Rules;
- **Rule 3** updated references to guidance on the general procedures to be followed when disposing of surplus land;
- **Rule 4** revision of the former Rules 3 and 4 dealing with the application of the Rules to local authorities, statutory bodies and certain bodies in the private sector;
- **Rule 5** a new rule dealing with land transfers from public bodies to other bodies, PFI/PPP projects;
- **Rule 8** formerly Rule 6, dealing with land acquired under blight provisions;
- **Rule 9** formerly Rule 7, this applies the Rules to leasehold disposals;
- **Rule 10** formerly Rule 9, the references to 'agricultural land' and 'urban site' have been deleted;
- **Rule 12** formerly Rule 11, clarification of the arrangements for offering back land that at the time of acquisition was subject to a long lease;
- **Rule 14** formerly Rule 13, defines the date of acquisition as the date of conveyance, transfer or vesting declaration;
- **Rule 15** formerly Rule 14, clarifies the handling of transfers of land between bodies with compulsory purchase powers, the treatment of small areas of land, provides examples where the offer back would be inconsistent with purpose of the original acquisition, the treatment of consortia and competing bids;

- **Rule 16** new Rule dealing with the notification of former owners if any of the exceptions to the Rules apply;

- **Rules 17 & 18** formerly Rules 15 and 16 the application of Rule 17 to sitting tenants is clarified and references to 'house' and 'tenanted house' amended;

- **Rule 22** rationalises the arrangements for advertisements;

- **Rule 28** new Rule dealing with the maintenance of records.

BODIES TO WHICH THESE RULES APPLY (RULE 2)

3. These Rules apply to all Government Departments, executive agencies and NDPBs in England and other organisations in England (such as NHS Trusts) which are subject to a power of direction by a Minister. They also apply to land in Wales acquired and still owned by a UK Government Department.

APPLICATION OF THE RULES BY LOCAL AUTHORITIES AND STATUTORY BODIES (RULE 4)

4. Local authorities and other statutory bodies which are not subject to a Ministerial power of direction (for example, statutory undertakers) but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are recommended to follow the Rules. Such authorities and bodies include those holding land in Wales acquired under an enabling power which remains capable of being confirmed by a UK Minister, such as the Secretary of State for Trade and Industry. The previous practice amongst such authorities has been very variable, but the Government would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires Government Departments and others to offer back surplus land but not local authorities. A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not.

5. The approach of these bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to the Rules which depend upon Ministerial authority (Rules 15(1), 15(2) and 15(7)) local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the Chairman. For disposals at the end of PPP/PFI agreements, departments may wish to seek legal advice in order to take account of the Rules.

THE THREAT OF COMPULSION (RULE 7)

6. A 'threat of compulsion' should be assumed in the case of a voluntary sale if the power to acquire the land compulsorily existed at the time. This means that the acquiring department did not need to have instituted compulsory purchase procedures or even to have actively 'threatened' to use them for this Rule to apply. It is enough for the acquiring authority to have statutory powers available if it wished to invoke them. For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority could use its powers

under the Highways Act 1980 to make a CPO. The only exception is where the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

WHAT CONSTITUTES A DISPOSAL? (RULE 9)

7. In addition to freehold disposals, any proposal to create and dispose of a leasehold interest of more than 7 years or capable of being extended to more than 7 years by virtue of contract or statute or where the total period of successive leases amounts to more than 7 years will be subject to the Rules. Disposals for the purposes of granting PFI/PPP projects do not fall within the Rules, see Rule 5. Government Accounting makes it clear that sale is normally preferable to lease but there may be cases where a short-term lease is appropriate if there is little prospect of an early sale. See paragraph 6 of Annex 24.2 to Chapter 24 of Government Accounting 2000.

WHAT IS A MATERIAL CHANGE OF CHARACTER? (RULE 10)

8. The Rules refer to a 'material change in character' to the land available for disposal. In the original Commons debate on the Crichel Down case in 1954, 'material change' was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries have been lost. However, other examples of a material change of character could include the erection of buildings on bare, open land (although it should be noted that the erection of temporary buildings is not necessarily a material change); the afforestation of open land; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site.

LAND SUBJECT TO A LONG LEASE (RULE 12)

9. If neither the former freeholder or former leaseholder are identifiable or interested in buying the land back then the freehold freed from any lease can be disposed of on the open market.

WHO IS A SUCCESSOR? (RULE 13)

10. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification 'otherwise than by purchase' may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

WHEN IS THE DATE OF ACQUISITION? (RULE 14)

11. Rule 14 says that the date of acquisition is the date of the conveyance, transfer or vesting declaration. Problems may arise where land has been requisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within the Rules if the date of transfer was used, but not if the date of requisition was. To avoid these difficulties the date of acquisition is therefore taken to be the date of conveyance, transfer or vesting declaration.

WHAT ARE 'REASONS OF PUBLIC INTEREST'? (RULE 15(2))

12. The courts have held that rule 15(2) (formerly 14(2)) does not require these to be matters where life or limb are at risk. In practice, this exception may be invoked where the body to which the land is to be sold could have made a compulsory purchase order to obtain it had it been owned by a third party (See *R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler*, The Times 4 August 2000).

SMALL AREAS OF LAND (RULE 15(3))

13. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.

WHEN IS IT INCONSISTENT WITH THE PURPOSE OF THE ORIGINAL ACQUISITION TO OFFER LAND BACK? (RULE 15(5))

14. The sections of the Agriculture Act 1947 referred to in this Rule deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85). In addition to the statutory examples quoted, the general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to the Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner; or land purchased by English Partnerships or a regional development agency (RDA) and sold for reclamation and redevelopment. This exception will apply to disposals by statutory bodies with specific primary rather than incidental functions to develop or redevelop land, and to disposals by their successor bodies. In such cases, land would only be subject to the Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

TRANSFER TO THE PRIVATE SECTOR

15. Rule 14(6) of the 1992 Rules, (which would have been Rule 15(6) in these Rules) has been deleted as such transfers are now dealt with by Rule 5, which makes it clear that land transferred to another body for the same functions is not surplus.

DWELLING TENANCIES (RULE 18)

16. For the purposes of the Rules a 'dwelling' includes a flat.

PROCEDURES FOR DISPOSAL (RULES 19-24)

17. The Rules specify various time limits in the procedures for disposal. However, to assist in the speedy disposal of sites, departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

MARKET VALUE AND THE DATE OF VALUATION (RULE 26)

18. For the purposes of the Rules, 'market value' means 'the best price reasonably obtainable for the property'. This is equivalent to the definition of 'market value' in the RICS Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (i.e. any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). Full guidance is available in Annex 24.2 to Chapter 24 of Government Accounting 2000. 'Current market value' means the market value on the date of the receipt by the disposing department of the notification of the former owner's intention to purchase.

MAINTENANCE OF RECORDS (NEW RULE 28)

19. In order to make it possible for the operation of these revised Rules to be monitored, disposing departments should include on each disposal file a note of its consideration of the Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner. It would also be very helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant department on a central (or regional) file, so that the information would be readily available for any future monitoring exercise.

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Compulsory Purchase and the Crichel Down Rules

Planning Act 2008

Guidance related to procedures for the compulsory acquisition of land

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Contents

Introduction

1. The Planning Act 2008 ("the Planning Act") created a new development consent regime for major infrastructure projects[1] in the fields of energy, transport, water, waste water, and waste.

2. This guidance is designed to assist those intending to make an application for a development consent order under the Planning Act where their application seeks authorisation for the compulsory acquisition of land or rights over land[2]. Its aim is to help applicants understand the powers contained in the Planning Act, and how they can be used to best effect. This guidance also advises on the application of the correct procedures and statutory or administrative requirements, to help ensure that the process of dealing with such orders is as fair, straightforward and accurate for all parties as possible.

3. Sections 122 to 134 of the Planning Act set out the main provisions relating to the authorisation of compulsory acquisition of land. These provisions specify the conditions which must be satisfied if a development consent order is to authorise compulsory acquisition, apply the provisions of the Compulsory Purchase Act 1965 (with appropriate modifications), restrict the provision which may be made about compensation in an order, and set out additional requirements which apply in relation to certain special types of land and Crown land.

4. The Planning Act was amended by the Growth and Infrastructure Act 2013. In particular the Growth and Infrastructure Act made changes to the consent and certification requirements (sections 127, 131, 132, 137 and 138 of the Planning Act), and to the circumstances where special parliamentary procedure can be triggered (sections 128, 129, 131 and 132). These changes are reflected in the remainder of this guidance where they are relevant. References to the Planning Act in this guidance should be read as including the amendments made by the Growth and Infrastructure Act.

[1] Major infrastructure projects will be used throughout this guidance to refer to projects that are granted development consent under the Planning Act.

[2] Unless otherwise stated, in the remainder of this guidance document any reference to the compulsory acquisition of land also includes any compulsory acquisition of rights over such land.

Justification for seeking authorisation for compulsory acquisition

5. Applicants seeking authorisation for the compulsory acquisition of land should make appropriate provision for this in their draft development consent order.

6. Section 122 of the Planning Act provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:

- the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132, and

- there is a compelling case in the public interest for the compulsory acquisition.

7. Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below set out some of the factors which the Secretary of State will have regard to in deciding whether or not to include a provision authorising the compulsory acquisition of land in a development consent order.

General considerations

8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

9. The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 (see paragraphs 11-13 below).

10. The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.

The purpose for which compulsory acquisition is sought

11. Section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first of these is related to the purpose for which compulsory acquisition is sought. These three purposes are set out in section 122(2):

(i) the land is required for the development to which the development consent relates

For this to be met, the applicant 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 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.

(ii) the land is required to facilitate or is incidental to the proposed development.

An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate.

(iii) the land is replacement land which is to be given in exchange under section 131 or 132 of the Planning Act.

This may arise, for example, where land which forms part of an open space or common is to be lost to the scheme, but the applicant does not hold other land in the area which may be suitable to offer in exchange. Again, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose, and that what is proposed is proportionate.

Compelling case in the public interest

12. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

13. For this condition to be met, 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. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

Balancing public interest against private loss

14. 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.

15. In practice, there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land.

16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.

Resource implications of the proposed scheme

17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

18. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.

Other matters

19. The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, applicants will need to be able to demonstrate that:

- any potential risks or impediments to implementation of the scheme have been properly managed;
- they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

Pre-application

20. A development consent order may only contain a provision authorising compulsory acquisition if one of the conditions set out in section 123(2)–(4) are met. These are that:

- the application for the order included a request for compulsory acquisition of land to be authorised - in which case the proposals will have been subject to pre-application consultation, and the other pre-application and application procedures set out in the Planning Act have been followed; or
- if the application did not include such a request, then the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 have been followed; or
- all those with an interest in the land consent to the inclusion of the provision.

Preparatory work

21. Before an application is made, applicants will need to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Planning Act. In particular, sections 42 and 44 require applicants to consult those with interests in relevant land.

22. Applicants must also ensure that they comply with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the Applications Regulations”). These contain specific requirements where compulsory acquisition is sought, including the following information:

- a statement of reasons (see paragraphs 31-33);

- a statement to explain how the proposals contained in an order which includes authorisation for compulsory acquisition will be funded (see paragraphs 17-18);

- a plan showing the land which would be acquired, including protected land and any proposed replacement land (see Annex C);

- a book of reference (see Annex D).

23. Applicants are expected to seek their own legal and professional advice when preparing an application under the Planning Act. However, where an applicant has concerns or questions about technical points concerning a draft order, including provisions regarding compulsory acquisition, the Planning Inspectorate may be able to provide advice or clarification. Advice is also available to those who wish to make representations in respect of applications for development consent.

Consultation

24. Applicants are required under section 37 of the Planning Act to produce a consultation report alongside their application, which sets out how they have complied with the consultation requirements set out in the Act. Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship with those whose interests are affected, by showing that the applicant is willing to be open and to treat their concerns with respect. It may also help to save time during the examination process by addressing and resolving issues before an application is submitted, and reducing any potential mistrust or fear that can arise in these circumstances.

25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset[3].

[3] It should be noted that in some cases it may be preferable, or necessary, to acquire compulsorily rather than by agreement. In the case of land belonging to and held inalienably by the National Trust, because the Trust has no power to dispose of land so held, the compulsory acquisition of Trust land must be authorised in an order even if the Trust is minded not to oppose the proposals.

26. Applicants should consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan for compulsory acquisition at the same time as conducting negotiations. Making clear during pre-application consultation that compulsory acquisition will, if necessary, be sought in an order will help to make the seriousness of the applicant's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

Use of alternative dispute resolution techniques

27. In the interests of speed and fostering good will, applicants are urged to consider offering full access to alternative dispute resolution techniques for those with concerns about the compulsory acquisition of their land. These should involve a suitably qualified independent third party and should be available throughout the whole of the compulsory acquisition process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed.

28. The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected.

Other means of involving those affected

29. Other actions which applicants should consider initiating during the preparatory stage include:

- providing full information about what the compulsory acquisition process under the Planning Act involves, the rights and duties of those affected and an indicative timetable for the decision making process;

- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

30. The applicant may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)

Statement of Reasons

31. The Applications Regulations require applicants to submit with their application a statement of reasons relating to the compulsory acquisition.

32. The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant's opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights.

33. When serving a compulsory acquisition notice under section 134 of the Planning Act, applicants should also send to each person they are notifying a copy of the statement of reasons and a plan showing how that person's land is affected by compulsory acquisition proposals.

Examination

34. Applications for a development consent order authorising compulsory acquisition will be subject to the same examination procedures as all other applications under the Planning Act. These procedures are set out in the Infrastructure Planning (Examination Procedure) Rules 2010 and in a guidance document[4].

35. Once an application has been accepted for examination, applicants must notify the people who have an interest in the application, and give them a deadline by which they can register their interest and assert their right to make representations about the application to the Planning Inspectorate (section 56 of the Planning Act) providing at least the minimum amount of time prescribed. When the application seeks an order authorising compulsory acquisition, applicants must also notify the Secretary of State of the names and other details of people who are affected (section 59 of the Planning Act).

36. Where the Secretary of State has accepted an application for an order which would authorise the compulsory acquisition of land, section 92 of the Planning Act requires the Secretary of State to hold an oral compulsory acquisition hearing if requested to by an "affected person"[5] within the set deadline. At this hearing each affected person will be able to make oral representations regarding the compulsory acquisition request, subject to the procedures governing the hearing.

[4] See guidance at: https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent

[5] As defined in section 59(5) of the Planning Act.

Authorisation

37. The Secretary of State will decide whether an order can be made granting development consent which authorises the compulsory acquisition of land. Once an order authorising compulsory acquisition has been made, applicants must also ensure that they comply with the notification requirements specified under section 134 of the Planning Act.

Other relevant provisions in the Planning Act

Special categories of land

38. The compulsory acquisition of certain types of land (land held inalienably by the National Trust, land forming part of a common (including a town or village green), open space, or fuel or field garden allotment and statutory undertakers' land) is subject to additional restrictions. These restrictions are described in more detail in Annex A.

Crown land

39. Unlike other land, interests in Crown land cannot generally be compulsorily acquired. Therefore, where such land is required for a major infrastructure project, the land, or an interest in it held by or on behalf of the Crown, will need to be acquired through negotiation and bilateral agreement. Discussions between applicants and the appropriate Crown authority should start as soon as it is clear that such land or interests will be required[6]. As it may be possible that the project as a whole will not get development consent if a voluntary agreement with the Crown authority is not reached, the aim should be to ensure that agreement is in place no later than the time that the application for the project is submitted to the Planning Inspectorate.

40. Section 135 of the Planning Act does allow development consent orders to contain provisions which authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Consent to the acquisition of such an interest must be given by the appropriate Crown authority for the land concerned before the compulsory acquisition provision can be included in a development consent order. Early discussions should be entered into in relation to such land where it is clear that such a provision will be required in the development consent order. Further details on the provisions of section 135 and the need for early agreement on Crown authority consents are set out in Annex B.

[6] Land or interests held by the Crown or a Duchy as defined by section 227(3) and 227(4) of the Planning Act.

Other relevant provisions

41. Applicants should also note that section 125 of the Planning Act applies (with suitable modifications and omissions) the provisions of Part 1 of the Compulsory Purchase Act 1965 to all orders made under the Planning Act which authorise the compulsory acquisition of land (section 125 also makes suitable provision for land in Scotland). These provisions govern the procedures to be followed once the compulsory acquisition of land has been authorised under the Planning Act.

42. An order under the Planning Act may also provide for a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

Decisions

43. Unlike the two stage process which generally operates for compulsory purchase, whereby an order is made by an acquiring authority but then has to be confirmed by a Minister, an order under the Planning Act is made in a single stage and does not have to be confirmed by another authority. Unless it is subject to special parliamentary procedure, an order for development consent under the Planning Act becomes operative when it is made, unless a different coming into force date is provided for in the order itself.

44. Unless the order is subject to legal challenge, the applicant may then implement the compulsory acquisition provisions. Implementation of compulsory acquisition provisions may be by "notice to treat" or, if the order so provides, by "general vesting declaration". A notice to treat must be served within 5 years or within any other period specified in the order.

Further guidance

45. The ODPM circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* contains further general guidance on matters related to compulsory acquisition, including on serving a "notice to treat", making a general vesting declaration, and compensation and other matters[7].

[7] Circular 06/2004 is currently being revised as part of the Government review of planning practice guidance.

Annex A:
Special categories of land

1. Certain special categories of land are subject to additional provisions in the Planning Act where it is proposed that they should be compulsorily acquired. This includes the possibility of any compulsory acquisition provision in the development consent order being subject to special parliamentary procedure.

2. Special parliamentary procedure requires those elements of a development consent order covering the compulsory acquisition of special land to be subject to further scrutiny by Parliament before it can come into effect.

3. Following the amendments to the Planning Act made by the Growth and Infrastructure Act 2013 the compulsory acquisition of the following types of land may, in certain cases, be subject to special parliamentary procedure:

   - Land held by the National Trust inalienably (section 130);
   - Land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132).

   For applications for development consent made after the commencement of the Growth and Infrastructure Act[8], special parliamentary procedure will no longer apply where the land being acquired is held by a local authority or a statutory undertaker. Special parliamentary procedure will still apply, however, to land held by a local authority or statutory undertaker if that land is common land, open space, or fuel or field garden allotments and protected by sections 131 and 132.

National Trust Land

4. An order granting development consent may be subject to special parliamentary procedure to the extent that the order authorises the compulsory acquisition of land held inalienably by the National Trust.

[8] The amendments made by the Growth and Infrastructure Act in respect of special parliamentary procedure will apply to all applications for development consent made on or after 25 June 2013. In addition, certain transitional and savings provisions apply to applications made on or after 19 October 2012 - see http://www.legislation.gov.uk/uksi/2013/1124/made

5. Special parliamentary procedure will be triggered where the National Trust makes a formal objection to compulsory acquisition of that land and that objection is not withdrawn.

Commons (including town or village greens), open space, or fuel or field garden allotments

6. Sections 131 and 132 of the Planning Act make provision for special parliamentary procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common, open space, or fuel or field garden allotment.

7. Special parliamentary procedure will apply in such cases unless the Secretary of State is satisfied that one of the following circumstances applies:

- replacement land has been, or will be, given in exchange for land being compulsorily acquired (sections 131(4) or 132(4));
- the land being compulsorily acquired does not exceed 200 square metres in extent or is required for specified highway works, and the provision of land in exchange is unnecessary in the interests of people entitled to certain rights or the public (sections 131(5) or 132(5));
- for open space only, that replacement land in exchange for open space land being compulsorily acquired is not available, or is available only at a prohibitive cost, and it is strongly in the public interest for the development to proceed sooner than would be likely if special parliamentary procedure were to apply (sections 131(4A) or 132(4A));
- for open space only, if the land, or right over land, is being compulsorily acquired for a temporary purpose (sections 131(4B) or 132(4B)).

The last two of these circumstances were added by the Growth and Infrastructure Act. This Act also removed the separate procedural requirements for issuing a certificate where the Secretary of State is of the view that one of the circumstances described above applies[9]. Instead, these matters will be considered and determined as part of the development consent order application process and recommendations provided to enable the Secretary of State to reach a view.

[9] Subject to the transitional and savings arrangements set out in the Commencement Order: http://www.legislation.gov.uk/uksi/2013/1124/made

Replacement land

8. Where either section 131(4) or 132(4) of the Planning Act applies, the Secretary of State will have regard to such matters as relative size and proximity of the replacement land when compared with the land it is proposed to compulsorily acquire through the development consent order.

9. Land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as replacement land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed replacement land is temporary (e.g. pending development). In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future.

Other provisions

10. Where either section 131(5) or 132(5) of the Planning Act applies, the Secretary of State will need to be satisfied that both criteria are met:

    - the order land (in total) does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and

    - the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

11. In coming to a view as to whether the criteria are met, the Secretary of State will have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, the Secretary of State may be reluctant to be satisfied in terms of section 131(5) or 132(5).

Land held by statutory undertakers

12. The Growth and Infrastructure Act repealed sections 128 and 129 of the Planning Act. This removed the possibility of special parliamentary procedure applying to situations where a development consent order provided for the compulsory acquisition of land, or rights over land, held by a statutory undertaker for the purposes of their undertaking.

13. Section 127(2) of the Planning Act places restrictions on the compulsory acquisition of land held by statutory undertakers for the purposes of their undertaking. Where the land falls into the description set out in that section and a statutory undertaker makes a representation, the Secretary of State will need to be satisfied that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

14. Section 127(5) places restrictions on the compulsory acquisition of rights over statutory undertakers' land where new rights over that land are created. If the circumstances in that subsection apply the Secretary of State will need to be satisfied that:

- the rights can be purchased without any serious detriment to the carrying on of the undertaking, and;
- any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

Annex B:
Crown Land

Compulsory acquisition of an interest in Crown land

1. Section 135(1) of the Planning Act enables development consent orders authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. Such an interest could include, for example, a lease granted over Crown land to a third party that is not itself the Crown, or an easement or right of way over Crown land granted to such a third party.

2. If provisions to compulsorily acquire such interests are to be included in a development consent order, then the consent of the appropriate Crown authority[10] is needed. It is important that such consent is obtained at the earliest opportunity as the development consent order cannot be made by the Secretary of State until the consent of the Crown authority is in place. The applicant for a project should ensure that any discussions with the Crown authority are started as soon as it is clear that an interest in Crown land will need to be acquired – i.e. before their application is submitted to the Planning Inspectorate for acceptance. The aim should be to ensure that Crown consent is in place before the application for the development consent order is submitted. If consent is not granted by the time an application is submitted, then the applicant should give an indication of when they expect consent to be received. At the very latest, this should be by the time the examination phase of the project is completed. This will allow the Examining Authority's recommendations to the Secretary of State on whether to grant development consent for the project to include a reference to the outcome of the application for Crown consent.

3. Early engagement is vital to ensure that the section 135 consenting requirement does not delay the final decision by the Secretary of State on the development consent order. It is the responsibility of applicants to notify the appropriate Crown authority if a section 135(1) consent is required. Applicants and Crown authorities are expected to do all they reasonably can to ensure an early resolution of any Crown consent needed. If, following notification by the applicant, it is clear that Crown consent is not going to be given, the appropriate Crown authority will aim to notify the applicant of the project before their application is submitted to the Planning Inspectorate.

[10] See section 227 of the Planning Act.

4. Applicants should note that certain Crown authorities may be unable to give general consents for compulsory purchase of interests in Crown land, and applicants should therefore be in a position to identify the specific third party interests which are required to be compulsorily purchased. Drafting in the development consent order may be needed to reflect this and where further specific interests are then identified, further consent would then be required from the appropriate Crown authority.

Other Provisions applying to Crown Land

5. Section 135(2) of the Planning Act allows a development consent order to include any provision which applies "in relation to Crown land or rights benefiting the Crown", but only if the appropriate Crown authority consents to the inclusion of the provision. These provisions could include, for example, a power to use Crown land temporarily for construction or maintenance of a project. “Rights benefiting the Crown” do not include rights that benefit the general public.

6. If the applicant is proposing to include such provisions in a draft development consent order, they should seek early discussions with the relevant Crown authority on whether such consent is likely to be granted before they submit their application to the Planning Inspectorate for acceptance. The Crown authority should also provide an early view on any issues that will need to be resolved if their consent is to be granted. These can then be taken into account by the applicant before they submit their application to the Planning Inspectorate. Any outstanding matters should then be identified in the application so these can be covered during the examination if relevant.

7. Wherever possible, the applicant should seek, and the Crown authority should give, a consent decision before the application is submitted, even if that is only on an “in principle basis” in advance of the examination of the project. The Crown authority should give a final decision on Crown consent by the time the examination of the project is completed. This will ensure that all relevant issues are covered during the examination and that a decision by the Secretary of State on the development consent order is not delayed by the need for Crown authority consent. If, at decision stage, the Secretary of State decides to make changes to the development consent order that go beyond the scope of the earlier Crown consent, then the Crown authority will be consulted and invited to give a final consent. Again decision on that final consent should be given promptly so the final decision on the development consent for the project is not delayed.

Annex C:
Plan which must accompany an application seeking authorisation for compulsory acquisition

1. The Applications Regulations require a land plan (see regulation 5(2)(i)) to identify any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land.

2. Applicants should ensure that references to the plan in the draft order and other documentation relating to the application correspond exactly with headings on the plan itself.

3. All land to be compulsorily acquired, and any replacement land, should be clearly identified on the plan by colouring or by any other method at the discretion of the applicant. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and replacement land is shown green. Where black-and-white copies are used they must still provide clear identification of the land to be compulsorily acquired and, where appropriate, any replacement land (e.g. by suitable shading or hatching).

4. The use of a sufficiently large scale, Ordnance Survey based map is important. The Applications Regulations specifies that maps should be on a scale no smaller than 1/2500. However, experience has shown that for compulsory acquisition a map of this scale is only suitable for rural areas. In general, the map scale should not be smaller than 1/1250, and for land in a densely populated urban area, the scale should be at least 1/500 and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. Where a plan requires three or more separate sheets, they should be bound together, and a key plan should be provided showing how the various sheets are interrelated.

5. Where it is necessary to have more than one sheet, appropriate references must be made to each of them in the text of the draft order so that there is no doubt that they are all related to the order. If it is necessary to include a key plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the plan itself, and not the key plan which identifies the boundaries of the land to be acquired.

6. It is also important that the plan should show such details as are necessary to relate it to the description of each parcel of land (including land affected by temporary occupation) described in the book of reference. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.

7. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the book of reference. Land which is delineated on the map but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.

8. There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the Secretary of State may refuse to make the order until this is made clear.

9. Where an applicant seeks authorisation for compulsory acquisition of additional land not included in the original application, and has not therefore been able to comply with the Applications Regulations, they must either secure the consent of all those with an interest in the land in question or observe the relevant procedures set out in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

Annex D:
The Book of Reference

1. The book of reference is defined in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It comprises a book, in five Parts, together with any relevant plan.

2. Part 1 should contain the names and addresses for service of each person within Categories 1 and 2 in respect of any land which it is proposed shall be subject to:

   (i) powers of compulsory acquisition;

   (ii) rights to use land, including the right to attach brackets or other equipment to buildings; or

   (iii) rights to carry out protective works to buildings;

   Category 1 persons are the owners, lessees, tenants, or occupiers of land. Category 2 persons are those who have an interest in the land or who have the power to sell or convey the land or release the land.

3. Part 2 should contain the names and addresses for service of each person within Category 3. These are persons who might be entitled to make a relevant claim if the development consent order were to be made and fully implemented (section 57(4) of the Planning Act).

4. Part 3 should contain the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) where these would be extinguished, suspended or interfered with as a result of the provisions in the development consent order for which an application is being made.

5. Part 4 should specify the owner of any Crown interest in the land which it is proposed to use for the purposes of the development consent order for which an application is being made.

6. Part 5 should specify land the acquisition of which could be subject to special parliamentary procedure, or which is special category land or which is replacement land for land being compulsorily acquired.

7. The descriptions of each plot of land included in parts 1-5 of the book of reference where it is intended that all or part of the proposed development and works shall be carried out, should include the area in square metres of each plot.

8. Applicants will need to be aware that each part in the book of reference serves a different purpose and persons may need to be identified in one or more parts. For example, a person entitled to enjoy easements or other private rights over land which the applicant proposes to extinguish, suspend or interfere with identified in Part 3 should also be recorded in Part 1 as a person within categories 1 or 2 as set out in section 57 of the Planning Act. Part 4 should specify the owner of any Crown interest in land it is proposed to be used for the purposes of the development consent order. Some (although not necessarily all) of these Crown interests may also be identified in the descriptions of land contained in Part 1 which will be subject to powers of compulsory acquisition, rights to use land or rights to carry out protective works to buildings.

9. Applicants should not add any further (non-prescribed) parts to a book of reference, for example schedules of statutory undertakers or other like bodies having or possibly having a right to keep equipment on, in or over the land within the order limits. 'Dashes' or other ambiguous descriptions should be avoided. Diligent inquiry should enable applicants to know whether or not such persons have an interest or right in land for the purposes of section 57 and if they are known to applicants the names and addresses should be contained in the relevant part(s) of the book of reference.

10. Where it is proposed to create and acquire new rights compulsorily they should be clearly identified. The book of reference should also cross-refer to the relevant articles contained in the development consent order.

COMMISSION DELEGATED REGULATION (EU) No 1391/2013

of 14 October 2013

amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 [1], and in particular Article 3(4) thereof,

Whereas:

(1) Regulation (EU) No 347/2013 sets out a new framework for infrastructure planning and project implementation for the period up to 2020 and beyond. It identifies nine strategic geographic infrastructure priority corridors in the domains of electricity, gas and oil, and three Union-wide infrastructure priority areas for electricity highways, smart grids and carbon dioxide transportation networks, and establishes a transparent and inclusive process to identify concrete projects of common interest (PCIs). Projects labelled as PCIs will benefit from accelerated and streamlined permit granting procedures, better regulatory treatment and – where appropriate – financial support under the Connecting Europe Facility (CEF).

(2) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Commission is to be empowered to adopt delegated acts to establish the Union list of PCIs (Union list) on the basis of the regional lists adopted by the decision-making bodies of the Regional Groups as established under that Regulation.

(3) Project proposals submitted for inclusion in the first Union list of PCIs were assessed by the Regional Groups established under Regulation (EU) No 347/2013 and composed of representatives of the Member States, national regulatory authorities, transmission system operators (TSOs), as well as the Commission, the Agency for the Cooperation of Energy Regulators (the Agency) and the European Network of Transmission System Operators for Electricity and Gas (ENTSO-E and ENTSOG).

(4) In the context of the work of the Regional Groups, organisations representing relevant stakeholders, including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection, were consulted.

(5) The draft regional lists were agreed upon during a meeting at technical level, comprising representatives of the Commission and of the relevant Member States, on 13 July 2013. Following an opinion by the Agency on the draft regional lists submitted on 17 July 2013, the final regional lists were adopted by the decision-making bodies of the Regional Groups on 24 July 2013. All of the proposed projects obtained the approval of the Member States to which territory they relate, in accordance with Article 172 of the TFEU and with Article 3(3)(a) of Regulation (EU) No 347/2013.

(6) The Union list of PCIs is based on the final regional lists. One project had to be removed from the list due to ongoing discussions on the designation of Natura 2000 sites.

(7) The projects on this first Union list of PCIs were assessed against, and found to meet, the criteria for projects of common interest set out in Article 4 of Regulation (EU) No 347/2013.

(8) Cross-regional consistency was ensured, taking into account the opinion of the Agency submitted on 17 July 2013.

(9) The PCIs are listed according to the order of the priority corridors set out in Annex I of Regulation (EU) No 347/2013. The list does not contain any ranking of projects.

[1] OJ L 115, 25.4.2013, p. 39.

(10) PCIs are either listed as stand-alone PCIs or as part of a cluster of several PCIs. Some PCIs have been clustered because of their interdependent, potentially competing or competing nature [1]. All PCIs are subject to the same rights and obligations established by Regulation (EU) No 347/2013.

(11) The Union list contains PCIs in different stages of their development. Some are still in the early phases, i.e. the pre-feasibility, feasibility or assessment phases. In those cases, studies are still needed to demonstrate that the projects are technically and economically viable, and that they are compliant with Union legislation, and with Union environmental legislation in particular. In this context, potential impacts on the environment should be adequately identified, assessed and avoided or mitigated.

(12) The inclusion of projects in the Union list of PCIs, in particular of those still in the early phases, is without prejudice to the outcome of relevant environmental assessment and permitting procedures. Projects not in compliance with Union legislation should be removed from the Union list of PCIs. The implementation of the PCIs, including their compliance with EU legislation, should be monitored at national level and pursuant to Article 5 of Regulation (EU) No 347/2013.

(13) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Union list is to take the form of an annex to that Regulation.

(14) Regulation (EU) No 347/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

An Annex VII is added to Regulation (EU) No 347/2013 in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 October 2013.

For the Commission
The President
José Manuel BARROSO

[1] As explained in the Annex.

ANNEX

The following annex is added to Regulation (EU) No 347/2013:

'ANNEX VII

Union list of projects of common interest ("union list"), referred to in Article 3(4)

A. The Commission applied the following principles when establishing the Union list:

1. *Clusters of PCIs*

Some PCIs form part of a cluster because of their interdependent, potentially competing or competing nature. The following principles were applied for the clustering of PCIs:

— A **cluster of interdependent PCIs** is defined as a "Cluster X including the following PCIs". Clusters of interdependent projects have been formed to identify those projects which are all needed to address the same bottleneck across country borders and which provide synergies if realised together. In this case, all projects have to be implemented to realise the Union-wide benefits.

— A **cluster of potentially competing PCIs** is defined as a "Cluster X including one or more of the following PCIs". Clusters of potentially competing projects reflect uncertainty around the extent of the bottleneck across country borders. In this case, not all of the PCIs contained in the clusters have to be implemented. It is left to the market whether all, several or one of the projects go ahead, subject to the necessary planning, permitting and regulatory approvals. The need for the projects shall be reassessed in the subsequent PCI identification process, including with regard to the capacity needs.

— A **cluster of competing PCIs** is defined as a "Cluster X including one of the following PCIs". Clusters of competing projects address the same bottleneck across country borders. However, the extent of the bottleneck is more certain than in the second case above and it is therefore clear that only one of the PCIs has to be implemented. It is left to the market which one of the projects goes ahead, subject to the necessary planning, permitting and regulatory approvals. Where necessary, the need for the projects shall be reassessed in the subsequent PCI identification process.

All PCIs are subject to the same rights and obligations established by Regulation (EU) No 347/2013.

2. *Treatment of substations, back-to-back stations and compressor stations*

Substations and back-to-back stations in electricity and compressor stations in gas are considered as part of the PCIs and are not mentioned explicitly, if they are geographically located on the transmission line. If they are placed in a different location, they are explicitly mentioned. These items are subject to the rights and obligations of Regulation (EU) No 347/2013.

B. Union list of projects of common interest:

1. **Priority corridor Northern Seas offshore grid ("NSOG")**

No	Definition
1.1.	Cluster Belgium – United Kingdom between Zeebrugge and Canterbury [currently known as the NEMO project] including the following PCIs: 1.1.1. Interconnection between Zeebrugge (BE) and the vicinity of Richborough (UK) 1.1.2. Internal line between the vicinity of Richborough and Canterbury (UK) 1.1.3. Internal line between Dungeness to Sellindge and Sellindge to Canterbury (UK)
1.2.	PCI Belgium – two grid-ready offshore hubs connected to the onshore substation Zeebrugge (BE) with anticipatory investments enabling future interconnections with France and/or UK
1.3.	Cluster Denmark – Germany between Endrup and Brunsbüttel including the following PCIs: 1.3.1. Interconnection between Endrup (DK) and Niebüll (DE) 1.3.2. Internal line between Brunsbüttel and Niebüll (DE)

No	Definition
1.4.	Cluster Denmark – Germany between Kassö and Dollern including the following PCIs: 1.4.1. Interconnection between Kassö (DK) and Audorf (DE) 1.4.2. Internal line between Audorf and Hamburg/Nord (DE) 1.4.3. Internal line between Hamburg/Nord and Dollern (DE)
1.5.	PCI Denmark – Netherlands interconnection between Endrup (DK) and Eemshaven (NL)
1.6.	PCI France – Ireland interconnection between La Martyre (FR) and Great Island or Knockraha (IE)
1.7.	Cluster France-United Kingdom interconnections, including one or more of the following PCIs: 1.7.1. France – United Kingdom interconnection between Cotentin (FR) and the vicinity of Exeter (UK) [currently known as FAB project] 1.7.2. France — United Kingdom interconnection between Tourbe (FR) and Chilling (UK) [currently known as the IFA2 project] 1.7.3. France – United Kingdom interconnection between Coquelles (FR) and Folkestone (UK) [currently known as the ElecLink project]
1.8.	PCI Germany – Norway interconnection between Wilster (DE) and Tonstad (NO) [currently known as the NORD.LINK project]
1.9.	Cluster connecting generation from renewable energy sources in Ireland to United Kingdom, including one or more of the following PCIs: 1.9.1. Ireland – United Kingdom interconnection between Co. Offaly (IE), Pembroke and Pentir (UK) 1.9.2. Ireland – United Kingdom interconnection between Coolkeeragh — Coleraine hubs (IE) and Hunterston station, Islay, Argyll and Location C Offshore Wind Farms (UK) 1.9.3. Ireland – United Kingdom interconnection between the Northern hub, Dublin and Codling Bank (IE) and Trawsfynyd and Pembroke (UK) 1.9.4. Ireland – United Kingdom interconnection between the Irish midlands and Pembroke (UK) 1.9.5. Ireland – United Kingdom interconnection between the Irish midlands and Alverdiscott, Devon (UK) 1.9.6. Ireland – United Kingdom interconnection between the Irish coast and Pembroke (UK)
1.10.	PCI Norway – United Kingdom interconnection
1.11.	Cluster of electricity storage projects in Ireland and associated connections to United Kingdom, including one or more of the following PCIs: 1.11.1. Hydro-pumped storage in North West Ireland 1.11.2. Ireland – United Kingdom interconnection between North West Ireland (IE) and Midlands (UK) 1.11.3. Hydro-pumped (seawater) storage in Ireland – Glinsk 1.11.4. Ireland – United Kingdom interconnection between Glinsk, Mayo (IE) and Connah's Quai, Deeside (UK)
1.12.	PCI compressed air energy storage in United Kingdom – Larne

2. **Priority corridor North-South electricity interconnections in Western Europe ("NSI West Electricity")**

No	Definition
2.1.	PCI Austria internal line between Westtirol and Zell-Ziller (AT) to increase capacity at the AT/DE border
2.2.	Cluster Belgium — Germany between Lixhe and Oberzier [currently known as the ALEGrO project] including the following PCIs: 2.2.1. Interconnection between Lixhe (BE) and Oberzier (DE) 2.2.2. Internal line between Lixhe and Herderen (BE) 2.2.3. New substation in Zutendaal (BE)
2.3.	Cluster Belgium – Luxembourg capacity increase at the BE/LU border including the following PCIs: 2.3.1. Coordinated installation and operation of a phase-shift transformer in Schifflange (LU) 2.3.2. Interconnection between Aubange (BE) and Bascharage/Schifflange (LU)
2.4.	PCI France – Italy interconnection between Codrongianos (IT), Lucciana (Corsica, FR) and Suvereto (IT) [currently known as the SA.CO.I. 3 project]
2.5.	Cluster France — Italy between Grande Ile and Piossasco, including the following PCIs: 2.5.1. Interconnection between Grande Ile (FR) and Piossasco (IT) [currently known as Savoie-Piemont project] 2.5.2. Internal line between Trino and Lacchiarella (IT)
2.6.	PCI Spain internal line between Santa Llogaia and Bescanó (ES) to increase capacity of the interconnection between Bescanó (ES) and Baixas (FR)
2.7.	PCI France – Spain interconnection between Aquitaine (FR) and the Basque country (ES)
2.8.	PCI Coordinated installation and operation of a phase-shift transformer in Arkale (ES) to increase capacity of the interconnection between Argia (FR) and Arkale (ES)
2.9.	PCI Germany internal line between Osterath and Philippsburg (DE) to increase capacity at Western borders
2.10.	PCI Germany internal line between Brunsbüttel-Großgartach and Wilster-Grafenrheinfeld (DE) to increase capacity at Northern and Southern borders
2.11.	Cluster Germany – Austria – Switzerland capacity increase in Lake Constance area including the following PCIs: 2.11.1. Interconnection between border area (DE), Meiningen (AT) and Rüthi (CH) 2.11.2. Internal line in the region of point Rommelsbach to Herbertingen, Herbertingen to Tiengen, point Wullenstetten to point Niederwangen (DE) and the border area DE-AT
2.12.	PCI Germany – Netherlands interconnection between Niederrhein (DE) and Doetinchem (NL)

No	Definition
2.13.	Cluster Ireland – United Kingdom (Northern Ireland) interconnections, including one or more of the following PCIs: 2.13.1. Ireland – United Kingdom interconnection between Woodland (IE) and Turleenan (UK – Northern Ireland) 2.13.2. Ireland – United Kingdom Interconnection between Srananagh (IE) and Turleenan (UK – Northern Ireland)
2.14.	PCI Italy – Switzerland interconnection between Thusis/Sils (CH) and Verderio Inferiore (IT)
2.15.	Cluster Italy – Switzerland capacity increase at IT/CH border including the following PCIs: 2.15.1. Interconnection between Airolo (CH) and Baggio (IT) 2.15.2. Upgrade of Magenta substation (IT) 2.15.3. Internal line between Pavia and Piacenza (IT) 2.15.4. Internal line between Tirano and Verderio (IT)
2.16.	Cluster Portugal capacity increase at PT/ES border including the following PCIs: 2.16.1. Internal line between Pedralva and Alfena (PT) 2.16.2. Internal line between Pedralva and Vila Fria B (PT) 2.16.3. Internal line between Frades B, Ribeira de Pena and Feira (PT)
2.17.	PCI Portugal – Spain interconnection between Vila Fria – Vila do Conde – Recarei (PT) and Beariz – Fontefría (ES)
2.18.	PCI capacity increase of hydro-pumped storage in Austria — Kaunertal, Tyrol
2.19.	PCI hydro-pumped storage in Austria — Obervermuntwerk II, Vorarlberg province
2.20.	PCI capacity increase of hydro-pumped storage in Austria — Limberg III, Salzburg
2.21.	PCI hydro-pumped storage in Germany — Riedl

3. **Priority corridor North-South electricity interconnections in Central Eastern and South Eastern Europe ("NSI East Electricity")**

No	Definition
3.1.	Cluster Austria – Germany between St. Peter and Isar including the following PCIs: 3.1.1. Interconnection between St. Peter (AT) and Isar (DE) 3.1.2. Internal line between St. Peter and Tauern (AT) 3.1.3. Internal line between St. Peter and Ernsthofen (AT)
3.2.	Cluster Austria – Italy between Lienz and Veneto region including the following PCIs: 3.2.1. Interconnection between Lienz (AT) and Veneto region (IT) 3.2.2. Internal line between Lienz and Obersielach (AT) 3.2.3. Internal line between Volpago and North Venezia (IT)

No	Definition
3.3.	PCI Austria – Italy interconnection between Nauders (AT) and Milan region (IT)
3.4.	PCI Austria – Italy interconnection between Wurmlach (AT) and Somplago (IT)
3.5.	Cluster Bosnia and Herzegovina – Croatia between Banja Luka and Lika including the following PCIs: 3.5.1. Interconnection between Banja Luka (BA) and Lika (HR) 3.5.2. Internal lines between Brinje, Lika, Velebit and Konjsko (HR)
3.6.	Cluster Bulgaria capacity increase with Greece and Romania including the following PCIs: 3.6.1. Internal line between Vetren and Blagoevgrad (BG) 3.6.2. Internal line between Tsarevets and Plovdiv (BG)
3.7.	Cluster Bulgaria – Greece between Maritsa East 1 and N. Santa including the following PCIs: 3.7.1. Interconnection between Maritsa East 1 (BG) and N. Santa (EL) 3.7.2. Internal line between Maritsa East 1 and Plovdiv (BG) 3.7.3. Internal line between Maritsa East 1 and Maritsa East 3 (BG) 3.7.4. Internal line between Maritsa East 1 and Burgas (BG)
3.8.	Cluster Bulgaria – Romania capacity increase including the following PCIs: 3.8.1. Internal line between Dobrudja and Burgas (BG) 3.8.2. Internal line between Vidino and Svoboda (BG) 3.8.3. Internal line between Svoboda (BG) and the splitting point of the interconnection Varna (BG) - Stupina (RO) in BG 3.8.4. Internal line between Cernavoda and Stalpu (RO) 3.8.5. Internal line between Gutinas and Smardan (RO) 3.8.6. Internal line between Gadalin and Suceava (RO)
3.9.	Cluster Croatia – Hungary – Slovenia between Žerjavenec/Heviz and Cirkovce including the following PCIs: 3.9.1. Interconnection between Žerjavenec (HR)/Heviz (HU) and Cirkovce (SI) 3.9.2. Internal line between Divača and Beričevo (SI) 3.9.3. Internal line between Beričevo and Podlog (SI) 3.9.4. Internal line between Podlog and Cirkovce (SI)
3.10.	Cluster Israel – Cyprus – Greece between Hadera and Attica region [currently known as the euro Asia Interconnector] including the following PCIs: 3.10.1. Interconnection between Hadera (IL) and Vasilikos (CY) 3.10.2. Interconnection between Vasilikos (CY) and Korakia, Crete (EL) 3.10.3. Internal line between Korakia, Crete and Attica region (EL)

No	Definition
3.11.	Cluster Czech Republic internal lines to increase capacity at North-Western and Southern borders including the following PCIs: 3.11.1. Internal line between Vernerov and Vitkov (CZ) 3.11.2. Internal line between Vitkov and Prestice (CZ) 3.11.3. Internal line between Prestice and Kocin (CZ) 3.11.4. Internal line between Kocin and Mirovka (CZ) 3.11.5. Internal line between Mirovka and Cebin (CZ)
3.12.	PCI internal line in Germany between Lauchstädt and Meitingen to increase capacity at Eastern borders
3.13.	PCI internal line in Germany between Halle/Saale and Schweinfurt to increase capacity in the North-South Corridor East
3.14.	Cluster Germany – Poland between Eisenhűttenstadt and Plewiska [currently known as the GerPol Power Bridge project] including the following PCIs: 3.14.1. Interconnection between Eisenhűttenstadt (DE) and Plewiska (PL) 3.14.2. Internal line between Krajnik and Baczyna (PL) 3.14.3. Internal line between Mikułowa and Świebodzice (PL)
3.15.	Cluster Germany – Poland between Vierraden and Krajnik including the following PCIs: 3.15.1. Interconnection between Vierraden (DE) and Krajnik (PL) 3.15.2. Coordinated installation and operation of phase shifting transformers on the interconnection lines between Krajnik (PL) – Vierraden (DE) and Mikułowa (PL) – Hagenwerder (DE)
3.16.	Cluster Hungary — Slovakia between Gőnyü and Gabčikovo including the following PCIs: 3.16.1. Interconnection between Gőnyü (HU) and Gabčikovo (SK) 3.16.2. Internal line between Velký Ďur and Gabčikovo (SK) 3.16.3. Extension of Győr substation (HU)
3.17.	PCI Hungary – Slovakia interconnection between Sajóvánka (HU) and Rimavská Sobota (SK)
3.18.	Cluster Hungary – Slovakia between Kisvárda area and Velké Kapušany including the following PCIs: 3.18.1. Interconnection between Kisvárda area (HU) and Velké Kapušany (SK) 3.18.2. Internal line between Lemešany and Velké Kapušany (SK)
3.19.	Cluster Italy – Montenegro between Villanova and Lastva including the following PCIs: 3.19.1. Interconnection between Villanova (IT) and Lastva (ME) 3.19.2. Internal line between Fano and Teramo (IT) 3.19.3. Internal line between Foggia and Villanova (IT)

No	Definition
3.20.	Cluster Italy – Slovenia between West Udine and Okroglo including the following PCIs: 3.20.1. Interconnection between West Udine (IT) and Okroglo (SI) 3.20.2. Internal line between West Udine and Redipuglia (IT)
3.21.	PCI Italy – Slovenia interconnection between Salgareda (IT) and Divača — Bericevo region (SI)
3.22.	Cluster Romania – Serbia between Resita and Pancevo including the following PCIs: 3.22.1. Interconnection between Resita (RO) and Pancevo (RS) 3.22.2. Internal line between Portile de Fier and Resita (RO) 3.22.3. Internal line between Resita and Timisoara/Sacalaz (RO) 3.22.4. Internal line between Arad and Timisoara/Sacalaz (RO)
3.23.	PCI hydro-pumped storage in Bulgaria — Yadenitsa
3.24.	PCI hydro-pumped storage in Greece — Amfilochia
3.25.	PCI battery storage systems in Central South Italy
3.26.	PCI hydro-pumped storage in Poland — Młoty

4. **Priority corridor Baltic Energy Market Interconnection Plan ("BEMIP Electricity")**

No	Definition
4.1.	PCI Denmark – Germany interconnection between Ishőj/Bjæverskov (DK) and Bentwisch/Gűstrow (DE) via offshore windparks Kriegers Flak (DK) and Baltic 2 (DE) [currently known as Kriegers Flak Combined Grid Solution]
4.2.	Cluster Estonia – Latvia between Kilingi-Nõmme and Riga [currently known as 3rd interconnection] including the following PCIs: 4.2.1. Interconnection between Kilingi-Nõmme (EE) and Riga CHP2 substation (LV) 4.2.2. Internal line between Harku and Sindi (EE)
4.3.	PCI Estonia/Latvia/Lithuania synchronous interconnection with the Continental European networks
4.4.	Cluster Latvia – Sweden capacity increase [currently known as the NordBalt project] including the following PCIs: 4.4.1. Internal line between Ventspils, Tume and Imanta (LV) 4.4.2. Internal line between Ekhyddan and Nybro/Hemsjö (SE)
4.5.	Cluster Lithuania – Poland between Alytus (LT) and Elk (PL) including the following PCIs: 4.5.1. LT part of interconnection between Alytus (LT) and LT/PL border 4.5.2. Internal line between Stanisławów and Olsztyn Mątki (PL) 4.5.3. Internal line between Kozienice and Siedlce Ujrzanów (PL) 4.5.4. Internal line between Płock and Olsztyn Mątki (PL)

No	Definition
4.6.	PCI hydro-pumped storage in Estonia — Muuga
4.7.	PCI capacity increase of hydro-pumped storage in Lithuania — Kruonis

5. **Priority corridor North-South gas interconnections in Western Europe ("NSI West Gas")**

Projects allowing bidirectional flows between Ireland and the United Kingdom:

No	Definition
5.1.	Cluster to allow bidirectional flows from Northern Ireland to Great Britain and Ireland and also from Ireland to United Kingdom including the following PCIs: 5.1.1. Physical reverse flow at Moffat interconnection point (Ireland/United Kingdom) 5.1.2. Upgrade of the SNIP (Scotland to Northern Ireland) pipeline to accommodate physical reverse flow between Ballylumford and Twynholm 5.1.3. Development of the Islandmagee Underground Gas Storage (UGS) facility at Larne (Northern Ireland)
5.2.	PCI Twinning of Southwest Scotland onshore system between Cluden and Brighouse Bay. (United Kingdom)
5.3.	PCI Shannon LNG Terminal located between Tarbert and Ballylongford (Ireland)

Projects allowing bidirectional flows between Portugal, Spain France and Germany:

No	Definition
5.4.	PCI 3rd interconnection point between Portugal and Spain
5.5.	PCI Eastern Axis Spain-France – interconnection point between Iberian Peninsula and France at Le Perthus [currently known as Midcat]
5.6.	PCI Reinforcement of the French network from South to North – Reverse flow from France to Germany at Obergailbach/Medelsheim Interconnection point (France)
5.7.	PCI Reinforcement of the French network from South to North on the Bourgogne pipeline between Etrez and Voisines (France)
5.8.	PCI Reinforcement of the French network from South to North on the east Lyonnais pipeline between Saint-Avit and Etrez (France)

Bidirectional flows between Italy, Switzerland, Germany and Belgium/France:

No	Definition
5.9.	PCI Reverse flow interconnection between Switzerland and France
5.10.	PCI Reverse flow interconnection on TENP pipeline in Germany
5.11.	PCI Reverse flow interconnection between Italy and Switzerland at Passo Gries interconnection point
5.12.	PCI Reverse flow interconnection on TENP pipeline to Eynatten interconnection point (Germany)

Development of interconnections between the Netherlands, Belgium, France and Luxembourg:

No	Definition
5.13.	PCI New interconnection between Pitgam (France) and Maldegem (Belgium)
5.14.	PCI Reinforcement of the French network from South to North on the Arc de Dierrey pipeline between Cuvilly, Dierrey and Voisines (France)
5.15.	Cluster implementing gas compressor optimisation in the Netherlands including the following PCIs: 5.15.1. Emden (from Norway to Netherlands) 5.15.2. Winterswijk/Zevenaar (from the Netherlands to Germany) 5.15.3. Bocholtz (from the Netherlands to Germany) 5.15.4. 's Gravenvoeren (from the Netherlands to Belgium) 5.15.5. Hilvarenbeek (from the Netherlands to Belgium)
5.16.	PCI Extension of the Zeebrugge LNG terminal.
5.17.	Cluster between Luxembourg, France and Belgium including one or more of the following PCIs: 5.17.1. Interconnection between France and Luxembourg. 5.17.2. Reinforcement of the interconnection between Belgium and Luxembourg

Other projects:

No	Definition
5.18.	PCI Reinforcement of the German network to reinforce interconnection capacities with Austria [currently known as Monaco pipeline phase I] (Haiming/Burghausen-Finsing)
5.19.	PCI Connection of Malta to the European Gas network (gas pipeline with Italy at Gela and Floating LNG Storage and Re-gasification Unit (FSRU))
5.20.	PCI Gas Pipeline connecting Algeria to Italy (Sardinia) and France (Corsica) [currently known as Galsi & Cyréné pipelines]

6. **Priority corridor North-South gas interconnections in Central Eastern and South Eastern Europe ("NSI East Gas")**

Projects allowing bidirectional flows between Poland, Czech Republic, Slovakia and Hungary linking the LNG terminals in Poland and Croatia:

No	Definition
6.1.	Cluster Czech – Polish interconnection upgrade and related internal reinforcements in Western Poland, including the following PCIs: 6.1.1. Poland – Czech Republic Interconnection [currently known as Stork II] between Libhošť – Hať (CZ/PL) – Kędzierzyn (PL) 6.1.2. Lwówek-Odolanów pipeline 6.1.3. Odolanow compressor station 6.1.4. Czeszów-Wierzchowice pipeline

No	Definition
	6.1.5. Czeszów-Kiełczów pipeline 6.1.6. Zdzieszowice-Wrocław pipeline 6.1.7. Zdzieszowice-Kędzierzyn pipeline 6.1.8. Tworóg-Tworzeń pipeline 6.1.9. Tworóg-Kędzierzyn pipeline 6.1.10. Pogórska Wola-Tworzeń pipeline 6.1.11. Strachocina – Pogórska Wola pipeline
6.2.	Cluster Poland – Slovakia interconnection and related internal reinforcements in Eastern Poland, including the following PCIs: 6.2.1. Poland – Slovakia interconnection 6.2.2. Rembelszczyzna compressor station 6.2.3. Rembelszczyzna-Wola Karczewska pipeline 6.2.4. Wola Karczewska-Wronów pipeline 6.2.5. Wronów node 6.2.6. Rozwadów-Końskowola-Wronów pipeline 6.2.7. Jarosław-Rozwadów pipeline 6.2.8. Hermanowice-Jarosław pipeline 6.2.9. Hermanowice-Strachocina pipeline
6.3.	PCI Slovakia – Hungary Gas Interconnection between Veľké Zlievce (SK) – Balassagyarmat border (SK/HU) – Vecsés (HU)
6.4.	PCI Bidirectional Austrian – Czech interconnection (BACI) between Baumgarten (AT) – Reinthal (CZ/AT) – Brečlav (CZ)

Projects allowing gas to flow from Croatian LNG terminal to neighbouring countries:

No	Definition
6.5.	Cluster Krk LNG Regasification Vessel and evacuation pipelines towards Hungary, Slovenia and Italy, including the following PCIs: 6.5.1. LNG Regasification vessel in Krk (HR) 6.5.2. Gas pipeline Zlobin – Bosiljevo – Sisak – Kozarac – Slobodnica (HR) 6.5.3. LNG evacuation pipeline Omišalj – Zlobin (HR) – Rupa (HR)/Jelšane (SI) – Kalce (SI) or 6.5.4. Gas pipeline Omišalj (HR) – Casal Borsetti (IT)
6.6.	PCI Interconnection Croatia – Slovenia (Bosiljevo – Karlovac – Lučko – Zabok – Rogatec (SI))
6.7.	PCI Interconnection Slovenia – Italy (Gorizia (IT)/Šempeter (SI) – Vodice (SI))

Projects allowing gas flows from the Southern Gas Corridor and/or LNG terminals in Greece through Greece, Bulgaria, Romania, Serbia and further to Hungary as well as Ukraine, including reverse flow capability from south to north and integration of transit and transmission systems:

No	Definition
6.8.	Cluster Interconnection between Greece and Bulgaria and necessary reinforcements in Bulgaria, including the following PCIs: 6.8.1. Interconnection Greece – Bulgaria [currently known as IGB] between Komotini (EL) – Stara Zagora (BG) 6.8.2. Necessary rehabilitation, modernization and expansion of the Bulgarian transmission system
6.9.	Cluster LNG terminal in Greece, including one of the following PCIs: 6.9.1. Independent Natural Gas System LNG Greece 6.9.2. Aegean LNG import terminal
6.10.	PCI Gas Interconnection Bulgaria – Serbia [currently known as IBS]
6.11.	PCI Permanent reverse flow at Greek – Bulgarian border between Kula (BG) – Sidirokastro (EL)
6.12.	PCI Increase the transmission capacity of the existing pipeline from Bulgaria to Greece
6.13.	Cluster Romania – Hungary – Austria transmission corridor, including the following PCIs: 6.13.1. Városföld-Ercsi– Győr pipeline + enlargement of Városföld Compressor station + modification of central odorization 6.13.2. Ercsi-Százhalombatta pipeline 6.13.3. Csanádpalota or Algyő compressor station
6.14.	PCI Romanian – Hungarian reverse flow at Csanádpalota or Algyő (HU)
6.15.	Cluster Integration of the transit and transmission system and implementation of reverse flow in Romania, including the following PCIs: 6.15.1. Integration of the Romanian transit and transmission system 6.15.2. Reverse flow at Isaccea

Projects allowing gas from the Southern gas corridor and/or LNG terminals reaching Italy to flow towards the north to Austria, Germany and Czech Republic (as well as towards the NSI West corridor):

No	Definition
6.16.	PCI Tauerngasleitung (TGL) pipeline between Haiming (AT)/Überackern (DE) – Tarvisio (IT)
6.17.	PCI Connection to Oberkappel (AT) from the southern branch of the Czech transmission system
6.18.	PCI Adriatica pipeline (IT)
6.19.	PCI Onshore LNG terminal in the Northern Adriatic (IT) [1]

[1] The precise location of the LNG terminal in the Northern Adriatic will be decided by Italy in agreement with Slovenia.

Projects allowing development of underground gas storage capacity in South-Eastern Europe:

No	Definition
6.20.	Cluster increase storage capacity in South-East Europe, including one or more of the following PCIs: 6.20.1. Construction of new storage facility on the territory of Bulgaria 6.20.2. Chiren UGS expansion 6.20.3. South Kavala storage in Greece 6.20.4. Depomures storage in Romania

Other projects:

No	Definition
6.21.	PCI Ionian Adriatic Pipeline (Fieri (AB) – Split (HR))
6.22.	Cluster Azerbaijan–Georgia–Romania Interconnector project, including the following PCIs: 6.22.1. Gas pipeline Constanta (RO) – Arad – Csanádpalota (HU) [currently known as AGRI] 6.22.2. LNG terminal in Constanta (RO)
6.23.	PCI Hungary – Slovenia interconnection (Nagykanizsa – Tornyiszentmiklós (HU) – Lendava (SI) – Kidričevo)

7. **Priority corridor Southern Gas Corridor ("SGC")**

No	Definition
7.1.	Cluster of integrated, dedicated and scalable transport infrastructure and associated equipment for the transportation of a minimum of 10 bcm/a of new sources of gas from the Caspian Region, crossing Georgia and Turkey and ultimately reaching final EU markets through two possible routes: one crossing South-East Europe and reaching Austria, the other one reaching Italy through the Adriatic Sea, and including one or more of the following PCIs: 7.1.1. Gas pipeline from the EU to Turkmenistan via Turkey, Georgia, Azerbaijan and the Caspian [currently known as the combination of the "Trans Anatolia Natural Gas Pipeline" (TANAP), the "Expansion of the South-Caucasus Pipeline" (SCP-(F)X) and the "Trans-Caspian Gas Pipeline" (TCP)] 7.1.2. Gas compression station at Kipi (EL) 7.1.3. Gas pipeline from Greece to Italy via Albania and the Adriatic Sea [currently known as the "Trans-Adriatic Pipeline" (TAP)] 7.1.4. Gas pipeline from Greece to Italy via the Adriatic Sea [currently known as the "Interconnector Turkey-Greece-Italy" (ITGI)] 7.1.5. Gas pipeline from Bulgaria to Austria via Romania and Hungary
7.2.	PCI consisting of integrated, dedicated and scalable transport infrastructures and associated equipment for the transportation of a minimum of 8 bcm/a of new sources of gas from the Caspian Region (Azerbaijan and Turkmenistan) to Romania, including the following projects: 7.2.1. Sub-marine gas pipeline in the Caspian Sea from Turkmenistan to Azerbaijan [currently known as the "Trans-Caspian Gas Pipeline" (TCP)]

No	Definition
	7.2.2. Upgrade of the pipeline between Azerbaijan and Turkey via Georgia [currently known as the "Expansion of the South-Caucasus Pipeline" (SCP-(F)X)] 7.2.3. Sub-marine pipeline linking Georgia with Romania [currently known as "White Stream"]
7.3.	Cluster of gas infrastructures and associated equipment for the transportation of new sources of gas from the offshore fields in the East Mediterranean including one or more of the following PCIs: 7.3.1. Pipeline from offshore Cyprus to Greece mainland via Crete 7.3.2. LNG storage located in Cyprus [currently known as the "Mediterranean Gas Storage"]
7.4.	Cluster of interconnections with Turkey, including the following PCIs: 7.4.1. Gas compression station at Kipi (EL) with a minimum capacity of 3bcm/a 7.4.2. Interconnector between Turkey and Bulgaria with a minimum capacity of 3 bcm/a [currently known as "ITB"]

8. **Priority corridor Baltic Energy Market Interconnection Plan in gas ("BEMIP Gas")**

No	Definition
8.1.	Cluster LNG supply in the Eastern Baltic Sea Region, including the following PCIs: 8.1.1. Interconnector between Estonia and Finland "Balticconnector", and 8.1.2. One of the following LNG terminals: 8.1.2.1. Finngulf LNG 8.1.2.2. Paldiski LNG 8.1.2.3. Tallinn LNG 8.1.2.4. Latvian LNG
8.2.	Cluster infrastructure upgrade in the Eastern Baltic Sea region, including the following PCIs: 8.2.1. Enhancement of Latvia-Lithuania interconnection 8.2.2. Enhancement of Estonia-Latvia interconnection 8.2.3. Capacity enhancement of Klaipeda-Kiemenai pipeline in Lithuania 8.2.4. Modernization and expansion of Incukalns Underground Gas Storage
8.3.	PCI Poland–Denmark interconnection "Baltic Pipe"
8.4.	PCI Capacity expansion on DK-DE border
8.5.	PCI Poland-Lithuania interconnection [currently known as "GIPL"]
8.6.	PCI Gothenburg LNG terminal in Sweden
8.7.	PCI Capacity extension of Świnoujście LNG terminal in Poland
8.8.	PCI Upgrade of entry points Lwówek and Włocławek of Yamal-Europe pipeline in Poland

9. **Priority corridor Oil Supply Connections in Central Eastern Europe (OSC)**

No	Definition
9.1.	PCI Adamowo-Brody pipeline: pipeline connecting the JSC Uktransnafta's Handling Site in Brody (Ukraine) and Adamowo Tank Farm (Poland)
9.2.	PCI Bratislava-Schwechat-Pipeline: pipeline linking Schwechat (Austria) and Bratislava (Slovak Republic)
9.3.	PCI JANAF-Adria pipelines: reconstruction, upgrading, maintenance and capacity increase of the existing JANAF and Adria pipelines linking the Croatian Omisalj seaport to the Southern Druzhba (Croatia, Hungary, Slovak Republic)
9.4.	PCI Litvinov (Czech Republic)-Spergau (Germany) pipeline: the extension project of the Druzhba crude oil pipeline to the refinery TRM Spergau
9.5.	Cluster Pomeranian pipeline (Poland), including the following PCIs: 9.5.1. Construction of Oil Terminal in Gdańsk 9.5.2. Expansion of the Pomeranian Pipeline: loopings and second line on the Pomeranian pipeline linking Plebanka Tank Farm (near Płock) and Gdańsk Handling Terminal
9.6.	PCI TAL Plus: capacity expansion of the TAL Pipeline between Trieste (Italy) and Ingolstadt (Germany)

10. **Priority thematic area Smart Grids Deployment**

No	Definition
10.1.	North Atlantic Green Zone Project (Ireland, UK/Northern Ireland): Lower wind curtailment by implementing communication infrastructure, enhance grid control and establishing (cross-border) protocols for Demand Side Management
10.2.	Green-Me (France, Italy): Enhance RES integration by implementing automation, control and monitoring systems in HV and HV/MV substations, advanced communicating with the renewable generators and storage in primary substations'

THE NATIONAL GRID NEMO LINK LIMITED (PEGWELL BAY)
COMPULSORY PURCHASE ORDER 2014

Statement of Case of the Acquiring Authority

1 Introduction

1.1 This is the Statement of Case for Nemo Link Limited (company registration number 8169409 and referred to in this statement as '**the Acquiring Authority'**) in respect of the making of the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014 ('**the Order'**).

1.2 The Order was made by the Acquiring Authority on 31 December 2014, when the acquiring authority was known as National Grid Nemo Link Limited. The Order was submitted to the Secretary of State for Energy and Climate Change for confirmation, and advertised in accordance with the relevant statutory requirements. Five objections to the confirmation of the Order were received by the Secretary of State,

1.3 The Secretary of State indicated by notice dated 6 May 2015 that a public local inquiry would be held into the confirmation of the order, and required Statements of Case to be submitted by the Acquiring Authority and any objectors wishing to appear at the inquiry within 6 weeks of the date of that notice (that is, by 17 June 2015). This is the Statement of Case of the Acquiring Authority.

1.4 The Order, if confirmed, will authorise the Acquiring Authority to purchase compulsorily rights in land in the vicinity of Pegwell Bay, near Ramsgate in Kent. The Acquiring Authority considers that these rights are required for the purpose of its undertaking, in order to enable it to construct an electricity transmission interconnector between the UK and Belgium, known as Nemo Link. Nemo Link is a joint project between the National Grid group and Elia, the Belgian electricity transmission network operator, which will give both countries improved reliability and access to electricity and sustainable generation. The construction of Nemo Link accords with European and national energy policy – Nemo Link having been designated by the European Commission as a 'Project of Common Interest' (PCI) under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, referred to as '**the TEN-E Regulation'**. The development also complies with national and local planning policy, and has the benefit of planning permission granted by the local planning authorities, Thanet District Council and Dover District Council on 18 December and 19 December 2013, respectively. The offshore elements of Nemo Link also have the benefit of a marine licence from the Marine Management Organisation, and equivalent French and Belgian consents have also been obtained.

1.5 Accordingly, the Acquiring Authority considers that there is a compelling case in the public interest for the compulsory acquisition of rights in the Order land under Schedule 3 to the Electricity Act 1989, and that the Secretary of State should conclude that the Order should be confirmed.

2 Powers under which the Order is made

2.1 The Order is made under section 10 of and Schedule 3 to the Electricity Act 1989.

2.2 Paragraph 1(1) of Schedule 3 provides that:

> *the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which the licence holder is authorised by the licence to carry on.*

2.3 Paragraph 1(2) makes it clear that licence holders are authorised to acquire rights in land as well as the title to land, and that this can be done by creating new rights as well as by acquiring existing rights.

2.4 The Acquiring Authority was granted an interconnector licence under section 6(1)(e) of the Electricity Act 1989 on 8 March 2013 from Ofgem.

2.5 The activity which the Acquiring Authority is authorised to carry out is "to participate in the operation of the Nemo Link, an electricity interconnector between Great Britain and Belgium connecting at Richborough 400kV substation in Great Britain". The interconnector licence granted to the Acquiring Authority incorporates a standard condition which relates to compulsory purchase:

> *The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:*
>
> *(a) the construction or extension of the licensee's interconnector; or*
>
> *(b) activities connected with the construction or extension of the licensee's interconnector or connected with the operation of the licensee's interconnector.*

2.6 The Acquiring Authority may therefore be authorised to purchase compulsorily land or rights required to enable the Acquiring Authority to carry on the activities authorised by its licence and in particular to purchase land or rights required to enable it to construct or extend the Nemo Link interconnector or for activities connected with the interconnector's construction, extension or operation. All of the rights in land proposed to be acquired under the Order are needed for these purposes.

3 Nemo Link

3.1 The Nemo Link is a proposed high voltage direct current ('**HVDC'**) electricity transmission interconnector with an approximate capacity of 1,000 megawatts which will allow the transfer of electrical power via subsea cables between the electricity transmission networks of Great Britain (at Richborough) and Belgium (at Herdersbrug) in order to facilitate trading of electricity between the two markets in either direction.

3.2 The Nemo Link is being developed by the Acquiring Authority, which is a joint venture between the National Grid group, and Elia System Operator NV/SA (**'Elia'**). National Grid plc, through its subsidiaries, owns and operates gas and electricity infrastructure in the UK. One of National Grid plc's subsidiary companies, National Grid Electricity Transmission plc ('**NGET**'), separately owns the electricity transmission network in England and Wales and operates the high voltage electricity transmission system for the whole of Great Britain. Elia is the national electricity transmission operator in Belgium. National Grid plc's subsidiary, National Grid Interconnector Holdings Limited, and Elia each own 50% of the shares in the Acquiring Authority. This joint venture agreement was completed between the two shareholders in February 2015, at which point the Acquiring Authority changed its name to Nemo Link Limited. The Acquiring Authority will develop, construct, own, and maintain the Nemo Link, and will jointly operate it with Elia after commissioning has been completed (under Belgian law, Elia is required to operate the interconnector in Belgium).

3.3 The Nemo Link will consist of subsea and underground cables connected to a converter station in each country, thus allowing electricity to flow in either direction between the two countries' electricity transmission networks, depending on the supply and demand in each country. Using subsea cables, the Nemo Link will provide interconnection between two High Voltage Alternating Current (**'HVAC'**) electricity transmission systems currently separated by the North Sea. Using HVDC technology enables the Nemo Link to avoid the need to synchronise the two interconnected AC networks. The proposed subsea cables would run from Pegwell Bay near Ramsgate in Kent to Zeebrugge in Belgium, passing through English, French and Belgian waters. Ofgem's view, as set out in its decision on the funding regime for Nemo Link, is that the Nemo Link will "provide social welfare benefits resulting from trade between the GB and Belgian markets. [Ofgem] also anticipate wider positive impacts (such as a small increase in competition and enhanced security of supply) that will benefit consumers, in addition to those captured by trade benefits".

3.4 The interconnector infrastructure in the UK will comprise:

- Two HVDC subsea cables between the landfall and the low water mark
- Two HVDC onshore underground cables from the converter station to the coast where they will be joined to the subsea HVDC cables
- Fibre optic cables installed with the onshore and subsea HVDC cables for the purposes of operational telemetry and communications
- An HVDC converter station on part of the site of the former Richborough Power Station which would convert the HVDC power used in the link to HVAC for use in the national transmission system and vice-versa
- A connection bay at the Richborough 400 kV electricity substation on part of the site of the former Richborough Power Station
- Three 400kV HVAC underground electricity land cables to connect the above substation to the HVDC converter station and up to two telecommunications cables.

Onshore cables

3.5 The UK onshore element of the Nemo Link, in relation to which compulsory purchase powers are being sought under the Order, consists of the route of underground cables which will run between the mean low water mark at Pegwell Bay and a converter station on the site of the former Richborough Power Station.

3.6 The HVDC onshore cables will be approximately 15cm in diameter. The fibre optic cables will be installed with the onshore underground cables and will be approximately 5cm in diameter. The onshore underground cables will be installed along the length of the route in three distinct ways:

- Standard trenching;
- Surface laid with capping; and
- Horizontal directional drilling.

Offshore cables

3.7 The Nemo Link will include two subsea HVDC cables between the landfall points at Pegwell Bay to mean low water and continuing to Zeebrugge. The cables will be rated between 350kV and 400kV. The size of the subsea cables will also be approximately 15cm in diameter.

3.8 The subsea cables will be bundled together in the same trench and jointed to the HVDC onshore underground cables in a transition joint pit ('**TJP'**). The approximate distance between Low Water and the TJP will be 1,800m.

3.9 The TJP will be an excavated pit (15m long x 5m wide x 2.5m deep) with a reinforced concrete plinth laid in its base. The cables will be jointed on the plinth and once this is undertaken, the excavation will be backfilled to original ground levels. On completion of works, there will not be any visible sign of the TJP on the surface.

3.10 The Pegwell Bay foreshore in which the subsea cables are to be installed is owned by Thanet District Council or the National Trust (who have leased part to the Kent Wildlife Trust). As the cables continue seaward they will be installed on the seabed, which is owned by the Crown Estate. The Order provides for the compulsory purchase of rights over the foreshore owned by Thanet District Council and the National Trust, but not over the seabed owned by the Crown Estate. A licence over the seabed is being negotiated between the Acquiring Authority and the Crown Estate.

Converter Station

3.11 The converter station will convert the electric current between direct current ('**DC**'), which is used for the subsea cables, and alternating current ('**AC**'), which is used by the electricity transmission system.

3.12 The converter station will require a main building which will be constructed at the former Richborough Power Station site. It will also contain the equipment necessary for the conversion between DC and AC, transformers for switching to the correct voltage rating, filter banks and associated switch gear. The converter station also requires 'valve halls' and other buildings to enclose the equipment. The main building will comprise 3 main parts and in total will be approximately 149m long by 93m wide with a maximum height of approximately 30.3m. AC connection gantries of approximately 15m in height will also be required.

3.13 There will also be a service building and a storage building. These buildings will each be approximately 27.4m long, 13.6m wide and 14.5m high, and attached to the main building.

3.14 A National Grid group company, National Grid Holdings One PLC, has entered into a lease with Richborough A Limited, the freeholder of the converter station site, and will enter into a

sub-lease with the Acquiring Authority, granting the Acquiring Authority the necessary interest and rights to construct and operate the converter station.

Substation

3.15 A new 400kV Gas Insulated Switchgear (**GIS**) substation is also needed at Richborough to connect the Nemo Link interconnector to the GB electricity transmission system. This will be owned, constructed and operated by NGET. The substation will be within a separately fenced compound adjacent to the proposed converter station to the west. The proposed substation will occupy a footprint of approximately 2.65 ha and will contain a combination of indoor and outdoor electrical equipment.

3.16 The substation will include a GIS Hall containing switchgear outdoor gas insulated busbar, overhead line gantries, two Super Grid Transformers, and equipment used to regulate and stabilise transmission voltages.

3.17 The GIS Hall will be approximately 52.2m long, 21.5m wide and 15m high and clad in a similar manner to the converter station. The maximum height of the outdoor electrical equipment will be approximately 12.7m.

3.18 A voluntary agreement has been reached between NGET and Richborough A Limited, granting NGET the necessary rights to construct and operate the substation.

4 The Order Land

4.1 The Order Land covers a site of approximately 335,302 square metres, encompassing 1.8km of subsea underground cable, and 2.3km of onshore underground cable. The route of the subsea cables runs through the foreshore area of Pegwell Bay, between the average low water mark and landfall. The route of the subsea cables to Pegwell Bay has been confirmed by geophysical and geotechnical survey. The two subsea cables will be installed in a single trench, from mean low water to the TJP. The subsea cables will be approximately 15cm in diameter, installed in a trench approximately 1-2m wide and buried to a target depth of between 1m and 3m. The precise depth of burial depends on the nature of the material encountered, with the shallowest depth applying to the most difficult material to excavate. In this area, the cables will be laid on a concrete base, which will be capped to form a box.

4.2 The two onshore underground cables (each approximately 15cm in diameter) will be installed in a trench approximately 1m wide and 1m deep, except where it runs through parcels 8 to 12, where the cables will be laid in a concrete tray on the surface, in line with advice from the Environment Agency, to avoid the risk of disturbing any potentially contaminated ground of this former landfill site and opening up potential contamination pathways during cable installation. Where the cables are laid on the surface, the tray will be covered with concrete, capped with chalk and regraded. The Order Land is a strip approximately 10m wide to accommodate the trenches or tray, and working room. Fibre optic cable will also be installed for control and communication along the link.

4.3 The onshore underground cables route between the subsea cables' landfall at Pegwell Bay and the converter station was identified taking account of the following factors in particular:

- Designated sites of nature conservation;
- Presence of protected species;
- Quality of saltmarsh habitat;
- Proximity to residential areas;
- Archaeology;
- Highways;
- Planning proposals;
- Watercourses;
- Risk of encountering contamination;
- Utilities and services; and
- Land use.

4.4 Section 3.0 of the Environmental Statement accompanying the planning applications summarises the options and alternatives considered for the Nemo Link, and the full details are set out in the "Nemo Link: Review of Options Report at Appendix 3.1 to that Statement. The options considered included 28 potential convertor station sites along the North Sea and English Channel coast. These led to a shortlist of 3 sites, from which Richborough was selected. Six alternative cable landfall sites were then considered, as set out in that Report, from which the site to the south of the petrol station located at the west of Pegwell Bay on the A256 was selected. The Order Land links the landfall site with the convertor stations. Four alternative routes for that link were considered, as summarised in the Enviornment Statement and set out in more detail in the Review of options Report. The alternatives considered were:

1) routeing along the A256,

2) routeing on the landward side of the A256 within St Augustine's golf course,

3) routeing further inland, across the golf course to Cottington Road and around Ebbsfleet Lane;

4) routeing on the coastal side of the existing cycle track which runs parallel to the A256 Sandwich Road, through Pegwell Bay Country Park, then into Stonelees Nature Reserve and BayPoint sports complex (the Order Land).

4.5 Routeing along Sandwich Road (A256) offered the shortest route and avoided potential direct effects on Pegwell Bay nature designations including Sandwich Bay Special Area of Conservation (SAC), Sandwich Bay Special Protection Area (SPA) and Ramsar site, Sandwich Bay to Hacklinge Marshes Site of Special Scientific Interest (SSSI) and Sandwich and Pegwell Bay National Nature Reserve (NNR). The road also comprises made ground, so trenching would be unlikely to impact upon archaeological features as these would previously have been unearthed. A utilities search demonstrated that the ground beneath the road is already congested with electricity and telecommunications cables and foul water and drinking water pipelines. Thanet Offshore Wind Farm cables have also recently been routed beneath Sandwich Road from its landfall north of Pegwell Bay Service Station to where it connects to a substation on the former Richborough Power Station site. There was therefore considered to be insufficient space to accommodate the two HVDC cables along the A256.

4.6 The verge on the landward side of the A256 within St Augustine's Golf Course offered an alternative routeing option. Potential direct effects on designated sites of nature conservation would be avoided. However installation would cause disruption to the use of land for golf. The

owners of the golf club made it clear to the Acquiring Authority that they had development plans to raise and remodel the golf course with an unknown overburden, which make this option unsuitable for the burial of the HVDC cables. The onshore underground cables for each project are designed to function efficiently within a series of parameters including the known depth of burial. Where land above the cables would change substantially, this would affect the capacity or rating of the cables, limiting the effectiveness of the Nemo Link. If the cables are buried deep below ground it can be very difficult to repair them in the event of failure.

4.7 Routeing further inland, directly across the Golf Course to Cottington Road and around Ebbsfleet Lane would mean a longer route but would result in fewer direct effects on the present golf course. However, the owners of this club also indicated that they too planned to improve the site, including an, as yet, undefined overburden, which would make the maintenance of the buried cables more costly and difficult. There are also 'pinch points' around which it would be difficult to route at St Augustine's Golf Course Club House, Weatherlees Hill Wastewater Treatment Works and the East Kent Access Road.

4.8 No feasible alternative route to the landward side of the A256 was found.

4.9 The preferred route of the HVDC onshore underground cables (which is comprised in the Order land) was therefore chosen to run on the coastal side of an existing footpath and cycleway which runs parallel to the A256 Sandwich Road, through Pegwell Bay Country Park. In this area the Order Land is predominately rough and scrub land. The route then runs through rough land in the Stonelees Nature Reserve and into the BayPoint sports complex. From the sports complex, the cables will be routed by horizontal directional drilling beneath the highway verge of and the A256, the beneath a small area of trees to the west of the A256 and an anaerobic digestion plant, finally passing below Minster Stream, and a compartment of Hacklinge Marshes SSSI before terminating in the converter station. This route offers a short, technically and environmentally acceptable route which minimised disturbance to local residents, landowners and environmental features.

4.10 The converter station itself is on the site of the former Richborough Power Station, which is currently derelict.

4.11 The Order Land includes 24 plots of land. The Order Land is in a variety of ownerships and 6 of the plots are unregistered land, 3 of which are in unknown ownership. The largest landowners are Thanet District Council and Kent County Council, neither of which have objected to the confirmation of the Order.

4.12 Plots 1 to 13, and 20 to 24 of the Order Land (approximately 331,125 square metres in total) fall within the administrative boundary of Thanet District Council. Plots 14 to 19 (approximately 4,177 square metres in total) are within the administrative boundary of Dover District Council.

4.13 Much of the Order Land is designated for its conservation status: running through part of the Thanet Coast and Sandwich Bay SPA and Ramsar site; the Sandwich Bay SAC; the Thanet Coast SAC; the Sandwich Bay to Hacklinge Marshes SSSI; and the Sandwich and Pegwell National Nature Reserve. Natural England was consulted on the Nemo Link proposals, when the Acquiring Authority applied for planning permission and a marine licence, and did not object to the proposals.

4.14 The Order Land generally comprises the following land:

Plot	Size (approximate)	Description	Owner
1	**281,128 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
2	**4,657 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**The National Trust**
3	**19,044 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**The National Trust (freehold)** **Kent Wildlife Trust (leasehold)**
4	**1,204 square metres**	**Pegwell Bay foreshore to the south east of Sandwich Road, Ramsgate**	**Kent County Council**
5	**1 square metre**	**Foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
6	**85 square metres**	**Foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
7	**2,541 square metres**	**Foreshore and cycle path to the southern side of Sandwich Road, Ramsgate**	**Thanet District Council**
8	**116 square metres**	**Highway verge to the southern side of Sandwich Road, Ramsgate**	**Kent County Council**
9	**561 square metres**	**Scrubland to the south east of Sandwich Road, Ramsgate**	**Kent County Council**
10	**164 square metres**	**Scrubland to the east of Sandwich Road, Ramsgate**	**Kent County Council**
11	**12,543 square metres**	**Footpaths and overgrown scrub land within Pegwell Bay Country Park**	**Kent County Council**
12	**3,153 square metres**	**Overgrown scrub land within Pegwell Bay Country Park**	**Kent County Council**
13	**3,319 square metres**	**Rough land within Stonelees Nature Reserve**	**Kent Wildlife Trust**

Plot	Size (approximate)	Description	Owner
14	**39 square metres**	**Hedgerow at Escana, Ramsgate Road, Sandwich**	**Unknown**
15	**1,824 square metres**	**Part of sports ground at Escana, Ramsgate Road, Sandwich**	**The Bay Point Club Limited**
16	**1,258 square metres**	**Part of sports ground at Escana, Ramsgate Road, Sandwich**	**The Bay Point Club Limited**
17	**44 square metres**	**Highway verge to the east side of Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
18	**74 square metres**	**Access track to east of Ebbsfleet Roundabout, Sandwich**	**Unknown**
19	**938 square metres**	**Access road and verge to the east of Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
20	**739 square metres**	**Highway and subsoil at Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
21	**184 square metres**	**Woodland to the west of Ebbsfleet Lane, Ramsgate**	**Alexandra and James Pace**
22	**699 square metres**	**Anaerobic digester site to the northwest of Ramsgate Road, Sandwich**	**Alexandra and James Pace (freehold)** **St Nicholas Court Farms Limited (leasehold)**
23	**72 square metres**	**Minster Stream**	**Unknown**
24	**917 square metres**	**Grassland in Hacklinge Marshes SSSI**	**Richborough Estates Limited**

5 Rights sought under the Order

5.1 Only the onshore cable element of Nemo Link, and the offshore cables to the landward side of mean low water are included in the Order Land. The site of the former Richborough Power Station is not included in the Order Land as the required rights have already been negotiated over this land by National Grid, and will be made available to the Acquiring Authority. Land

below the mean low water mark is also outside of the scope of the Order Land as it is owned by the Crown Estate. Negotiations are underway with the Crown Estate for a licence to place the cables on the sea bed up to 12 nautical miles from low water.

5.2 As the onshore cables are to run underground, it is not necessary for the Acquiring Authority to acquire the Order Land outright. Accordingly, in order to minimise impacts on the Order Land, the Acquiring Authority is seeking one of two types of right in the Order Land: one where the infrastructure is to be permanently located or permanent access rights are needed (defined as an 'interconnector right' in the Order), and the other where the land is also to be used as a worksite (defined as a 'work compound right' in the Order).

Interconnector Right

5.3 This right is sought over plots 1 to 11, 13 to 15, and 17 to 24. It would give the Acquiring Authority all rights necessary:

1) to place new electricity interconnector infrastructure within the Order Land and thereafter retain, inspect, maintain, repair, alter, renew, replace, remove and use the electricity interconnector infrastructure;

2) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

3) to access the Order Land and access adjoining land in connection with the electricity interconnector infrastructure; and

4) to protect the electricity interconnector infrastructure; prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it.

Work Compound Right

5.4 This right is sought over plots 12 and 16 only, which are proposed to be used as work compounds for the duration of construction works, as well as for the permanent infrastructure. It would give the Acquiring Authority all rights necessary:

1) to use the Order Land as a working and compound area for construction, inspection, maintenance, repair, alteration, renewal, replacement and removal of the electricity interconnector infrastructure;

2) to prevent any works on or use of the Order Land which may interfere with or damage the electricity interconnector infrastructure or which interferes with or obstructs access to the interconnector infrastructure;

3) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

4) to access the Order Land and access adjoining land in connection with the electricity interconnector infrastructure; and

5) to protect the electricity interconnector infrastructure and prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it.

6 The Acquiring Authority's Approach to Acquiring Rights in Land by Agreement

6.1 The Acquiring Authority has been negotiating with the owners and occupiers of the land over which rights are required under the Order, to seek to agree acquisition or options to make acquisitions on a voluntary basis. It will continue to negotiate in parallel with seeking the confirmation of the Order, which will be used only as a last resort in order to ensure the deliverability of Nemo Link.

6.2 The National Grid group has already acquired a lease over the land comprising the site of the former Richborough Power Station, and will sub-lease the necessary rights to the Acquiring Authority.

6.3 The Acquiring Authority has attempted to negotiate voluntary agreements with the known landowners providing for the necessary rights to be granted to the Acquiring Authority. These include negotiations with the landowners who have objected to the confirmation of the Order. However while heads of terms have been agreed with Thanet District Council and Richborough Estates Limited, and agreed in principle with Kent County Council, no formal agreements have yet been reached. The Acquiring Authority will update this position prior to the inquiry.

6.4 Whilst the Acquiring Authority will continue to seek to reach an agreement with landowners it is considered necessary to also have compulsory acquisition powers over the Order Land for the following reasons:

1) The compulsory powers provide a fallback should the voluntary agreements fail and cover instances where the owner is unwilling to grant the relevant land interest or right. As noted in CLG's 2010 Guidance related to procedures for compulsory acquisition[1], it is not always practicable to acquire by agreement all the interests needed for a linear scheme. This is particularly the case for Nemo Link where 3 parcels are in unknown ownership, and 3 others are unregistered and so unidentified interests may exist.

2) As noted in paragraph 24 of ODPM Circular 06/2004 on Compulsory Purchase and the Crichel Down Rules, comprehensive compulsory purchase powers encourage affected landowners to "enter more readily into serious negotiations" and, importantly, to conduct negotiations in the context of the ultimate compulsory acquisition process with a view to reaching a deal.

3) Including all interests in a compulsory purchase order enables all of the required rights to be obtained in the same way and through one process, potentially by General Vesting Declaration ('**GVD'**).

4) Compulsory acquisition by GVD is effective against all interests in the land, so avoiding the risk of the landowner failing to disclose a relevant interest, which could give rise to a ransom situation; the GVD is effective even against interests that may be unknown to the landowner and the promoter of the scheme.

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[1] Although the guidance relates directly to compulsory acquisition procedures under the Planning Act 2008, there are no relevant differences in relation to this particular issue, which relates to the nature of a project (i.e., long and linear) rather than its consenting route.

5) Compulsory powers are more readily enforceable, so reducing additional risk, cost and delay.

6.5 Further, the Order Land includes 3 parcels of land where, after using all reasonable endeavours, the ownership remains unknown, and a further 3 where ownership is presumed but unregistered. For these parcels, there is nobody from whom the Acquiring Authority can purchase the necessary rights voluntarily. It is necessary to seek to acquire the rights over this land compulsorily to ensure that Nemo Link can be delivered.

6.6 The Acquiring Authority will produce evidence to demonstrate the efforts that have been made to acquire the necessary rights voluntarily.

7 The Purpose of the Order and the Need for Compulsory Purchase powers

7.1 The purpose of the Order is to enable the comprehensive implementation of Nemo Link, an interconnector between the United Kingdom and Belgium's national electricity transmission systems. As set out in its decision on the regulatory regime for Nemo Link, electricity interconnection is considered by Ofgem to have many benefits:

- improving competition by creating larger effective markets, thereby making electricity market prices more efficient;
- making supply more secure by increasing access to generation in periods of system or energy shortage;
- making generation dispatch more efficient by providing access to the most efficient units over a larger area. This can also help to reduce the greenhouse gas emissions; and
- improving integration between variable generation and demand (for example, wind and solar renewable energy generation) by harnessing the diversity between output in different locations and improving access to the balancing services and other production flexibility needed to maintain security and quality of supply.

7.2 The delivery of the Nemo Link electrical interconnector infrastructure is strongly in the public interest, on two principal grounds:

7.2.1 Increasing energy from renewable sources and reducing greenhouse gas emissions; and

7.2.2 Ensuring the competitiveness, sustainability and security of Europe's energy supply.

Renewable Energy

7.3 Nemo Link will support the domestic and European objective of reaching renewable and climate change targets. The UK has two key environmental targets relating to renewable energy and greenhouse gas emissions. First, the European Union's 20/20/20 vision for energy sets a target of 20% of European energy to come from renewable sources by 2020. The Renewable Energy Strategy published in July 2009 identified that for the UK to meet its share of the EU target, 30% of the UK's electricity would have to come from renewable sources by 2020. The second target is incorporated in the Climate Change Act 2008 and sets a target of

an 80% reduction in UK greenhouse gas emissions from 1990 levels by 2050. This equates to a 34% reduction in greenhouse gas emissions by 2020 as specified by the Climate Change Committee.

7.4 The UK Government's vision to ensure safe, secure and affordable supplies for the future involves the construction of a new fleet of nuclear generation, rapid expansion of renewable energy (mainly through offshore wind) and the development of interconnector projects. To meet the targets set out at 6.3 and the targets in the European Commission's 3rd energy package which states that 15% of the UK's demand for energy needs to be generated from the renewable sources by 2020, the UK will need an energy portfolio of 34% wind generating capacity by 2020. This is a dramatic increase on the 4% wind generating capacity which the UK has today.

7.5 In both the UK and Belgium more electricity is being generated from renewable sources, including onshore and offshore wind. The vast majority of the UK's increased wind generation capacity is expected to be obtained from the Crown Estate's licensed Round 3 Development Zones which have the aim of installing 25GW of offshore wind capacity. By its nature, wind generation is intermittent, and interconnectors such as the Nemo Link support an increase in wind generating capacity by allowing fluctuations in supply and demand to be managed effectively. It does this by enabling renewable energy from one geographical market to be used in another market: if too much renewable energy is generated in one region, the energy that is surplus to requirements can easily be transmitted through the interconnector to a region where the level of demand is higher. This will support the European renewable and climate change targets. It will also reduce the demand for non-renewable energy sources.

7.6 In December 2009 the UK and Belgium both became signatories to the North Seas Countries Offshore Grid Initiative, with the objective of co-ordinating offshore wind energy and infrastructure developments in the North Sea. Interconnection between countries is a pre-requisite to achieving this co-ordination.

Europe's Energy Supply

7.7 Nemo Link also supports European energy supply policies. The European Commission strategy document "Europe 2020" recognises the urgent need to upgrade Europe's energy infrastructure and to interconnect networks across borders to meet the EU's core energy policy objectives of competitiveness, sustainability and security of supply. The particular need to transport and balance energy from renewable sources is also recognised in European policy. Despite the existence of common rules for the internal market in electricity, the European Commission recognises that the internal market remains fragmented due to insufficient interconnections between national energy networks.

7.8 Nemo Link is pro-competitive, as it will enhance cross-border electricity flows in Europe. It will increase electricity interconnections across the EU, by directly linking the electricity markets in Great Britain and Belgium without the need to make use of any other countries' electricity transmission networks. Interconnectors play a crucial role in the European Union's strategy to achieve a competitive and integrated European energy market. Greater opportunities for trading with wider European energy markets will contribute to downward pressure on wholesale electricity prices which will create greater liquidity in the national markets and increase the availability of traded energy. Nemo Link will make a significant contribution to the European Commission's key policy objective of creating a single energy market by facilitating

the integration of electricity markets in GB and Belgium. Nemo Link therefore contributes to achieving the European Commission's objectives for a single EU electricity market.

7.9 Security of supply is also another major rationale for the development of Nemo Link. By enabling participants in the GB and Belgian markets to trade electricity, Nemo Link will increase security and diversify both countries' electricity supply. The trading of electricity between GB and Belgium will support the electricity security needs of both countries and also wider within Europe. Greater interconnection between GB and mainland Europe provides the opportunity for the creation of new possibilities (between GB – Belgium).

7.10 Accordingly, the development of Nemo Link supports the European Commission's requirement for a wider electricity market within Europe, with electricity being traded throughout Europe and utilized more efficiently netting demand with supply. This should also see an overall reduction in the cost of wholesale electricity prices which would be reflected in the cost of electricity for consumers across Europe.

7.11 Having identified that a modern infrastructure with adequate interconnectors and reliable networks is crucial for an integrated energy market where consumers get the best value for their money, on 21 December 2013 the European Commission published its first list of 'Projects of Common Interest' (PCI) under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, referred to as '**the TEN-E Regulation'**. Nemo Link is one of those PCIs. Under the TEN-E Regulation, designated PCIs are considered to be necessary to take forward EU energy networks policy and should be given the most rapid consideration in the permitting process that is legally possible. Consequently PCIs are to benefit from faster and more efficient permit granting procedures, and improved regulatory treatment and potential access to financial support from the Connecting Europe Facility. In order to qualify as a PCI, a project must:

- Deliver significant benefits for at least two European Member States,
- Further support market integration and competition,
- Enhance security of energy supply, and
- Contribute to reducing CO2 emissions.

7.12 In 2002 the EU Council set a target for all Member States to have electricity interconnection capacity equivalent to at least 10% of their installed production capacity by 2005. The UK is still failing to meet this target, with current total interconnection capacity of 3.5GW representing just over 4% of the 86GW of installed generation capacity.

7.13 The proposed Nemo Link is one of several interconnector projects currently under development. Taking into account these other projects, the Nemo Link will contribute 15% of a total interconnection capacity of 5.4GW for the UK which will represent 6.4% of the UK's installed generation capacity. As such it will provide an important means of responding to the intermittency of wind generation, of responding to periods when wind generation is greater than electricity demand, of helping to meet the challenge of retiring fossil fuel and nuclear plants in the UK and of supporting neighbouring wholesale and supply markets.

8 Policy support

8.1 The Nemo Link project is supported by European, national and local policy, and has been approved by the local planning authorities.

Planning Application

8.2 Hybrid applications for planning permission under the Town and Country Planning Act 1990 for all the UK onshore elements of Nemo Link were submitted to Thanet District Council and Dover District Council. The applications were hybrid in that they were for outline permission for the development of the converter station and substation, and for full permission in relation to the underground cables. In other words, full permission was sought for the development on the Order Land.

8.3 The applications were approved on 18 December 2013 by Thanet District Council (reference number F/TH/13/0760) and 19 December 2013 by Dover District Council (reference number 13/00759)[2]. Accordingly, there is full planning permission for the use of the Order Land for Nemo Link.

8.4 Documents submitted in support of the applications included:

1) Environmental Statement – this includes a description of the proposed Nemo Link Project, an outline of the alternatives considered – including an appendix setting this out in detail, a description of the likely significant effects on the environment and a description of measures envisaged to prevent, reduce or where possible off-set any significant adverse impacts on the environment.

2) Planning Statement - provides the planning context and background. It also provides the details of the proposed Nemo Link Project and sets out how it fits with local, regional and national planning policy.

3) Design and Access statement - Section 62 of the Town and Country Planning Act 1990 (as amended) requires a Design and Access Statement to be submitted with most forms of planning applications. This statement sets out the design and access principles and concept of the proposed converter station and substation development components including an outline as to how these are reflected in the development layout, visual appearance and landscaping proposals.

4) Arboricultural Survey - details the arboricultural implications of development, subsequent mitigation recommendations and protective measures.

5) Sustainability appraisal report - sustainability appraisal has been a requirement in the development of certain plans and programmes in the UK since the enactment of the Planning and Compulsory Purchase Act (2004) and its use was extended in order to meet the requirements of Dover District Council. This report is drafted to describe what “sustainability” means with respect to the proposed works and to demonstrate how it has been built into the design of Nemo Link.

[2] Non-material amendments were subsequently made to the outline permissions, but not to the full permissions for the installation of the cables on the Order land.

8.5 A full assessment of European, National and Local policy can be found in the planning statement that accompanied the planning applications. A brief summary of some of the relevant policies is set out below.

European Policy

8.6 As noted above, under the TEN-E Regulation, PCIs are considered to be necessary to implement the EU's energy priority corridors and areas. As Nemo Link has been designated as a PCI, its construction is considered to be necessary to implement EU energy policy.

8.7 On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy "Europe 2020". One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource efficient, greener and more competitive economy. The strategy put energy infrastructures at the forefront as part of the flagship initiative "Resource efficient Europe", by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

8.8 The Commission Communication "*Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network*", followed by the Transport, Telecommunications and Energy Council conclusions of 28 February 2011 and the European Parliament resolution of 6 July 2011, called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

8.9 The European Council Conclusion of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and develop renewable energy sources in competition with traditional sources.

8.10 In linking the UK and Belgian electricity transmission networks, Nemo Link is fully supported by European policy.

National Policy

8.11 There is strong policy support at national level for Nemo Link. The Energy White Paper 2007 set out four key goals for energy policy and identified the challenges currently faced. Nemo Link will support the use of renewable energy which is important in meeting these challenges. The Project will support renewable energy connected to the UK's national electricity transmission system because the opportunity to export power when generation exceeds demand means that there is an additional potential market for renewables developers. This will support the development of renewable energy generation in the UK, assist in meeting the challenges related to security of supply and encourage investment in generation.

8.12 The National Policy Statements, approved by Parliament in July 2011, set out the most recent Government policy for the delivery of major energy infrastructure. These are a material consideration in England and Wales, including those which fall under the Town and Country Planning Act 1990 (as amended).

8.13 The Overarching National Policy Statement for Energy (EN-1) notes that it is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy. The NPS notes that "existing transmission and distribution networks will have to evolve and adapt in various ways to handle increases in demand".

8.14 The National Policy Statement for Electricity Networks Infrastructure (EN-5) highlights that the new electricity generating infrastructure that the UK needs to move to a low carbon economy, while maintaining security of supply, will be heavily dependent on the availability of a fit for purpose and robust electricity network. That network will need to be able to support a more complex system of supply and demand and cope with generation occurring in locations of greater diversity.

8.15 The National Planning Policy Framework ("**NPPF**") published in March 2012 sets out the Government's planning policies for England. In support of the NPPF goal of delivering sustainable development the Project will help to build a strong and competitive economy by creating jobs and create a cluster of high technology industry in the area. Good design has been incorporated in the Project and the potential effects on the natural environment as a result of the Project have been assessed in accordance with the NPPF. The Project also helps meet the challenge of climate change by supporting the use of renewable energy.

Local Policy

8.16 Tables 4.1 and 4.2 of the Planning Statement accompanying the planning applications set out the local plan policies that apply to the Order Land within Thanet (and also to the Richborough Power Station site). Tables 4.3 and 4.4 set out the policies that apply to the Order Land within Dover. In summary, while Nemo Link is not in full accordance with the local development plans, being as it is a particularly sui generis form of development, nor does it conflict with the policies or aims of the development plans. In particular, as the cables will be buried underground and as the construction impacts will be temporary, the proposed use of the Order land will not conflict with policies for the improvement of the A256, the protection of open spaces, the maintenance of the natural character of undeveloped beaches, and the protection of the integrity of green infrastructure networks (including long-distance paths and cycle tracks).

8.17 Both Thanet and Dover District Council concluded that the need for Nemo Link outweighed any harm that would be caused to the character and appearance of the area.

9 Compatibility with the Human Rights Act 1998

9.1 The Acquiring Authority recognises that compulsory purchase orders should only be made where there is a compelling case in the public interest. The Acquiring Authority acknowledges that the rights over the Order Land which are sought in the Order interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol to the European Convention on Human Rights, and that the purposes for which the rights are sought in the Order must be sufficient to justify this interference with human rights.

9.2 The Acquiring Authority is satisfied that there is a compelling case in the public interest for the compulsory purchase of the Order Land, given the public policy support for the construction and operation of the Nemo Link interconnector.

9.3 The Acquiring Authority has sought to keep any interference in the rights of those with interests in the Order Land to a minimum. The Order would only permit the acquisition of rights, enabling the existing landowners to continue to own and use their land (subject to reasonable protection for the Nemo Link infrastructure). The land within the Order has been limited to the minimum required for the cables to be installed and maintained. Furthermore, as summarised in section 4 above, and set out in more detail in the Environmental Statement accompanying the planning applications, the route of the underground cables has been selected so as to minimise the impact on land use. The onshore underground cables have been routed so that they will not prevent any future development proposals with Pegwell Country Park, although there will be restrictions on planting above the cable route.

9.4 In summary, the Acquiring Authority considers the Order to be necessary and proportionate and that the public interest in the proposals is sufficient to override the private interests in the Order Land where appropriate compensation for the compulsory purchase will be paid to those affected.

10 Special land

10.1 Schedule 3 to the Acquisition of Land Act 1981 (**'the 1981 Act**') applies to compulsory purchase of rights over certain specified types of land. The only type found in the Order Land is inalienable National Trust land.

10.2 The Order Land includes approximately 23,701 square metres of foreshore in Pegwell Bay which is owned by the National Trust (parcels 2 and 3), 19,044 square metres of which is leased to the Kent Wildlife Trust (parcel 3). Paragraph 5 of Schedule 3 to the 1981 Act contains restrictions which apply to the acquisition of rights over National Trust land. In particular, where land subject to a CPO is held by the National Trust inalienably and the Trust objects to the confirmation of that CPO, the CPO must be subject to special parliamentary procedure before it can have effect.

10.3 At the time at which the Order was made, the National Trust would not confirm to the Acquiring Authority whether parcels 2 or 3 were inalienable. Accordingly, as parcel 3 had been leased to Kent Wildlife Trust, the Acquiring Authority proceeded on the basis that it was not inalienable. The National Trust subsequently objected to the confirmation of the Order, and on 17 March 2015 provided the Acquiring Authority with evidence that parcels 2 and 3 were declared to be inalienable in 1983, As such the compulsory acquisition of rights over it will be subject to special parliamentary procedure if the CPO is confirmed.

10.4 The Acquiring Authority has reconsidered whether rights over parcels 2 and 3 are still required in light of the National Trust providing evidence that it is inalienable. As parcels 2 and 3 occupy the foreshore in Pegwell Bay, it would be prohibitively expensive to seek an alternative route that avoids them. Accordingly, therefore, the Acquiring Authority still seeks rights over this land, although it remains the preference of the Acquiring Authority to obtain the rights by agreement, and terms to this effect have been proposed to the National Trust.

10.5 The details of the National Trust's objection are set out and dealt with in section 14 below.

11 Environmental Impact Assessment

11.1 Nemo Link will bring both short and long term local economic benefit, wider benefit to electricity consumers in the UK and Europe and enhanced opportunities for the integration of renewable energy to meet climate change targets. However, the Acquiring Authority recognises that the Project could also bring some detrimental effects, and has sought to minimise these as far as possible.

11.2 The Acquiring Authority has aimed to minimise and mitigate the environmental effects of the Project, and chose to prepare and submit a voluntary Environmental Statement to accompany its application for planning permission for the Nemo Link. The full ES is available on the project website at www.nemo-link.com. Overall, the ES predicts that Nemo Link will not bring significant environmental detriment, with the majority of environmental effects predicted to be neutral or beneficial. Minor adverse effects on traffic and transport, noise and air quality will be limited to the construction phase and will be localised and brief. As the cable route is underground it will have a neutral effect on landscape. The installation and construction of the Nemo Link is predicted to have no significant impact on ground conditions, hydrology and flood risk, ecology or archaeological and cultural heritage.

12 Funding

12.1 Nemo Link is projected to cost €500m to construct and commission, including land acquisition costs. The costs of acquiring the necessary rights over the Order Land is currently estimated at £200,000. It will be financed directly by the Acquiring Authority, which in turn will be financed in equal sums by National Grid Interconnector Holdings Limited and Elia. In February 2015, the boards of Elia and National Grid plc each determined to provide a full commitment to the funding and long-term investment in Nemo Link. During the construction phase, the Acquiring Authority will make funding requests to each of its shareholders to fund 50% of the payments due to contractors and landowners. Each shareholder has a commitment to fund the sum requested by the Acquiring Authority.

12.2 The Acquiring Authority will repay these sums from its operational revenues. These revenues will be regulated in accordance with a framework jointly developed between Ofgem and the Belgian energy regulator, CREG, which received final approval from each regulator in November and December 2014. This new framework is to be called the "cap and floor" mechanism. Under the cap and floor mechanism, if Nemo Link's revenues exceed the cap, then revenue above the cap is returned to consumers via each country's National Electricity Transmission System Operator, NGET or Elia respectively. If their revenues fall below the floor then consumers top up revenues to the level of the floor, again via the Transmission System Operator. For Nemo Link, Ofgem and CREG have calculated the cap and floor levels based on the final regime design and its assessment of the capital costs (including acquisition of land rights), operational costs and a return on capital; an annual floor level of £50.4m and an annual cap level of £80m (2013/14 prices). These will be subject to final adjustments after construction is completed. This will ensure the implementation of the Order proposals is financially viable.

13 Related Applications, Appeals, Orders etc.

Planning permission

13.1 As noted in 8.3 above, planning permission for the underground cables was granted on 18 December 2013 by Thanet District Council and 19 December 2013 by Dover District Council Non-material amendments to these permissions have since been made, but not in respect of the Order land.

Marine Licence

13.2 For the subsea cables within UK territorial waters, a marine licence was granted by the Marine Management Organisation on 23 December 2013 (reference number MLA/2013/00072).

International elements

13.3 For the non UK elements of the project, Nemo Link was granted authorisation to lay the offshore electricity cables in Belgian territorial waters by Secretary of State for Energy on 9 April 2014 (reference number EB-2013-0019-A). The environmental permit for these cables was approved by the Federal Minister of the North Sea on 20th March 2014. Consent for the part of Nemo Link which passes through French waters was received from the French Ministry of Ecology, Sustainable Development and Energy on 11 June 2013 (reference number 13014350).

13.4 The Belgian on-shore element has the equivalent of spatial planning approval, and Elia has signed an agreement with Electrabel for the transfer of property of the site for the proposed Belgian on-shore converter station at Herdersbrug. Elia will then grant a long-term lease of the site to Nemo Link. The land cable route is mainly (c.90%) located beneath a public road, and negotiations to obtain easements for the remainder of the route are ongoing. There is no reason to suppose that approval is unlikely to be given. The outstanding approval for these elements does not therefore represent an impediment to the implementation of the Order.

14 Response to objections received

14.1 Five objections were received to the confirmation of the Order:

1) from the National Trust, freeholder of parcels 2 and 3;

2) from the Kent Wildlife Trust, lessee of parcel 3 and freeholder of parcel 13;

3) from Baypoint Sports Club Limited, freeholder of parcels 15 and 16;

4) [redacted]

5) from St Nicholas Court Farms Limited, lessee of parcel 22.

Objection of the National Trust

14.2 The National Trust's objection letter does not give grounds for their objection, but simply indicates that "The land in question is held inalienably by the National Trust under section 21

of the National Trust Act 1907. As such any compulsory order shall be subject to special parliamentary procedure under s.18(2) of the Acquisition of Land Act 1981." The National Trust have since provided proof that the land has been designated as inalienable, and this point is not in issue.

14.3 The National Trust has not objected to the purposes of making the Order, the policy support for Nemo Link, or the specific rights to be acquired. Rather, it is understood that their objection is to the acquisition of rights compulsorily, and that the rights could be granted voluntarily if terms can be agreed. The Acquiring Authority and National Trust have since sought to negotiate a voluntary grant of the necessary rights, and remain in negotiations. However, if agreement cannot be reached, the Acquiring Authority considers that it remains in the public interest to acquire the rights compulsorily, to enable the Nemo Link project to be delivered. In particular, once the Nemo Link cables have been installed below the surface of parcels 2 and 3, the parcels will retain their open nature, and Pegwell Bay and the nature reserve will remain accessible by wildlife and members of the public. The acquisition of the rights are not therefore inconsistent with the purposes for which the land was made inalienable, or with the National Trust's purposes more generally. The mere fact that the Order would be subject to special parliamentary procedure if confirmed and the National Trust maintains its objection does not change this conclusion. The Order should therefore be confirmed.

Objection of the Kent Wildlife Trust

14.4 Kent Wildlife Trust objected to the confirmation of the Order on 28 January 2015. Their grounds of objection were as follows:

1) The designated status of the land both international (RAMSAR, SAC and SPA) and national (SSSI, Sandwich & Pegwell Bay NNR) should offer protection from potentially damaging operations;

2) Rare nature of the habitats and vegetative assemblages present (inter-tidal mud flats, salt marsh, dune pasture, coastal shrub) would be lost or damaged;

3) The fragile and sensitive nature of the above mentioned habitats have a high potential for permanent damage, and insofar as such is not permanent, would have a very slow recovery rate, from the potentially damaging operations that may occur;

4) The sensitive nature of species present in particular overwintering, migrating and breeding birds which are already under considerable recreation pressure and are particularly sensitive to noise disturbance and intrusion such as would result from such works (as supported by bird studies). The site is afforded international protected status for its wetland bird populations;

5) The Environmental Statement does not satisfactorily address the management and offset of public access;

6) The Environmental Statement does not satisfactorily address the monitoring of the impact of the project during and post scheme;

7) Insufficient consideration has been given to an alternative route which could minimise the environmental impact; and

8) The use of compulsory purchase powers is intended as a last resort in the event that attempts to acquire rights by agreement fail. In the present case [the Acquiring Authority] have failed to engage satisfactorily with the objectors concerns. This is contrary to the Government's own guidance (circular 06/04).

14.5 With the exception of point (8), these are all points about the likely impacts of the Nemo Link scheme itself, rather than an objection to the acquisition of the rights proposed. Nor is there any objection to the argument that the Nemo Link proposals are in the public interest or that it has policy support. Rather, Kent Wildlife Trust is seeking to re-run its objection to the applications for planning permission, at which these issues were considered. In particular, the designation and nature of and impacts on the Order Land and the species present were all considered both by the local planning authorities and by the Environment Agency and Natural England, who were consulted, and made representations, on the applications. Following receipt of those representations, the Acquiring Authority met with the Wildlife Trust, the local planning authorities, the Environment Agency and Natural England, and sought ways to address areas of concern. The Wildlife Trust's revised position with regard to the applications is set out in its letter to the planning authorities of 4th October 2013. That letter explained that the Wildlife Trust had removed its objections to the planning applications, subject to any grant of planning permission having conditions attached as it suggested or equivalent conditions. The local planning authorities took account of the Wildlife Trust's representations in concluding that the proposals were in accordance with policy, and that the impacts on designated features, as mitigated by the conditions attached to the permission, were acceptable. In particular, the permissions granted have conditions which address the Wildlife Trust's concerns regarding effects on the designated site.

14.6 The Acquiring Authority considers that the position has not changed since then, and that the Wildlife Trust's objections (1) to (7) do not constitute a reason not to confirm the Order.

14.7 So far as point (8) is concerned, the Acquiring Authority has been continuing to negotiate a voluntary transfer with the Wildlife Trust (and other affected landowners). However, for the reasons given in paragraph 6.4 above, compulsory powers are needed in any event. Further, paragraph 24 of Circular 06/04 states clearly that:

> "Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."

14.8 That is exactly what has occurred in this case: the Acquiring Authority has commenced the formal CPO procedures in parallel with continuing to negotiate a voluntary agreement. Ground (8) does not therefore represent a reason to refuse confirmation of the Order.

Objection of Baypoint Club

14.9 Baypoint Sports Club objected on the basis that:

1) the proposed works will severely affect the use of their land as privately owned Sports Centre, particularly as the Acquiring Authority wish to use part of it, particularly the road frontage, as a compound for the purposes of "thrust boring" the cables under the objector's land and other land. The site is neat, tidy and well matained and the

works will cause them loss. The club will be perceived by the general public and potential customers as a contractor's site, "such losses unlikely to be difficult to quantify and adequately compensated".

2) It is very difficult to quickly and properly restore sports grounds following civil works such as these – the objectors are well aware of similar difficulties following works carried out by the Environment Agency associated with the nearby Sandwich Flood Defence Scheme. Land cannot be reinstated straight away and normal sports uses resumed.

3) The land is low lying and subject to waterlogging. There will be an impact on the objector's drainage systems.

4) The easement will reduce the objector's future use of part of their land as activities will be restricted. This will include the planting of trees and the construction of buildings and carrying out soil level alterations, together with impacting on any underground works they may wish to do themselves. The objectors operate only a small site which is land hungry for extensive recreational activities, and it is vital they preserve their ability to use their entire land to its full extent.

5) The land in question is frontage land rather than back land.

6) The objectors will get no benefit from the electricity cables. Indeed, the presence of the cables and their easement might well affect any plans the objectors have to lay services or drainage on these areas.

7) In future their land is likely to be entered for the maintenance of the cables or if any faults should occur. The site is currently secure. The objectors are going to be further inconvenienced in future.

8) The objectors are concerned about the health risks arising from the current proposed placement of the cables, albeit they are buried. They operate a fitness, health and leisure centre and as such receive a large footfall of people all over the site.

9) There must be an alternative route whereby these cables can be fixed without affecting the objectors' land.

14.10 The objector has not challenged the purpose of the Order or the policy support for Nemo Link.

14.11 The impacts on amenity and use of the affected land set out in grounds 1 to 3 were considered by the local planning authority, which held that the impacts, as proposed to be mitigated by the conditions attached to the planning permission, were acceptable. Grounds 4 to 7 set out the general impact on the landowner. While any impact on private individuals is unfortunate, in this case it is outweighed by the clear public interest in constructing Nemo Link and would be compensated. No evidence has been presented in support of ground 8, which was dealt with in the Environmental Statement accompanying the planning applications: no health impacts are anticipated. Route selection is considered at section 4 above. There is no reasonably appropriate alternative route to Richborough power station from Pegwell Bay that does not pass through this land.

14.12 The Acquiring Authority remains in negotiations with this objector and hopes to be able to acquire the necessary rights voluntarily. If, however, this cannot be achieved, the Acquiring Authority considers that it remains in the public interests to acquire the rights compulsorily and that the Order should be confirmed.

Objection of the Paces and St Nicholas Court Farm Limited

14.13 The Paces and St Nicholas Court Farm Limited objected in like terms as follows:

1) The proposed works could severely affect the maintenance, future use and expansion of their land as an anaerobic digester plant because the cables are to be drilled directly under their existing building and site. The site comprises a very modern facility but was constructed without the likelihood of having these cables underneath it. The cables pass under their building which sits on deep pile foundations.

2) The buildings and plant on the site have a value in excess of £4,500,000, and the objectors consider that National Grid should look at an alternative route so as to avoid the chance of affecting what is a very substantial capital investment.

3) Is in the same terms as point 3 of the Baypoint Sports Club's objection.

4) Is in similar terms to point 4 of that objection.

5) Is in the same terms as point 6 of that objection.

6) Is in similar terms to point 7 of that objection, with an additional point that access to cables located under the objectors' buildings does not make any practical sense.

7) Despite the likely depth of the cables it seems positively dangerous to have high voltage cables running beneath a building with potentially combustible materials stored within it. Indeed use of building may change with increased human activity within them.

8) Is in the same terms as point 9 of the Baypoint Sports Club's objection.

14.14 Again, the Objectors have not challenged the purposes of the Nemo Link project, or its policy support.

14.15 The cables will be drilled at a depth of 10m or below to avoid the existing piles beneath the existing silage clamp which are constructed to an approximate depth of 8m below ground. The Acquiring Authority considers that the presence of the cables at this depth will not interfere with the maintenance of the site or buildings. Nor is there likely to be any impact on the landowner's drainage systems by the installation of cables via horizontal directional drilling at this depth. As cable repair is likely to be via the drilled conduits, this is unlikely to have a significant impact either. Accordingly, even with occasional surface access for inspection, the presence of the cables is unlikely to have such a significant impact on the landowners that it outweighs the compelling case in favour of the Nemo Link scheme.

14.16 The Objectors have indicated an intention to extend the existing silage clamp to the south (subject to all necessary consents) which will involve construction over the Order Land. In

order to provide the Objectors with greater comfort about the future development of the land, the Acquiring Authority has proposed in negotiations for a voluntary settlement that any works to a maximum depth of 2m below ground could be undertaken without the Acquiring Authority's consent. This also means that trees and other vegetation will remain unaffected by the works.

14.17 As noted in the Environmental Statement, once the cables are installed, the present land uses are able to resume. The cables are not only 10m deep below the surface at this location (as the Objectors acknowledge), but are enclosed in a protective metal sheath. This is a well-understood technology, and high voltage cables are in place below many locations without significant safety risks. It is not considered to represent the danger suggested by the Objectors.

14.18 Alternatives considered were summarised in section 4 above and set out in more detail in the Environmental Statement. In short, there were no feasible alternatives to the Order Land for a cable route connecting the convertor station at Richborough and the landfall site at Pegwell Bay.

15 Conclusion

15.1 The Acquiring Authority may be authorised to purchase compulsorily land or rights required to enable it to carry on the activities authorised by its licence and in particular to purchase land or rights required to enable it to construct the Nemo Link interconnector or for activities connected with the interconnector's construction, extension or operation.

15.2 The construction of the Nemo Link interconnector is in the public interest, it supports national energy policy and national planning policy, and does not conflict with local planning policy. None of the objections raised undermines this point.

15.3 All of the rights in land proposed to be acquired under the Order are needed for the purposes of constructing and operating the Nemo Link interconnector. The Acquiring Authority does not propose to acquire any greater rights than are needed.

15.4 There are no impediments to the implementation of the Order.

15.5 Accordingly, there is a compelling case in the public interest that the Order should be confirmed.

16 Availability of documents

16.1 The Core Documents on which the Acquiring Authority will rely are listed in the Appendix to the Statement of Case and are available for inspection at Ramsgate Library, Guildford Lawn, Ramsgate, Kent CT11 9AY and Sandwich Library, 13 Market Street, Sandwich, Kent CT13 9DA.

Bircham Dyson Bell LLP
For and on behalf of Nemo Link Limited
17 June 2015

APPENDIX

1 National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

2 ODPM Circular 6/04 on Compulsory Purchase and the Crichel Down Rules

3 National Grid Nemo Link Limited's Interconnector Licence, Ofgem, 8 March 2013

4 Decision on the cap and floor regime for the GB-Belgium interconnector project Nemo, Ofgem, 2 December 2014

5 CLG Guidance on Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land

6 Third Package of Legislative Proposals for Electricity and Gas Markets, European Commission, 19 September 2007

7 European Commission Communication COM (2010), Europe 2020: A strategy for smart, sustainable and inclusive growth

8 Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure ('the TEN-E Regulation')

9 List of 'Projects of Common Interest' under the TEN-E Regulation, as set out in Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013

10 European Commission Communication COM (2010) 0677 'Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network'

11 Transport, Telecommunications and Energy Council conclusions of 28 February 2011 (6950/11)

12 The European Parliament resolution of 6 July 2011 (2010/2242/(INI))

13 The European Council conclusion of 4 February 2011 (EUCO 2/1/11 REV 1 CO EUR 2 CONCL1)

14 Renewable Energy Strategy, Cm 7686, DECC, 15 July 2009

15 The Energy White Paper 2007 (CM 7124)

16 The Overarching National Policy Statement for Energy (EN-1), July 2011

17 The National Policy Statement for Electricity Networks Infrastructure (EN-5), July 2011

18 The National Planning Policy Framework

19 Dover District Local Plan 2002 saved policies and 2010 adopted Core Strategy

20 Thanet Local Plan 2006 saved policies, and preferred option pre-consultation draft Local Plan 2014

21 Kent Waste and Minerals plan saved policies

22 Planning permission granted by Thanet District Council (reference F/TH/13/0760) dated 18 December 2013

23 Thanet District Council's report on the application for planning permission and the representations received.

24 Planning permission granted by Dover District Council (reference 13/00759) dated 19 December 2013

25 Dover District Council's report on the application for planning permission and the representations received.

26 Copies of representations made in relation to the applications for planning permission.

27 Environmental Statement accompanying the applications for planning permission

28 Planning Statement accompanying the applications for planning permission

29 Design and Access Statement accompanying the applications for planning permission

30 Arboricultural Survey accompanying the applications for planning permission

31 Sustainability Appraisal Report accompanying the applications for planning permission

32 Marine Licence granted for the subsea cables within UK territorial waters by Marine Management Organisation dated 23 December 2013 (ref MLA/2013/00072)

33 Authorisation to lay offshore electricity cables in Belgian territorial waters by Belgian Federal Secretary of State for Energy dated 9 April 2014 (ref EB-2013-0019-A)

34 Consent for the part of Nemo Link which passes through French waters by French Ministry of Ecology, Sustainable Development and Energy dated 11 June 2013 (ref 13014350)

35 Statement of Reasons for making of the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

36 Application for confirmation of the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014.

37 Objections to the confirmation of the Order:

38 Notice by the Secretary of State for Energy and Climate Change of the holding of an inquiry into the confirmation of the Order.

THE NATIONAL GRID NEMO LINK LIMITED (PEGWELL BAY)
COMPULSORY PURCHASE ORDER 2014

Statement of Reasons

1 Introduction

1.1 This is the Statement of Reasons for National Grid Nemo Link Limited (company registration number 8169409 and referred to in this statement as '**NGNL'**) for the making of the National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014 ('**the Order'**).

1.2 NGNL is part of the National Grid group, which owns and operates the electricity transmission infrastructure in the UK. Through other subsidiaries, National Grid also links the UK electricity transmission system to other countries' networks via electrical interconnectors to meet energy demands in the UK. Links with France, known as IFA (Interconnexion France Angleterre), and the Netherlands, known as BritNed, have already been developed.

1.3 The Order, if confirmed, will authorise NGNL to purchase compulsorily rights in land to enable it to construct an electrical interconnector between the UK and Belgium, known as Nemo Link. Nemo Link is a joint project between NGNL and the Belgian electricity transmission network operator, Elia, and will give both countries improved reliability and access to electricity and sustainable generation.

1.4 This statement is prepared in accordance with Appendix R of ODPM Circular 6/04 on Compulsory Purchase which gives guidance on what should be included with the Statement of Reasons (adapted and supplemented as necessary according to the circumstances of this particular order). This statement therefore includes the following sections:

- **Section 2** identifies the powers under which the Order will be made;
- **Section 3** sets out the background for Nemo Link and a description of the proposals for the use of the Order Land;
- **Section 4** sets out the rights to be acquired under the Order;
- **Section 5** sets out a description of the land subject to the Order ('**the Order Land**') and its location;
- **Section 6** sets out NGNL's approach to acquiring required rights in the Order Land by agreement and how negotiations are progressing;
- **Section 7** sets out the need for compulsory purchase;
- **Section 8** describes the planning policy position in relation to the Order Land and Nemo Link;
- **Section 9** justifies the use of compulsory purchase powers, and sets out their compatibility with the Convention rights;
- **Section 10** covers other special considerations that apply;
- **Section 11** summarises the environmental impact assessment undertaken for the project;
- **Section 12** explains the funding for Nemo Link;
- **Section 13** details related applications;
- **Section 14** explains where those interested may find further information.

1.5 In summary this statement sets out the justification for seeking compulsory purchase powers within the Order and will show that there is a compelling case in the public interest for compulsory purchase powers.

1.6 This statement is separate to, and independent from, the Statement of Case that NGNL will be required to prepare in case of an inquiry into the Order.

2 Powers under which the Order is made

2.1 The Order is made under section 10 of and Schedule 3 to the Electricity Act 1989.

2.2 Paragraph 1(1) of Schedule 3 provides that:

> *the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which the licence holder is authorised by the licence to carry on.*

2.3 Paragraph 1(2) makes it clear that licence holders are authorised to acquire rights in land as well as the title to land, and that this can be done by creating new rights as well as by acquiring existing rights.

2.4 NGNL was granted an interconnector licence under section 6(1)(e) of the Electricity Act 1989 on 8 March 2013 from Ofgem.

2.5 The activity which NGNL is authorised to carry out is "to participate in the operation of the Nemo Link, an electricity interconnector between Great Britain and Belgium connecting at Richborough 400kV substation in Great Britain". The interconnector licence granted to NGNL incorporates a standard condition which relates to compulsory purchase:

> *The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:*
>
> *(a) the construction or extension of the licensee's interconnector; or*
>
> *(b) activities connected with the construction or extension of the licensee's interconnector or connected with the operation of the licensee's interconnector.*

2.6 NGNL may therefore be authorised to purchase compulsorily land or rights required to enable NGNL to carry on the activities authorised by its licence and in particular to purchase land or rights required to enable it to construct or extend the Nemo Link interconnector or for activities connected with the interconnector's construction, extension or operation. All of the rights in land proposed to be acquired under the Order are needed for these purposes.

3 Nemo Link

3.1 The Nemo Link is a proposed high voltage direct current ('**HVDC'**) electrical interconnector with an approximate capacity of 1,000 megawatts which will allow the transfer of electrical power via subsea cables between the electricity transmission networks of Great Britain (at Richborough) and Belgium (at Herdersbrug) in order to facilitate trading of electricity between the two markets in either direction.

3.2 The Nemo Link is being developed by NGNL, part of the National Grid group, and Elia System Operator NV/SA (**'Elia'**) which is part of the national electricity transmission company in Belgium. National Grid plc, through its subsidiaries, owns and operates gas and electricity infrastructure in the UK. One of National Grid plc's subsidiary companies, National Grid Electricity Transmission plc ('**NGET**') separately owns the electricity transmission network in England and Wales and operates the high voltage electricity transmission system for the whole of Great Britain.

3.3 National Grid has interests in other electricity transmission interconnector projects: National Grid Interconnectors Limited owns 50 percent of the assets in, and jointly operates, the France – GB electricity transmission interconnector with Réseau de Transport d'Electricité ("**RTE**"). With its partner Tennet, National Grid Interconnector Holdings Limited (**'NGIH'**) is a shareholder in the 50:50 joint venture, Britned Developments Limited, which owns and operates the Netherlands – GB electricity transmission interconnector.

3.4 NGIH is currently the sole parent company of NGNL. NGIH and Elia have agreed to acquire joint control of NGNL by way of a 50/50 subscription of shares in NGNL (on completion, NGNL will change its name to Nemo Link Limited). NGNL will develop, construct, own, operate and maintain the Nemo Link.

3.5 The Nemo Link will consist of subsea and underground cables connected to a converter station in each country, thus allowing electricity to flow in either direction between the two countries' electricity transmission networks, depending on the supply and demand in each country. Using subsea cables, the Nemo Link will provide interconnection between two High Voltage Alternating Current (**'HVAC'**) electricity systems currently separated by the North Sea. Using HVDC technology enables the Nemo Link to avoid the need to synchronise the two interconnected AC networks. The proposed subsea cables would run from Pegwell Bay near Ramsgate in Kent to Zeebrugge in Belgium, passing through English, French and Belgian waters. Ofgem's view is that the Nemo Link will increase access to energy generation and make energy supplies more secure and resilient for consumers.

3.6 The interconnector infrastructure will comprise:

- Two HVDC subsea cables between the landfall and the low water mark
- Two HVDC onshore underground cables from the converter station to the coast where they will be joined to the subsea HVDC cables
- Fibre optic cables installed with the onshore and subsea HVDC cables for the purposes of operational telemetry and communications
- An HVDC converter station on part of the site of the former Richborough Power Station which would convert the HVDC power used in the link to HVAC for use in the national transmission system and vice-versa
- A connection bay at the Richborough 400 kV electricity substation on part of the site of the former Richborough Power Station

- Three 400kV HVAC underground electricity land cables to connect the above substation to the HVDC converter station and up to two telecommunications.

Onshore cables

3.7 The UK onshore element of the Nemo Link, in relation to which compulsory purchase powers are being sought under the Order, consists of the route of underground cables which will run between the mean low water mark at Pegwell Bay and a converter station on the site of the former Richborough Power Station.

3.8 The HVDC onshore cables will be approximately 15cm in diameter. The fibre optic cables will be installed with the onshore underground cables and will be approximately 5cm in diameter. The onshore underground cables will be installed along the length of the route in three distinct ways:

- Standard trenching;
- Surface laid with capping; and
- Horizontal directional drilling.

Offshore cables

3.9 The Nemo Link will include two subsea HVDC cables between the landfall points at Pegwell Bay to mean low water and continuing to Zeebrugge. The cables will be rated between 350kV and 400kV. The size of the subsea cables will also be approximately 15cm in diameter.

3.10 The subsea cables will be bundled together in the same trench and jointed to the HVDC onshore underground cables in a transition joint pit ('**TJP'**). The approximate distance between Low Water and the TJP will be 1,800m.

3.11 The TJP will be an excavated pit (15m long x 5m wide x 2.5m deep) with a reinforced concrete plinth laid in its base. The cables will be jointed on the plinth and once this is undertaken, the excavation will be backfilled to original ground levels. On completion of works, there will not be any visible sign of the TJP on the surface.

3.12 The Pegwell Bay foreshore in which the subsea cables are to be installed is owned by Thanet District Council or the National Trust (who have leased part to the Kent Wildlife Trust). As the cables continue seaward they will be installed on the seabed, which is owned by the Crown Estate. The Order provides for the compulsory purchase of rights over the foreshore owned by Thanet District Council and the National Trust, but not over the seabed owned by the Crown Estate. A licence over the seabed is being negotiated between NGNL and the Crown Estate.

Converter Station

3.13 The converter station will convert the electric current between direct current ('**DC**'), which is used for the subsea cables, and alternating current ('**AC**'), which is used by the electricity transmission system.

3.14 The converter station will require a main building which will be constructed at the former Richborough Power Station site. It will also contain the equipment necessary for the conversion between DC and AC, transformers for switching to the correct voltage rating, filter

banks and associated switch gear. The converter station also requires 'valve halls' and other buildings to enclose the equipment. The main building will comprise 3 main parts and in total will be approximately 149m long by 93m wide with a maximum height of approximately 30.3m. AC connection gantries of approximately 15m in height will also be required.

3.15 There will also be a service building and a storage building. These buildings will each be approximately 27.4m long, 13.6m wide and 14.5m high, and attached to the main building.

3.16 A voluntary agreement has been reached between Richborough A Limited and NGIH's parent company, National Grid Holdings One PLC, which will provide NGNL with the necessary interest and rights to construct and operate the converter station.

Substation

3.17 A new 400kV Gas Insulated Switchgear (**GIS**) substation is also needed at Richborough to connect the Nemo Link interconnector to the national electricity transmission system. This will be owned, constructed and operated by NGET. The substation will be within a separately fenced compound adjacent to the proposed converter station to the west. The proposed substation will occupy a footprint of approximately 2.65 ha and will contain a combination of indoor and outdoor electrical equipment.

3.18 The substation will include a GIS Hall containing switchgear outdoor gas insulated busbar, overhead line gantries, two Super Grid Transformers, and equipment used to regulate and stabilise transmission voltages.

3.19 The GIS Hall will be approximately 52.2m long, 21.5m wide and 15m high and clad in a similar manner to the converter station. The maximum height of the outdoor electrical equipment will be approximately 12.7m.

3.20 A voluntary agreement has been reached between NGET and Richborough A Limited, granting NGET the necessary rights to construct and operate the substation.

4 Rights sought under the Order

4.1 Only the onshore cable element of Nemo Link, and the offshore cables to the landward side of mean low water are included in the Order Land. The site of the former Richborough Power Station is not included in the Order Land as the required rights have already been negotiated over this land by National Grid Holdings One PLC. Land below the mean low water mark is also outside of the scope of the Order Land as it is owned by the Crown Estate. Negotiations are underway with the Crown Estate for a licence to place the cables on the sea bed up to 12 nautical miles from low water.

4.2 As the onshore cables are to run underground, it is not necessary for NGNL to acquire the Order Land outright. Instead, NGNL is seeking one of two types of right in the Order Land: one where the infrastructure is to be permanently located (defined as an 'interconnector right' in the Order), and the other where the land is to be used temporarily as a worksite (defined as a 'work compound right' in the Order).

Interconnector Right

4.3 This right is sought over plots 1 to 11, 13 to 15, and 17 to 24. It would give NGNL all rights necessary:

(a) to place new electricity interconnector infrastructure within the Order Land and thereafter retain, inspect, maintain, repair, alter, renew, replace, remove and use the electricity interconnector infrastructure;

(b) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

(c) to access the Order Land and access adjoining land in connection with the electricity interconnector infrastructure; and

(d) to protect the electricity interconnector infrastructure; prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it.

Work Compound Right

4.4 This right is sought over plots 12 and 16. It would give NGNL all rights necessary:

(a) to use the Order Land as a working and compound area for construction, inspection, maintenance, repair, alteration, renewal, replacement and removal of the electricity interconnector infrastructure;

(b) to prevent any works on or use of the Order Land which may interfere with or damage the electricity interconnector infrastructure or which interferes with or obstructs access to the interconnector infrastructure;

(c) to fell, trim and lop all trees, bushes and other vegetation which obstructs or interferes with the exercise of those rights;

(d) to access the Order Land and access adjoining land in connection with the electricity interconnector infrastructure; and

(e) to protect the electricity interconnector infrastructure and prevent interference with, damage or injury to the electricity interconnector infrastructure or its operation, or interference with or obstruction of access to it.

5 The Order Land

5.1 The Order Land covers a site of approximately 335,302 square metres, encompassing 1.8km of subsea underground cable, and 2.3km of onshore underground cable. The route of the subsea cables runs through the foreshore area of Pegwell Bay, between the average low water mark and landfall. The route of the subsea cables to Pegwell Bay has been confirmed by geophysical and geotechnical survey. The two subsea cables will be installed in a single trench, from mean low water to the TJP. The subsea cables will be approximately 15cm in diameter, installed in a trench approximately 1-2m wide and buried to a target depth of between 1m and 3m. The precise depth of burial depends on the nature of the material

encountered, with the shallowest depth applying to the most difficult material to excavate. In this area, the cables will be laid on a concrete base, which will be capped to form a box.

5.2 The two onshore underground cables (each approximately 15cm in diameter) will be installed in a trench approximately 1m wide and 1m deep. The Order Land is a strip approximately 10m wide to accommodate the trenches and working room. Fibre optic cable will also be installed for control and communication along the link. An onshore underground cables route has been identified between the subsea cables' landfall at Pegwell Bay and the converter station taking account of the following:

- Designated sites of nature conservation;
- Presence of protected species;
- Quality of saltmarsh habitat;
- Proximity to residential areas;
- Archaeology;
- Highways;
- Planning proposals;
- Watercourses;
- Risk of encountering contamination;
- Utilities and services; and
- Land use.

5.3 The route of the onshore underground cables is on the coastal side of an existing footpath and cycleway which runs parallel to the A256 Sandwich Road, through Pegwell Bay Country Park, then into Stonelees Nature Reserve and the BayPoint sports complex. From the sports complex, the cables will be routed by horizontal directional drilling beneath the A256, Minster Stream, and a compartment of Hacklinge Marshes SSSI terminating in the converter station. The converter station is on the site of the former Richborough Power Station, which is currently derelict.

5.4 The Order Land includes 24 plots of land. The Order Land is in a variety of ownerships and 6 of the plots are unregistered land, 3 of which are in unknown ownership. The largest landowner is Thanet District Council.

5.5 Plots 1 to 13, and 20 to 24 of the Order Land (approximately 331,125 square metres in total) fall within the administrative boundary of Thanet District Council. Plots 14 to 19 (approximately 4,177 square metres in total) are within the administrative boundary of Dover District Council.

5.6 Much of the Order Land is designated for its conservation status: running through part of the Thanet Coast and Sandwich Bay SPA and Ramsar site; the Sandwich Bay SAC; the Thanet Coast SAC; the Sandwich Bay to Hacklinge Marshes SSSI; and the Sandwich and Pegwell National Nature Reserve.

5.7 The Order Land generally comprises the following land:

Plot	Size (approximate)	Description	Owner
1	**281,128 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
2	**4,657 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**The National Trust**
3	**19,044 square metres**	**Pegwell Bay foreshore to the east of Sandwich Road, Ramsgate**	**The National Trust (freehold)** **Kent Wildlife Trust (leasehold)**
4	**1,204 square metres**	**Pegwell Bay foreshore to the south east of Sandwich Road, Ramsgate**	**Kent County Council**
5	**1 square metre**	**Foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
6	**85 square metres**	**Foreshore to the east of Sandwich Road, Ramsgate**	**Thanet District Council**
7	**2,541 square metres**	**Foreshore and cycle path to the southern side of Sandwich Road, Ramsgate**	**Thanet District Council**
8	**116 square metres**	**Highway verge to the southern side of Sandwich Road, Ramsgate**	**Kent County Council**
9	**561 square metres**	**Scrubland to the south east of Sandwich Road, Ramsgate**	**Kent County Council**
10	**164 square metres**	**Scrubland to the east of Sandwich Road, Ramsgate**	**Kent County Council**
11	**12,543 square metres**	**Footpaths and overgrown scrub land within Pegwell Bay Country Park**	**Kent County Council**
12	**3,153 square metres**	**Overgrown scrub land within Pegwell Bay Country Park**	**Kent County Council**
13	**3,319 square metres**	**Rough land within Stonelees**	**Kent Wildlife Trust**

Plot	Size (approximate)	Description	Owner
		Nature Reserve	
14	**39 square metres**	**Hedgerow at Escana, Ramsgate Road, Sandwich**	**Unknown**
15	**1,824 square metres**	**Part of sports ground at Escana, Ramsgate Road, Sandwich**	**The Bay Point Club Limited**
16	**1,258 square metres**	**Part of sports ground at Escana, Ramsgate Road, Sandwich**	**The Bay Point Club Limited**
17	**44 square metres**	**Highway verge to the east side of Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
18	**74 square metres**	**Access track to east of Ebbsfleet Roundabout, Sandwich**	**Unknown**
19	**938 square metres**	**Access road and verge to the east of Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
20	**739 square metres**	**Highway and subsoil at Ebbsfleet Roundabout, Sandwich**	**Kent County Council**
21	**184 square metres**	**Woodland to the west of Ebbsfleet Lane, Ramsgate**	[redacted]
22	**699 square metres**	**Anaerobic digester site to the northwest of Ramsgate Road, Sandwich**	[redacted] **St Nicholas Court Farms Limited (leasehold)**
23	**72 square metres**	**Minster Stream**	**Unknown**
24	**917 square metres**	**Grassland in Hacklinge Marshes SSSI**	**Richborough Estates Limited**

6 NGNL's Approach to Acquiring Rights in Land by Agreement

6.1 NGNL has been negotiating with the owners and occupiers of the land over which rights are required under the Order, to seek to agree acquisition or options to make acquisitions on a voluntary basis. NGNL will continue to negotiate in parallel with seeking compulsory purchase powers, which will be used only as a last resort in order to ensure the deliverability of Nemo Link.

6.2 National Grid Holdings One plc has already acquired rights by agreement over the land comprising the site of the former Richborough Power Station, and will grant the necessary rights out of these to NGNL.

6.3 NGNL has attempted to negotiate voluntary agreements with the known landowners providing for the necessary rights to be granted to NGNL, however while heads of terms have been agreed with Thanet District Council and Richborough Estates Limited, and agreed in principle with Kent County Council, no formal agreements have yet been reached.

6.4 Whilst NGNL will continue to seek to reach an agreement with landowners it is considered necessary to also have compulsory acquisition powers over the Order Land for the following reasons:

(a) Generally only an option is obtained by agreement. The compulsory powers therefore provide a fallback should the voluntary agreements fail and cover instances where the owner is unwilling to grant the relevant land interest or right once the option has been exercised.

(b) Comprehensive compulsory purchase powers encourage affected landowners to come to the negotiating table in the first instance and, importantly, to conduct negotiations in the context of the ultimate compulsory acquisition process with a view to reaching a deal.

(c) Including all interests in a compulsory purchase order enables all of the required rights to be obtained in the same way and through one process, potentially by General Vesting Declaration ('**GVD'**).

(d) Compulsory acquisition by GVD is effective against all interests in the land, so avoiding the risk of the landowner failing to disclose a relevant interest, which could give rise to a ransom situation; the GVD is effective even against interests that may be unknown to the landowner and the promoter of the scheme.

(e) Acquisition of all easements by single GVD avoids any argument that individual easements cannot benefit the grantee's undertaking due to lack of direct connection to the remainder of the grantee's undertaking at the time of grant – the alternative being to ensure completion of all negotiated easements on the same day which is impracticable.

(f) Compulsory powers are more readily enforceable, so reducing additional risk, cost and delay.

6.5 Further, as there are 3 parcels of land where, after using all reasonable endeavours, the ownership remains unknown, and a further 3 where ownership is presumed but unregistered, it is necessary to seek to acquire the land compulsorily to ensure the Project can be delivered.

7 The Purpose of the Order and the Need for Compulsory Purchase powers

7.1 The purpose of the Order is to enable the comprehensive implementation of Nemo Link, an interconnector between the United Kingdom and Belgium's national electricity transmission systems. Electricity interconnection is considered by Ofgem to have many benefits:

- improving competition by creating larger effective markets, thereby making electricity market prices more efficient;
- making supply more secure by increasing access to generation in periods of system or energy shortage;
- making generation dispatch more efficient by providing access to the most efficient units over a larger area. This can also help to reduce the greenhouse gas emissions; and
- improving integration between variable generation and demand (for example, wind and solar renewable energy generation) by harnessing the diversity between output in different locations and improving access to the balancing services and other production flexibility needed to maintain security and quality of supply.

7.2 Nemo Link will deliver electrical interconnector infrastructure for which there is a strong public interest, on two principal grounds:

7.2.1 Increasing energy from renewable sources and reducing greenhouse gas emissions; and

7.2.2 Ensuring the competitiveness, sustainability and security of Europe's energy supply.

Renewable Energy

7.3 Nemo Link will support the domestic and European objective of reaching renewable and climate change targets. The UK has two key environmental targets relating to renewable energy and greenhouse gas emissions. First, the European Union's 20/20/20 vision for energy sets a target of 20% of European energy to come from renewable sources by 2020. The Renewable Energy Strategy published in July 2009 identified that for the UK to meet its share of the EU target, 30% of the UK's electricity would have to come from renewable sources by 2020. The second target is incorporated in the Climate Change Act 2008 and sets a target of an 80% reduction in UK greenhouse gas emissions from 1990 levels by 2050. This equates to a 34% reduction in greenhouse gas emissions by 2020 as specified by the Climate Change Committee.

7.4 The UK Government's vision to ensure safe, secure and affordable supplies for the future involves the construction of a new fleet of nuclear generation, rapid expansion of renewable energy (mainly through offshore wind) and the development of interconnector projects. To meet the targets set out at 6.3 and the targets in the European Commission's 3rd energy package which states that 15% of the UK's demand for energy needs to be generated from

the renewable sources by 2020, the UK will need an energy portfolio of 34% wind generating capacity by 2020. This is a dramatic increase on the 4% wind generating capacity which the UK has today.

7.5 In both the UK and Belgium more electricity is being generated from renewable sources, including onshore and offshore wind. The vast majority of the UK's increased wind generation capacity is expected to be obtained from the Crown Estate's licensed Round 3 Development Zones which have the aim of installing 25GW of offshore wind capacity. By its nature, wind generation is intermittent, and interconnectors such as the Nemo Link support an increase in wind generating capacity by allowing fluctuations in supply and demand to be managed effectively. It does this by enabling renewable energy from one geographical market to be used in another market: if too much renewable energy is generated in one region, the energy that is surplus to requirements can easily be transmitted through the interconnector to a region where the level of demand is higher. This will support the European renewable and climate change targets. It will also reduce the demand for non-renewable energy sources.

7.6 In December 2009 the UK and Belgium both became signatories to the North Seas Countries Offshore Grid Initiative, with the objective of co-ordinating offshore wind energy and infrastructure developments in the North Sea. Interconnection between countries is a pre-requisite to achieving this co-ordination.

Europe's Energy Supply

7.7 Nemo Link also supports European energy supply policies. The European Commission strategy document "Europe 2020" recognises the urgent need to upgrade Europe's energy infrastructure and to interconnect networks across borders to meet the EU's core energy policy objectives of competitiveness, sustainability and security of supply. The particular need to transport and balance energy from renewable sources is also recognised in European policy. Despite the existence of common rules for the internal market in electricity, the European Commission recognises that the internal market remains fragmented due to insufficient interconnections between national energy networks.

7.8 Nemo Link is pro-competitive, as it will enhance cross-border electricity flows in Europe. It will increase electricity interconnections across the EU, by directly linking the electricity markets in Great Britain and Belgium without the need to make use of any other countries' electricity transmission networks. Interconnectors play a crucial role in the European Union's strategy to achieve a competitive and integrated European energy market. Greater opportunities for trading with wider European energy markets will contribute to downward pressure on wholesale electricity prices which will create greater liquidity in the national markets and increase the availability of traded energy. Nemo Link will make a significant contribution to the European Commission's key policy objective of creating a single energy market by facilitating the integration of electricity markets in GB and Belgium. Nemo Link therefore contributes to achieving the European Commission's objectives for a single EU electricity market.

7.9 Security of supply is also another major rationale for the development of Nemo Link. By enabling participants in the GB and Belgian markets to trade electricity, Nemo Link will increase security and diversify both countries' electricity supply. The trading of electricity between GB and Belgium will support the electricity security needs of both countries and also wider within Europe. Greater interconnection between GB and mainland Europe provides the opportunity for the creation of new possibilities (between GB – Belgium).

7.10 Accordingly, the development of Nemo Link supports the European Commission's requirement for a wider electricity market within Europe, with electricity being traded throughout Europe and utilized more efficiently netting demand with supply. This should also see an overall reduction in the cost of wholesale electricity prices which would be reflected in the cost of electricity for consumers across Europe.

7.11 Having identified that a modern infrastructure with adequate interconnectors and reliable networks is crucial for an integrated energy market where consumers get the best value for their money, on 21 December 2013 the European Commission published its first list of 'Projects of Common Interest' (PCI) under Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, referred to as '**the TEN-E Regulation'**. Nemo Link is one of those PCIs. Under the TEN-E Regulation, designated PCIs are considered to be necessary to take forward EU energy networks policy and should be given the most rapid consideration in the permitting process that is legally possible. Consequently PCIs are to benefit from faster and more efficient permit granting procedures, and improved regulatory treatment and potential access to financial support from the Connecting Europe Facility. In order to qualify as a PCI, a project must:

- Deliver significant benefits for at least two European Member States,
- Further support market integration and competition,
- Enhance security of energy supply, and
- Contribute to reducing CO2 emissions.

7.12 In 2002 the EU Council set a target for all Member States to have electricity interconnection capacity equivalent to at least 10% of their installed production capacity by 2005. The UK is still failing to meet this target, with current total interconnection capacity of 3.5GW representing just over 4% of the 86GW of installed generation capacity.

7.13 The proposed Nemo Link is one of several interconnector projects currently under development. Taking into account these other projects, the Nemo Link will contribute 15% of a total interconnection capacity of 5.4GW for the UK which will represent 6.4% of the UK's installed generation capacity.

7.14 An industry consultation carried out by National Grid Interconnectors Limited, Elia and RTE in 2008 concluded that there was significant demand for new interconnection between Britain and continental Europe. Respondents considered interconnection to be an important means to respond to the intermittency of wind generation, to respond to periods when wind generation is greater than electricity demand, to help meet the challenge of retiring fossil fuel and nuclear plants in the UK and to support neighbouring wholesale and supply markets.

8 The Planning Position

Planning Application

8.1 Hybrid applications for planning permission under the Town and Country Planning Act 1990 for all the UK onshore elements of Nemo Link were submitted to Thanet District Council and Dover District Council. The applications were hybrid in that they were for outline permission for the development of the converter station and substation, and for full permission in relation

to the underground cables. In other words, full permission was sought for the development on the Order Land.

8.2 The applications were approved on 18 December 2013 by Thanet District Council (reference number F/TH/13/0760) and 19 December 2013 by Dover District Council (reference number 13/00759). Accordingly, there is full planning permission for the use of the Order Land for Nemo Link.

8.3 Documents submitted in support of the applications included:

(a) Environmental Statement – this includes a description of the proposed Nemo Link Project, an outline of the alternatives considered, a description of the likely significant effects on the environment and a description of measures envisaged to prevent, reduce or where possible off-set any significant adverse impacts on the environment.

(b) Planning Statement - provides the planning context and background. It also provides the details of the proposed Nemo Link Project and sets out how it fits with local, regional and national planning policy.

(c) Design and Access statement - Section 62 of the Town and Country Planning Act 1990 (as amended) requires a Design and Access Statement to be submitted with most forms of planning applications. This statement sets out the design and access principles and concept of the proposed converter station and substation development components including an outline as to how these are reflected in the development layout, visual appearance and landscaping proposals.

(d) Arboricultural Survey - details the arboricultural implications of development, subsequent mitigation recommendations and protective measures.

(e) Sustainability appraisal report - sustainability appraisal has been a requirement in the development of certain plans and programmes in the UK since the enactment of the Planning and Compulsory Purchase Act (2004) and its use was extended in order to meet the requirements of Dover District Council. This report is drafted to describe what “sustainability” means with respect to the proposed works and to demonstrate how it has been built into the design of Nemo Link.

8.4 A full assessment of National, Regional and Local policy can be found in the planning statement that accompanied the planning applications. A brief summary of some of the relevant policies is set out below.

European Policy

8.5 As noted above, under the TEN-E Regulation, PCIs are considered to be necessary to implement the EU’s energy priority corridors and areas. As Nemo Link has been designated as a PCI, its construction is considered to be necessary to implement EU energy policy.

8.6 On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy "Europe 2020". One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource efficient, greener and more competitive economy. The strategy put energy infrastructures at the forefront as part of the flagship initiative "Resource efficient Europe", by underlining the need to urgently upgrade Europe's

networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

8.7 The Commission Communication "*Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network*", followed by the Transport, Telecommunications and Energy Council conclusions of 28 February 2011 and the European Parliament resolution of 6 July 2011, called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

8.8 The European Council Conclusion of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and develop renewable energy sources in competition with traditional sources.

8.9 In linking the UK and Belgian electricity transmission networks, Nemo Link is fully supported by European policy.

National Policy

8.10 There is strong policy support at national level for Nemo Link. The Energy White Paper 2007 set out four key goals for energy policy and identified the challenges currently faced. Nemo Link will support the use of renewable energy which is important in meeting these challenges. The Project will support renewable energy connected to the UK's national electricity transmission system because the opportunity to export power when generation exceeds demand means that there is an additional potential market for renewables developers. This will support the development of renewable energy generation in the UK, assist in meeting the challenges related to security of supply and encourage investment in generation.

8.11 The National Policy Statements, approved by Parliament in July 2011, set out the most recent Government policy for the delivery of major energy infrastructure. These are a material consideration in England and Wales, including those which fall under the Town and Country Planning Act 1990 (as amended).

8.12 The Overarching National Policy Statement for Energy (EN-1) notes that it is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy. The NPS notes that "existing transmission and distribution networks will have to evolve and adapt in various ways to handle increases in demand".

8.13 The National Policy Statement for Electricity Networks Infrastructure (EN-5) highlights that the new electricity generating infrastructure that the UK needs to move to a low carbon economy, while maintaining security of supply, will be heavily dependent on the availability of a fit for purpose and robust electricity network. That network will need to be able to support a more complex system of supply and demand and cope with generation occurring in locations of greater diversity.

8.14 The National Planning Policy Framework ("**NPPF**") published in March 2012 sets out the Government's planning policies for England. In support of the NPPF goal of delivering sustainable development the Project will help to build a strong and competitive economy by

creating jobs and create a cluster of high technology industry in the area. Good design has been incorporated in the Project and the potential effects on the natural environment as a result of the Project have been assessed in accordance with the NPPF. The Project also helps meet the challenge of climate change by supporting the use of renewable energy.

Local Policy

8.15 Tables 4.1 and 4.2 of the Planning Statement accompanying the planning applications set out the local plan policies that apply to the Order Land within Thanet (and also to the Richborough Power Station site). Tables 4.3 and 4.4 set out the policies that apply to the Order Land within Dover. In summary, while Nemo Link is not in full accordance with the local development plans, being as it is a particularly sui generis form of development, nor does it conflict with the policies or aims of the development plans. In particular, as the cables will be buried underground and as the construction impacts will be temporary, the proposed use of the Order land will not conflict with policies for the improvement of the A256, the protection of open spaces, the maintenance of the natural character of undeveloped beaches, and the protection of the integrity of green infrastructure networks (including long-distance paths and cycle tracks).

8.16 Both Thanet and Dover District Council concluded that the need for Nemo Link outweighed any harm that would be caused to the character and appearance of the area.

9 Compatibility with the Human Rights Act 1998

9.1 NGNL recognises that compulsory purchase orders should only be made where there is a compelling case in the public interest. NGNL acknowledges that the rights over the Order Land which are sought in the Order interfere with the human rights of those with an interest in the land affected, particularly rights under Article 1 of the First Protocol to the European Convention on Human Rights, and that the purposes for which the rights are sought in the Order must be sufficient to justify this interference with human rights.

9.2 NGNL is satisfied that there is a compelling case in the public interest for the compulsory purchase of the Order Land, given the public policy support for the construction and operation of the Nemo Link interconnector.

9.3 NGNL has sought to keep any interference in the rights of those with interests in the Order Land to a minimum. The land within the Order has been limited to the minimum required for the cables to be installed and maintained. Furthermore, the route of the underground cables has been selected so as to minimise the impact on land use. The onshore underground cables have been routed so that they will not prevent any future development proposals with Pegwell Country Park, although there will be restrictions on planting above the cable route.

9.4 In summary, NGNL considers the Order to be necessary and proportionate and that the public interest in the proposals is sufficient to override the private interests in the Order Land where appropriate compensation for the compulsory purchase will be paid to those affected.

10 Special Considerations

10.1 Schedule 3 to the Acquisition of Land Act 1981 (‘**the 1981 Act**’) applies to compulsory purchase of rights over certain specified types of land.

10.2 National Trust Land:

(a) The Order Land includes approximately 23,701 square metres of foreshore in Pegwell Bay which is owned by the National Trust and 19,044 square metres of which is leased to the Kent Wildlife Trust.

(b) Paragraph 5 of Schedule 3 to the 1981 Act contains restrictions which apply to the acquisition of rights over National Trust land and instances where special parliamentary procedure is required.

(c) The land in question is not inalienable as it has been leased to Kent Wildlife Trust. As such the compulsory acquisition of rights over it is not subject to special parliamentary procedure under the 1981 Act.

10.3 Open Space Land:

(a) Paragraph 6 of Schedule 3 to the 1981 Act contains restrictions which apply to the acquisition of rights over open space, allotments and common land.

(b) “Open space” in this context means any land laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground. While rights are sought over land within Pegwell Bay Country Park, none of the land affected is classified as open space for these purposes: all of the land is either a public footpath, or is overgrown scrub, where the undergrowth is too dense for use by the public for recreation. Accordingly, it is the view of NGNL that the Order falls outside the scope of paragraph 6.

(c) If, however, the Secretary of State takes the view that the Order is within paragraph 6, then as the ground above the cables is to be reinstated following the construction of the cables, an application will be made to the Secretary of State for a certificate under para 6(1)(a) that the land “when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before”.

10.4 Local Authority Land:

(a) Paragraph 1 of Schedule 3 to the 1981 Act contains restrictions which apply to the acquisition of rights over local authority and statutory undertakers land.

(b) There are parcels of Order Land that are held by local authorities, in particular sections of highway and amenity land. However, paragraph 1(2) of Schedule 3 provides that a compulsory purchase order shall not be subject to special parliamentary procedure where the person acquiring the interest is a statutory undertaker. As NGNL holds an interconnector licence under the Electricity Act 1989, it is a statutory undertaker for the purposes of the 1981 Act. Accordingly, special parliamentary procedure does not apply.

10.5 Listed buildings

(a) There are no listed buildings within the Order Land.

11 Environmental Impact Assessment

11.1 Nemo Link will bring both short and long term local economic benefit, wider benefit to electricity consumers in the UK and Europe and enhanced opportunities for the integration of renewable energy to meet climate change targets. However, NGNL recognises that the Project could also bring some detrimental effects, and has sought to minimise these as far as possible.

11.2 NGNL has aimed to minimise and mitigate the environmental effects of the Project, and chose to prepare and submit a voluntary Environmental Statement to accompany its application for planning permission for the Nemo Link. The full ES is available on the project website at www.nemo-link.com. Overall, the ES predicts that Nemo Link will not bring significant environmental detriment, with the majority of environmental effects predicted to be neutral or beneficial. Minor adverse effects on traffic and transport, noise and air quality will be limited to the construction phase and will be localised and brief. As the cable route is underground it will have a neutral effect on landscape. The installation and construction of the Nemo Link is predicted to have no significant impact on ground conditions, hydrology and flood risk, ecology or archaeological and cultural heritage.

12 Funding

12.1 Nemo Link will be financed by NGNL, which in turn will be financed in equal shares by NIGH and Elia. NGNL's revenues will be regulated in accordance with a framework jointly developed between Ofgem and the Belgian energy regulator, CREG. This new framework is to be called the "cap and floor" mechanism.

12.2 Under the cap and floor mechanism, if developers' revenues exceed the cap, then revenue above the cap is returned to consumers via the relevant National Electricity Transmission System Operator (NGET or Elia respectively). If their revenues fall below the floor then consumers top up revenues to the level of the floor. For Project Nemo, Ofgem have calculated the cap and floor levels based on the final regime design and its assessment of costs to date; an annual floor level of £50.4m and an annual cap level of £80m (2013/14 prices). These will be subject to final adjustments after construction. This will ensure the implementation of the Order proposals is financially viable.

13 Related Applications, Appeals, Orders etc.

Planning permission

13.1 As noted in 8.3 above, planning permission for the underground cables was granted on 18 December 2013 by Thanet District Council and 19 December 2013 by Dover District Council.

Marine Licence

13.2 For the subsea cables within UK territorial waters, a marine licence was granted by the Marine Management Organisation on 23 December 2013 (reference number MLA/2013/00072).

International elements

13.3 For the non UK elements of the project, Nemo Link was granted authorisation to lay the offshore electricity cables in Belgian territorial waters by Secretary of State for Energy on 9 April 2014 (reference number EB-2013-0019-A). The environmental permit for these cables was approved by the Federal Minister of the North Sea on 20th March 2014. Consent for the part of Nemo Link which passes through French waters was received from the French Ministry of Ecology, Sustainable Development and Energy on 11 June 2013 (reference number 13014350).

13.4 Elia has entered into a Memorandum of Understanding with Electrabel for the proposed Belgian on-shore converter station at Herdersbrug. Negotiations with other land-owners for the use of that site are continuing, and there is no reason to suppose that approval is unlikely to be given. The outstanding approval for these elements does not therefore represent an impediment to the implementation of the Order.

14 Conclusion

14.1 NGNL may be authorised to purchase compulsorily land or rights required to enable NGNL to carry on the activities authorised by its licence and in particular to purchase land or rights required to enable it to construct the Nemo Link interconnector or for activities connected with the interconnector's construction, extension or operation.

14.2 The construction of the Nemo Link interconnector is in the public interest, it supports national energy policy and national planning policy, and does not conflict with local planning policy.

14.3 All of the rights in land proposed to be acquired under the Order are needed for the purposes of constructing and operating the Nemo Link interconnector. NGNL does not propose to acquire any greater rights than are needed.

14.4 There are no impediments to the implementation of the Order.

14.5 Accordingly, it is in the public interest that the Order should be confirmed.

15 Further Information

15.1 The Order, schedule and related maps are available for inspection at Ramsgate Library, Guildford Lawn, Ramsgate, Kent CT11 9AY and Sandwich Library, 13 Market Street, Sandwich, Kent CT13 9DA, as well as on the project website www.nemo-link.com. The documents, maps and plans produced for the planning application can also be downloaded from www.nemo-link.com.

15.2 A list of documents referred to in this Statement of Reasons is set out in the Appendix and may be inspected on www.nemo-link.com. NGNL reserves the right to supplement this list in the event of a public inquiry into the Order.

15.3 Further information about Nemo Link can be obtained by calling Freephone 0800 083 3149 between 9am – 5pm, Monday to Friday (an answerphone service is available outside these core hours), emailing nemointerconnector@communitycomms.co.uk or writing to Freepost RSLG-YXEU-BJUC, Nemo Link, PO BOX 68215, London, SW1P 9UJ.

APPENDIX

1 National Grid Nemo Link Limited (Pegwell Bay) Compulsory Purchase Order 2014

2 Appendix R of ODPM Circular 6/04 on Compulsory Purchase and the Crichel Down Rules

3 National Grid Nemo Link Limited's Interconnector Licence, Ofgem, 8 March 2013

4 Industry Consultation by National Grid Interconnectors Limited, Elia and RTE 2008

5 Third Package of Legislative Proposals for Electricity and Gas Markets, European Commission, 19 September 2007

6 European Commission Communication COM (2010), Europe 2020: A strategy for smart, sustainable and inclusive growth

7 Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure ('the TEN-E Regulation')

8 List of 'Projects of Common Interest' under the TEN-E Regulation, as set out in Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013

9 European Commission Communication COM (2010) 0677 'Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network'

10 Transport, Telecommunications and Energy Council conclusions of 28 February 2011 (6950/11)

11 The European Parliament resolution of 6 July 2011 (2010/2242/(INI))

12 The European Council conclusion of 4 February 2011 (EUCO 2/1/11 REV 1 CO EUR 2 CONCL1)

13 Renewable Energy Strategy, Cm 7686, DECC, 15 July 2009

14 The Energy White Paper 2007 (CM 7124)

15 The Overarching National Policy Statement for Energy (EN-1), July 2011

16 The National Policy Statement for Electricity Networks Infrastructure (EN-5), July 2011

17 The National Planning Policy Framework

18 Dover District Local Plan 2002 saved policies and 2010 adopted Core Strategy

19 Thanet Local Plan 2006 saved policies, and preferred option pre-consultation draft Local Plan 2014

20 Kent Waste and Minerals plan saved policies

21 Planning permission granted by Thanet District Council (reference F/TH/13/0760) dated 18 December 2013

22 Planning permission granted by Dover District Council (reference 13/00759) dated 19 December 2013

23 Environmental Statement accompanying the applications for planning permission

24 Planning Statement accompanying the applications for planning permission

25 Design and Access Statement accompanying the applications for planning permission

26 Arboricultural Survey accompanying the applications for planning permission

27 Sustainability Appraisal Report accompanying the applications for planning permission

28 Marine Licence granted for the subsea cables within UK territorial waters by Marine Management Organisation dated 23 December 2013 (ref MLA/2013/00072)

29 Authorisation to lay offshore electricity cables in Belgian territorial waters by Belgian Federal Secretary of State for Energy dated 9 April 2014 (ref EB-2013-0019-A)

30 Consent for the part of Nemo Link which passes through French waters by French Ministry of Ecology, Sustainable Development and Energy dated 11 June 2013 (ref 13014350)

National Grid Nemo Link Limited
31 December 2014

Thanet District Council

Draft Thanet Local Plan to 2031

Preferred Options Consultation

January 2015

Contents

What is the Local Plan

The Local Plan is a key Council document that is required to guide and deliver the Council's plans and aspirations for growth. It is essential to shaping change in a form which is desired by the Council and Thanet's communities, and for the delivery of development projects and infrastructure.

The Plan must be prepared with the objective of contributing to the achievement of sustainable development, and be in accordance with national planning policy.

The Plan should be aspirational but also realistic and should provide sufficient flexibility to adapt to rapid change. The Plan must be based upon up to date, sound evidence. We have to be able to demonstrate that the Plan will be deliverable and therefore the proposals included within it must be viable and realistic. The Plan will be delivered by a number of partners, including the private sector.

The Plan sets out policies and proposals that will be used to guide decisions and investment on development and regeneration over the period to 2031. It sets out how and where the homes, jobs, community facilities, shops and infrastructure will be delivered and the type of places and environments we want to create. It also identifies land to be protected from development, such as open space. Once adopted, the Plan will form the statutory planning framework for determining planning applications and will replace the 'saved' policies from the Thanet Local Plan 2006.

Why is the Council producing a Local Plan?

- The Council is required by government to produce a Local Plan.
- The Council also wants to set out in advance how it wishes to see the District develop. This provides certainty to developers, businesses, the community and other stakeholders.
- The Plan provides a framework to help deliver the Council's Economic Development and Regeneration Strategy
- The Plan will ensure that decisions on planning applications are made in accordance with local policy. Without a Plan the Council has less control over development in the area.

How has the Council decided what the Plan should contain?

- The National Planning Policy Framework sets out what the government expects local plans to cover.
- We have considered the specific issues and opportunities that are relevant to Thanet.
- We carried out consultation on the Issues and Options for the Plan and have considered the comments received.
- We have assessed the merits of the options in achieving sustainable development, including through the Sustainability Appraisal.
- We have and will continue to co-operate with our neighbouring authorities on cross boundary strategic issues.

The options and assessment of their merits are documented in the Issues and Options Consultation Document, the Sustainability Appraisal and in topic papers, which can be accessed on the Planning Policy pages of the Council's website. This Draft Local Plan is based upon the Council's preferred options.

How is the Plan structured?

The Plan is set out in three chapters.

Chapter 1 provides the introduction and sets the context for the Plan. It sets out the vision for Thanet that the Plan is seeking to achieve, and introduces the overall strategy behind the Plan, as well as setting out the strategic priorities and objectives which need to be achieved in order to deliver the vision and strategy of the Plan.

Chapter 2 sets out the strategic issues and policies of the Plan. These are the overarching policies which underpin the Plan's strategy. This chapters sets out the overarching strategies for delivering sustainable development and the overall levels of development and growth which are needed in Thanet, and includes the strategies for the economy, town centres, housing, environment, communities and transport, including strategic site proposals.

Chapter 3 sets out district wide development management policies. These are detailed and wide ranging policies which may be relevant to all new development proposals in Thanet. The chapter is set out in topic areas, and covers issues including climate change, design and heritage.

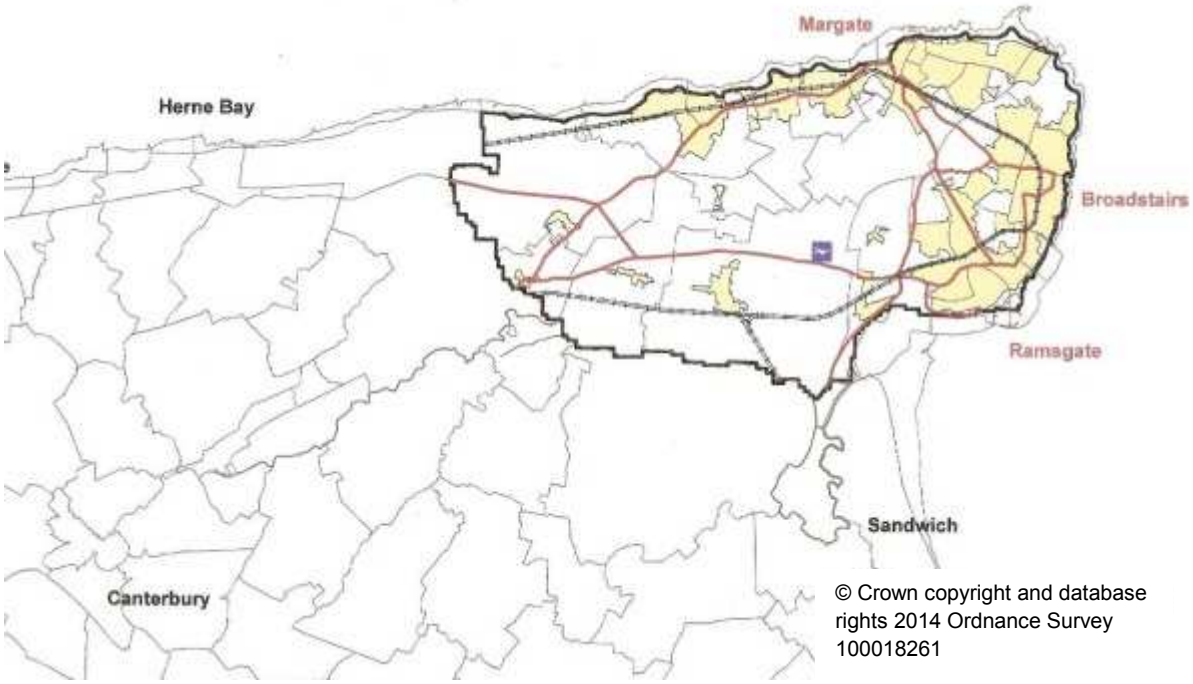
Thanet's Profile and key issues

In order to inform the plan for the future, we must have a good understanding of the characteristics of Thanet today, and the issues and opportunities that it presents. These are set out in the evidence and background papers supporting this document.

The following profile of Thanet provides an overview of the key characteristics, problems, issues and opportunities that need to be addressed.

Thanet lies at the eastern end of Kent, in close proximity to continental Europe. It has three main coastal towns of Margate, Ramsgate and Broadstairs. The built up area is densely populated and forms an almost continuous urban belt around the north east coast. This is separated by areas of countryside between the towns and providing relief in the built area. There are also attractive coastal and rural villages.

Map 1 – Map of Thanet



The district has an area of 103 square kilometres and a resident population of 134,400[1]. About 30% of the district is urban with 95% of the population living in the main urban area around the coast. Thanet is the fourth most populated district in Kent, with the second highest population density. Thanet is a popular area for retired people to live, and has the highest number of over 65 year olds in the county whilst having a lower proportion (59.6%) of 16-64 year olds than the county (62.6%).

Thanet is a unique and vibrant coastal area, with an attractive environment and a number of unique features. There are 32 kilometres of coastline with attractive chalk cliffs and beautiful sandy beaches and bays, many of which have been awarded European Blue Flag status. Much of the coast is also recognised for its internationally important habitats, including coastal chalk and significant populations

of coastal birds. This is reflected in the coast's designation under international and national legislation, including Sites of Special Scientific Interest, Special Protection Areas, and Specials Areas of Conservation. These areas are protected by legislation to prevent harm to them from development change and other activity.

Thanet is also rich in history, with around 2,000 listed buildings and 21 Conservation Areas. Its historic landscape contains many archaeological sites dating back to pre-historic times.

Outside of the urban area, much of the land is high quality and intensively farmed agricultural land.

Thanet has some areas which are at risk from flooding. These are confined to the low lying areas of the countryside to the south west of the district, and along the very edges of the coast, affecting small areas of Margate and Ramsgate.

In 2005, a new town centre was established at Westwood. This brought many retailers not previously represented in Thanet, and in turn has significantly reduced the 'leakage' of retail spend from the District. The centre continues to attract investment, with further development planned over the next few years. The area does however suffer from traffic congestion, and accessibility around the centre, particularly on foot, is not convenient.

The district benefits from excellent road access to and from the M25 and London via the M2 and dual carriageway A299. Access to Dover and beyond is via the A256, with the recently completed East Kent Access Road providing dual carriageway for the majority of the route. Access to the nearby cathedral city of Canterbury and to Ashford is via the single carriageway A28. Thanet has rail links to London, Canterbury, Dover and Ashford. Since 2009 High Speed domestic rail services operate from Thanet to London St Pancras using the High Speed 1 route via Ashford.

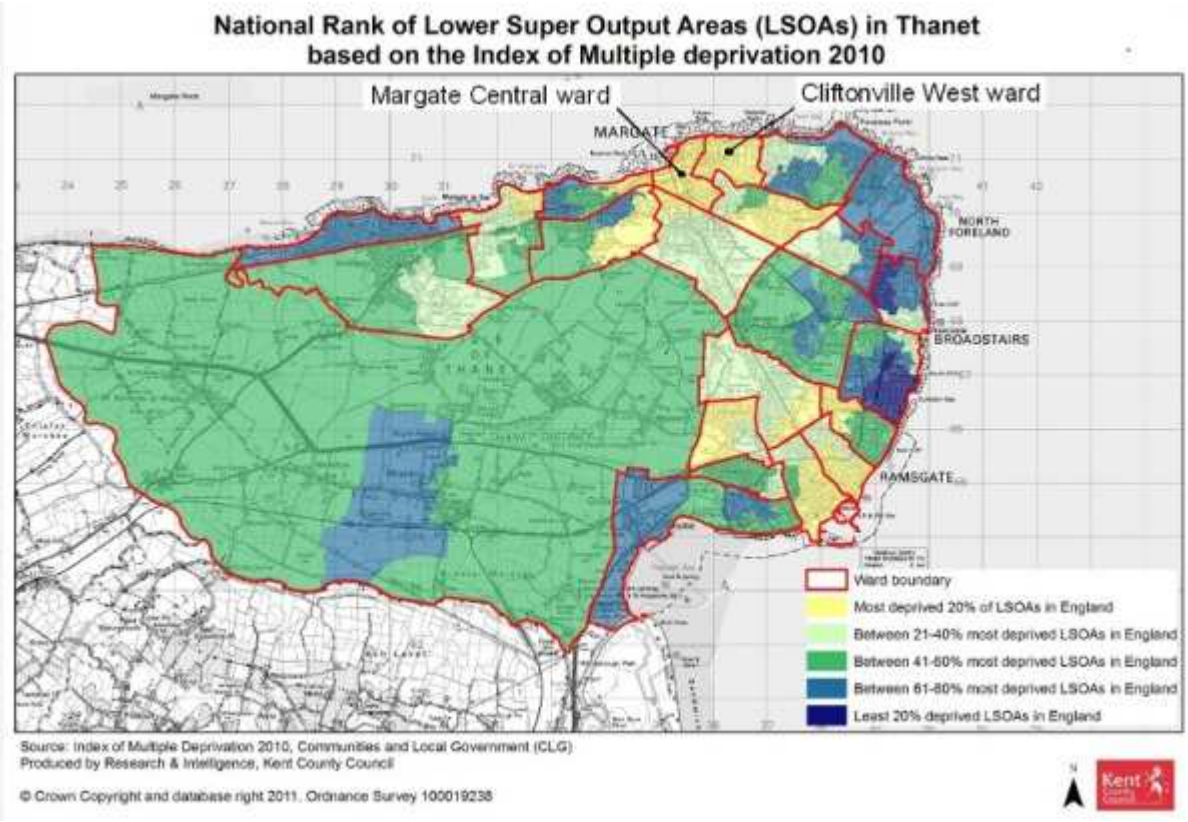
Ramsgate is a major cross channel port with opportunities for passenger and freight services to Belgium. It has also recently established itself as a base for servicing offshore wind farms. Thanet has an international airport whose recent activity has been predominantly in the freight market, but with some passenger services. The recent announcement regarding the potential closure of the airport makes it's future role for the district uncertain.

The tourism sector has continued to grow over the last couple of years, compared with declines in the South East and England. However, Thanet has a generally weak economic and employment base, and is underperforming when compared to the region. Productivity is below the county average and Thanet experienced a steeper decline in total employment in 2011 than the South East and England. Thanet's Business Parks have been slow to develop, and there is a significant amount of undeveloped employment land.

The towns' high streets have continued to suffer, particularly Ramsgate and Margate, with vacancy rates significantly above the national average. However, alongside the opening of the Turner Contemporary Gallery in April 2011, Margate's

Old Town and lower High Street have seen a significant number of new businesses opening.

Map 2

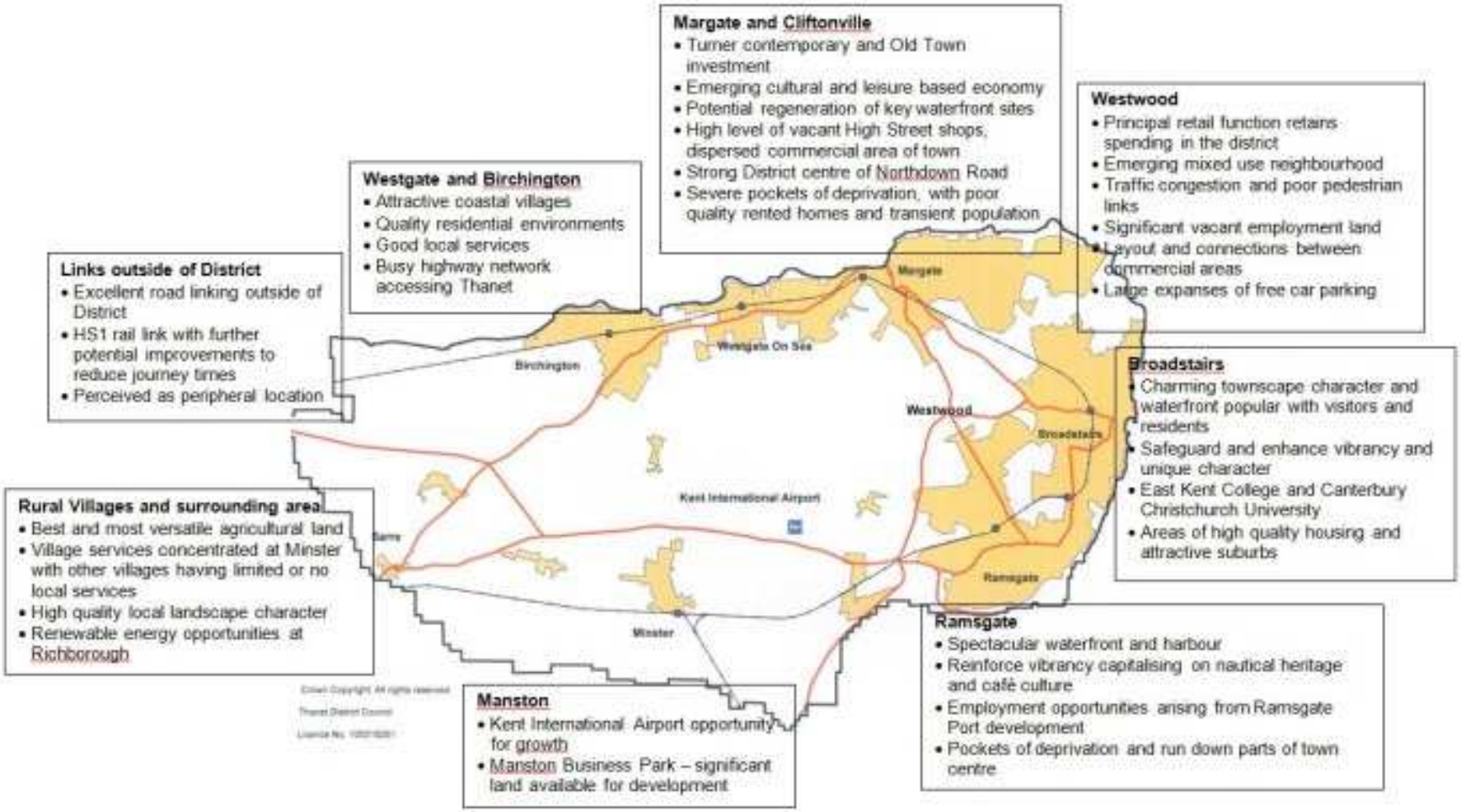


The district is ranked as the 49th most deprived district out of 326 authorities in England with the highest average proportion of households in poverty within Kent (Index of Multiple Deprivation 2010). Average skills levels of Thanet's residents are lower than the rest of Kent and England, with unemployment levels (claimant count 2012) at 6.2%, twice that of Kent. Wage levels are also lower than the national and regional average.

The overall quality of life of Thanet's residents is extremely varied. Some residents enjoy a very high quality of life, including living in high quality residential environments. However, Thanet also has a number of highly deprived wards with many people with support needs. These areas are also characterised by pockets of urban decline and poor housing stock. A key challenge is to ensure that everyone has the same opportunities by reducing inequalities in the area and improving quality of life for all.

In relation to Thanet's specific places and towns the following map summarises the key issues and opportunities that need to be addressed.

Map 3 – Key Issues and Opportunities



The Vision

Thanet has realised its growth potential as a location for business investment.

Making the most of its close proximity to Europe and easy access to London, Thanet plays an important role in East Kent.

It has benefited from investment in skills, employment, and infrastructure. Health and educational attainment in Thanet are comparable with the county average. Thanet successfully retains and attracts skilled people to live and work in the area.

A strong higher and further education sector has developed and evolved, providing links with local businesses. Opportunities in the green economy have been realised.

Thanet has a sustainable, balanced economy with a strong focus on tourism, culture and leisure, supported by the three thriving coastal towns.

It has a well established year round visitor economy, a destination of choice, having high quality accommodation and public spaces, and capitalising on its natural assets, the coastline and beaches, the heritage and culture.

The coastal town centres have re-defined their roles, maximising their unique characteristics, with diverse commercial offers and independent places to shop, eat and stay. New and restored housing has been regenerated next to boutique hotels and art studios.

Margate is a contemporary seaside resort based on its unique assets of a sandy beach, harbour and rich townscape. The creative industry, niche retail and educational sectors have diversified the economic heart of the town.

Ramsgate's maritime heritage, the commercial function of the Port, supporting renewable technology, its Royal Harbour, marina, beach and attractive waterfront, provide a vibrant mix of town centre uses, with a strong visitor economy and café culture.

Broadstairs is a charming and attractive town and a popular location for visitors and residents, who enjoy the flavour of its historic associations, range of small shops and restaurants, beach and picturesque waterfront.

Westwood has strengthened its position as a retail destination, as well as being firmly established as a town centre, and has developed as an integrated community, with housing, business, leisure, sport and recreation, and education. This has been supported by investment in transport infrastructure creating a safe and attractive pedestrian environment at its centre.

High quality new homes, as well as the regeneration of Thanet’s high quality historic housing, provide a choice of homes for Thanet’s residents and for those who have invested and relocated to the area.

Cliftonville has an economically independent, settled and mixed community structure, with the pride and confidence to invest in quality development and care for its local environment.

The villages retain their separate physical identity, historic character and have vibrant communities with local facilities and services.

The open countryside between the towns and villages remains essentially undeveloped, with a varied landscape, tranquility and distinctive views. Opportunity has been taken to increase public access and there is a diverse agricultural economic base, including green tourism.

The Local Plan's Strategy

The following sections set out the key drivers for this Local's Plan strategy, explains the overarching principles of the strategy and context of national planning policy, and the need to deliver sustainable development.

Sustainable Development

The Local Plan is prepared by Thanet District Council under the national planning policy system, whose central principle is to achieve 'sustainable development'. This may be defined as 'development that meets the need of the present without compromising the ability of future generations to meet their own needs'.

The National Planning Policy Framework (NPPF) sets out the Government's view of what sustainable development in England means in practice for the planning system.

The NPPF identifies the three dimensions of sustainable development; economic, social and environmental; giving rise to the need for the planning system to perform a number of roles:

'an economic role *– contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

a social role *– supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and*

an environmental role *– contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.'*

In pursuing sustainable development, this Plan positively seeks opportunities to meet the needs of the area, and economic, social and environmental gains are sought jointly and simultaneously.

The following policy sets out how the Council will consider proposals for development in accordance with the National Planning Policy Framework. The Plan as a whole sets out what sustainable development means for Thanet.

Policy SP01 - National Planning Policy Framework – Presumption in favour of sustainable development

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work

proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in this Local Plan (and, where relevant, with polices in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether:

- **Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or**
- **Specific policies in that Framework indicate that development should be restricted.**

A bold and positive strategy is needed in order to achieve the Council's vision for Thanet. Realising the economic aspirations for the District and improving the quality of life for all Thanet's residents, will require investment in new job creation, new quality homes, open space and infrastructure, as well as maintaining and enhancing Thanet's existing high quality built and natural environment.

Although Thanet has historically experienced social and economic problems, the Council has high aspirations for growth as set out in the Council's Corporate Plan and Economic Growth and Regeneration Strategy. The Local Plan looks to support this by identifying, facilitating and helping to deliver the development required. The National Planning Policy Framework requires the Council to plan positively for economic growth and boosting housing supply which is what this Plan seeks to achieve.

Preparing this draft Local Plan has involved some tough and complex decisions including the selection of key sites to accommodate new development.

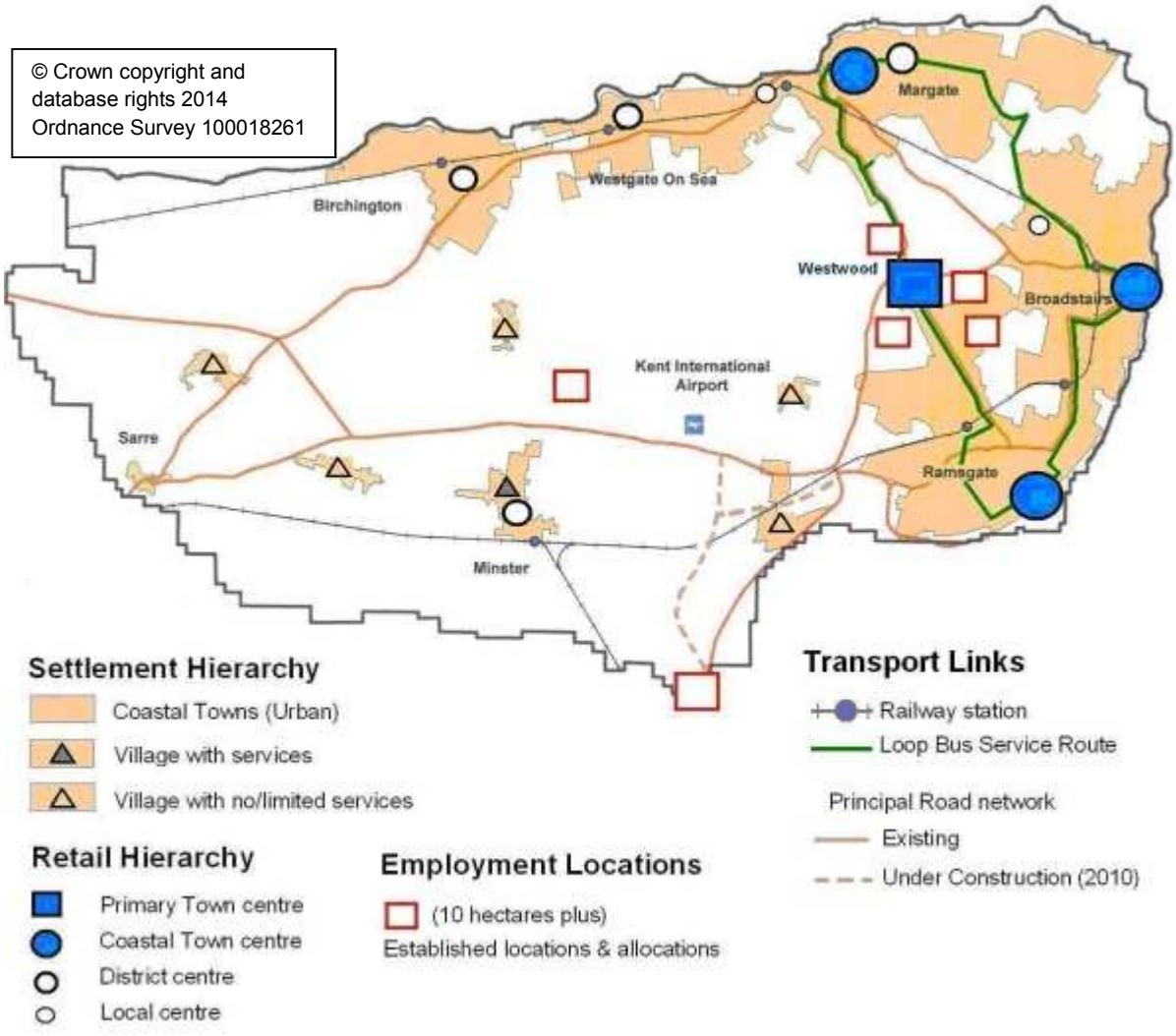
The levels of development proposed within the draft Plan are based upon robust and up to date evidence of the needs of the District. Thanet's population is expected to grow significantly over the next 20 years, and new homes and jobs are required to support this. The overall strategy aims for an optimistic and aspirational level of economic growth necessary to bring about the step change that is required in the District. It also aims to deliver the right number and mix of housing required alongside such growth, as well as delivering new open space, and protecting and improving the quality of Thanet's existing built and natural environment.

It is recognised that any growth in Thanet must be supported by the necessary infrastructure, such as roads, schools and health facilities. The Plan aims to take a co-ordinated approach to delivering such facilities alongside new development, and the Council has and will continue to work with other agencies, organisations and service providers to ensure that this is achieved.

The location of growth set out in this Plan is based upon a District settlement hierarchy and the key principle of focusing new development in locations that are highly accessible, and that can take advantage of and support Thanet's existing infrastructure and services. Thanet's established settlement pattern and transport links have evolved over a long period of time, and have been strongly influenced by its coastal location and peninsular geography. The hierarchy aims to inform and underpin policies in this Local Plan to facilitate growth in a manner sustainable in the local context.

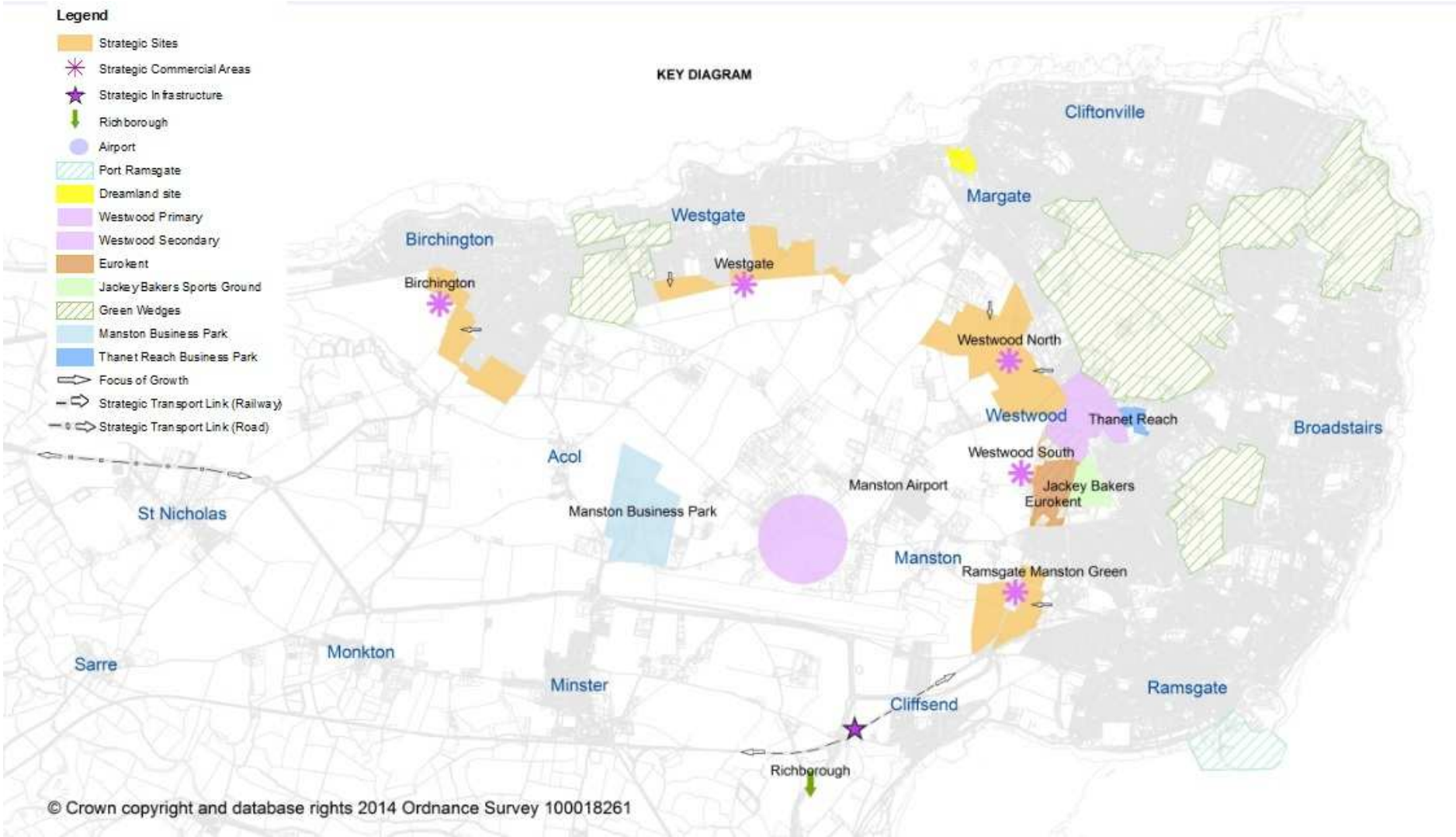
The settlement hierarchy is illustrated on Map 4 below:

Map 4 – Settlement Hierarchy



A number of sites and proposals are of fundamental importance to delivering the objectives of the Local Plan. The locations of sites of strategic importance for the Plan are indicated on the Key Diagram below, and the text of Local Plan sets out the relevant specific policies.

Map 5 – Key Diagram



Strategic Priorities and Objectives

The following strategic priorities and objectives set out what this plan is seeking to do in order to acheive the Council's vision and deliver sustainable development for the District. (No order of priority is implied)

Strategic Priority 1 - Create additional employment and training opportunities, to strengthen and diversify the local economy and improve local earning power and employability.

Objectives:

- Support the diversification and expansion of existing businesses in Thanet, particularly in the tourism and green sectors, and provide the right environment to attract inward investment.
- Retain and attract skilled people.
- Support the sustainable growth of Ramsgate Port.
- Support additional improvements to high speed rail links that will achieve further reduction of journey times.
- Provide a sufficient and versatile supply of land to accommodate expansion and inward investment by existing and new businesses.
- Facilitate the provision of accessible, modern and good quality schools, as well as higher and further education and training facilities to meet the expectations of employers and of a confident, inclusive and skilled community.
- Facilitate the tourism economy taking advantage of the area’s unique coast, countryside, its townscape and cultural heritage and potential of the coastal towns, while safeguarding the natural environment.
- Support a sustainable rural economy, recognising the importance of best and most versatile agricultural land.
- Support the sustainable development and regeneration of Manston Airport to enable it to function as a local regional airport, providing for significant new employment opportunities, other supporting development and improved surface access subject to environmental safeguards or as an opportunity site promoting mixed-use development that will deliver high quality employment and a quality environment.

Strategic Priority 2 - Facilitate the continued regeneration of the coastal town centres, developing their individual niche roles, whilst also consolidating the role and function of Westwood as Thanet’s primary retail centre, ensuring retail expenditure is retained in the district.

Objectives:

- Guide investment in the coastal towns to support the tourism economy and provide for the needs of local communities.
- Reshape Margate town centre and seafront to achieve a sustainable economic heart celebrating its traditions as a place of relaxation, leisure and seaside fun and growing reputation as a cultural destination.

- Assist Ramsgate to achieve its full potential capitalising on its historical and nautical heritage and visitor economy.
- Enhance Broadstairs' role as a popular location for visitors and the local community.
- Enable Westwood to consolidate and evolve as an accessible, successful and sustainable residential and business community with an excellent range of homes, schools, leisure, sports, shops and other facilities in an attractive environment.

Strategic Priority 3 - Provide homes that are accessible to, and suited to the needs and aspirations of, a settled and balanced community.

Objectives:

- Plan for sufficient new homes to meet local community need so that, irrespective of income or tenure, people have access to good quality and secure accommodation.
- Meet the housing needs and demands of a balanced and mixed community and to support economic growth.
- Safeguard family homes and the character and amenity of residential areas.
- Increase the supply of affordable homes.
- Improve the environment and the quality and mix of housing in areas needing revitalisation to restore mixed and confident communities.

Strategic Priority 4 - Safeguard local distinctiveness and promote awareness, responsible enjoyment, protection and enhancement of Thanet's environment, including the coast, countryside, rich seaside heritage, historic environment, diverse townscapes and landscape, biodiversity and water environment.

Objectives:

- Accommodate the development needed to optimise access to jobs, key services and facilities required to promote the physical and mental well-being, independence and quality of life of all sections of the community, and retain young people.
- Preserve and enhance Thanet's exceptional built historic environment and ancient monuments and their settings.
- Safeguard and enhance the geological and scenic value of the coast and countryside, and facilitate its responsible enjoyment as a recreational and educational resource.
- Retain the separation between Thanet' towns and villages as well as their physical identity and character.
- Protect, maintain and enhance the District's biodiversity and natural environment, including open and recreational space to create a coherent network of green infrastructure that can better support wildlife and human health.
- Mitigate and adapt to the forecast impacts of climate change (including the water environment, air quality, biodiversity and flooding)

- Use natural resources more efficiently, increase energy efficiency, the use of renewable and low carbon energy sources, to reduce the District's carbon footprint.
- Facilitate improvements within areas characterised by poor quality housing, empty property and poor physical environment.
- Ensure that all new development is built to the highest attainable quality and sustainability standards and enhances its local environment.
- Reduce opportunities for crime and the fear of crime
- Ensure Thanet's community has access to good quality social and health services
- Broaden and improve the range of active leisure facilities to encourage greater participation within the local community.
- Support the social, economic and physical revitalisation of Margate and Cliftonville West in line with community aspirations and through partnership working.

Strategic Priority 5 - Deliver the infrastructure required to support existing communities and new development, including an efficient and effective transport system.

Objectives:

- Promote development patterns and behaviour that will minimise the need to travel or use private cars to access services and amenities.
- Facilitate the enhanced integration of the High Speed 1 network with the wider public transport and highway network by supporting infrastructure that would maximise its benefits
- Promote an efficient public transport system alongside expansion of larger scale transport infrastructure.
- Facilitate provision of direct walking and cycling routes to reduce potential congestion, noise and pollution.
- Deliver required improvements to the road network in order to reduce congestion and pollution, and to accommodate new development.
- Facilitate the provision of infrastructure required to support new development and communities.

Strategic Proposals

1 Economic Strategy

Employment Growth

1.1 The Plan's economic strategy sets out how the Thanet's economy should grow, develop and create new jobs and prosperity over the plan period. The economic strategy is based upon a positive and optimistic level of growth. The strategy explains where the growth is expected to take place, and what the Local Plan is doing to support this, alongside the Council's Economic Development and Regeneration Strategy.

1.2 One of the core principles of the National Planning Policy Framework (NPPF) is to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. It states that planning authorities should set out a clear economic vision and strategy for their areas which positively and proactively encourages sustainable growth, identify strategic sites to meet anticipated needs over the plan period, support existing business sectors and plan for new and emerging sectors. Policies should be flexible to accommodate needs not anticipated and to allow rapid responses to changes in the economy. It also states that clusters or networks of knowledge driven, creative high technology industries should be planned for, priority areas for economic regeneration and infrastructure provision, and environmental enhancement should be identified, and flexible working practices such as the integration of residential and commercial uses within the same unit should be facilitated.

1.3 It further states that plans should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose.

1.4 The NPPF states that plans should recognise town centres as the heart of their communities and support their vitality and viability, promote competitive town centres that provide customer choice and a diverse retail offer, retain and enhance existing markets and introduce new ones and allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed.

1.5 The NPPF also states that Local Plans should support the sustainable growth and expansion of all types of business and enterprise in the rural areas, promote the development and diversification of agricultural and other land based rural businesses, support sustainable rural tourism and leisure developments that benefits businesses in the rural area and promote the retention and development of local services and community facilities. The NPPF also states that the Local Plan’s evidence base should assess the needs of the food production industry and any barriers to investment that planning can resolve.

1.6 Thanet is unique in that it has a diverse economy which is currently strong in the education and health sectors and traditionally has seen above average representation of retail and public administration. The expected cuts in public sector spending and increased pressure on personal wealth could have an impact on this. However, evidence shows that the tourism and green economy sectors are currently doing well and are expected to increase in the District.

1.7 Thanet also benefits from an airport and port. There is uncertainty regarding the future of the airport, however both offer potential to deliver job growth.

1.8 Thanet's manufacturing base has always been limited and mainly characterised by small scale business. There has always been a diverse economy in Thanet with tourism historically at its heart. Tourism and leisure continues to be an important component of Thanet's economy and retail has been particularly strong outperforming all other Kent Districts.

1.9 Thanet's business parks have been slow to develop and there is a significant amount of land available which in itself is an opportunity. Evidence suggests that only 30% of future jobs will be in traditional office, industrial and warehouse (Class B) type uses that are often located on business parks and therefore a flexible approach to Thanet's employment land is required.

1.10 Thanet has been a tourist destination for many years and whilst the popularity of seaside tourism may have declined it is still important in terms of Thanet's economy. Total employment across Tourism related industries in 2011 was 4,089 employees although around half of these were part time. Tourism accounts for 9% of Thanet's employment. A good visitor economy can also provide benefits for Thanet residents in terms of leisure facilities, attractive public realm and quality of life which in turn attract business to the area.

1.11 Thanet's strength in the visitor economy stems from the attractive sandy beaches in close proximity to London, the established successful tourist destination of Broadstairs, the development of the Turner Contemporary Gallery and the strong character of Thanet as a traditional tourist destination. Thanet also contains a wealth of heritage assets which are attractive to visitors with around 2,500 listed buildings.

1.12 Tourism along with the green economy are performing well and with certain developments in these sectors coupled with improved transport and communications infrastructure it is expected that these sectors will grow over the plan period and provide a significant number of jobs.

1.13 The green sector includes agriculture, forestry and fishing and construction activities but it is the growth in the low carbon goods and services and renewable energy and their spin off manufacturing and service businesses that are likely to deliver job growth over the plan period. Thanet has already seen above average development of wind farms, solar farms, anaerobic digesters and other renewable sources of energy production particularly located around the former Richborough Power Station site. The forecasted growth sees the green sector accounting for 12% of the Thanet's economy by the end of the plan period.

1.14 Ramsgate Port is an infrastructure asset and is important for the green economy sector and as a wharf for the movement of minerals. The Council supports the growth of port related uses and would wish to see the reintroduction of a roll on roll off passenger ferry service.

1.15 Thanet has 7 rural settlements with a population of around 6,000 residents which make up just 4% of the population. The employment land review concludes that Thanet has quite a low representation of rural employment enterprises when compared to the rest of the south east with less than 10% of VAT registered premises being located in the rural areas. Nonetheless the Council wishes to support rural economic development of an appropriate scale.

1.16 The overall target is to deliver a minimum of 5,000 jobs during the plan period to 2031 based on a projection assuming high growth in the tourism and green sectors. The aim of the strategy is to reduce unemployment to 3%. In order to do this it is necessary to understand what sectors have the most potential to deliver.

1.17 Future job growth in Thanet is expected to remain strong in town centre and tourism uses, as well as in public administration, and education. Thanet is a popular retirement area and this brings with it benefits to the economy particularly in terms of the health and caring professions which are expected to grow. Given that Thanet has a diverse economy a flexible economic strategy is needed in order to accommodate all employment generating uses.

1.18 In Thanet's town centres there is opportunity to capitalise on heritage assets and cultural and creative industries creating hubs of innovation and entrepreneurship. This is increasingly the trend in Margate, particularly the Old Town.

1.19 The Council's Economic Development and Regeneration Strategy identifies tourism as a key sector to support and enhance. A key element of this is the re-establishment of Dreamland as an amusement park. The Economic Development and Regeneration Strategy also identifies the potential to develop the green sector and capture more economic benefits from the windfarms surrounding Thanet and spin off businesses as opportunities. Growth in these sectors forms the basis of the District's economic strategy to plan for and deliver at least an additional 5000 jobs.

1.20 In delivering high growth in tourism, the main challenge is to increase visitor spend in Thanet, which can be achieved by encouraging the overnight visitor and developing more of a year round offer.

1.21 The Council has adopted a Destination Management Plan (DMP) which focuses on individual projects bringing together a variety of stakeholders to improve beach management, facilitate coastal regeneration and develop a shared story to improve marketing for visitors.

1.22 30% of overall job growth is still likely to be from the development in B use classes found on business parks. The strength in Thanet is smaller manufacturing firms which require smaller industrial units. It is therefore important within the

strategy to protect them. A range of employment sites is needed to cater for all types of employment generating development and an element of flexibility is needed.

1.23 Improving education and skills in Thanet is an important part of growing the economy and therefore the plan seeks to support the provision of these facilities.

1.24 Thanet's employment offer and relatively peripheral location combined with improving transport and communications infrastructure means that a certain level of commuting is expected. Currently the majority of working age people that live in Thanet work in Thanet with a significant amount commuting to the neighbouring Districts of Dover and Canterbury, as well as further afield. Improved rail linkages in the future could further impact on this. This is not necessarily a harmful trend as it brings wealth to the area and better access to jobs which increases local consumer spend further strengthening the retail and leisure professions. It is envisaged particularly that the Discovery Park Enterprise Zone established in Sandwich following the closure of the Pfizer pharmaceutical plant will impact upon out commuting levels, but its close proximity to Thanet is beneficial in terms of retention of wealth in the area as well as potential relocation of firms to Thanet's nearby employment sites. The proximity of the Enterprise Zone to Thanet is positive for employment and Thanet's economic strategy takes account of this in order to complement Discovery Park and benefit from it.

1.25 Job growth in the District will be supported, promoted and delivered by;

- allocation and retention of employment land and premises that are fit for purpose across the District;
- flexibility of uses on employment land;
- allocation of vibrant town centres able to accommodate a wide range of compatible uses;
- being flexible with regard to holiday accommodation reflecting and supported by the Council's Destination Management Plan;
- providing suitable and sufficient employment land to support growth in the green economy;
- continuing support for education and skills facilities; and
- supporting the growth of port related uses at Ramsgate Port.

1.26 It is not possible to predict or plan specifically for the needs of all significant job creating development proposals that may arise over the lifetime of the plan and only 30% or employment growth is expected to be in the non B use classes that are traditionally located on business parks. The Council wishes to plan positively for all kinds of employment generating development and such proposals whose needs cannot be met within existing or planned provisions will need to be considered in the context of relevant environmental and countryside policies and the aspirations of the strategic priorities. Account will also be taken of prospective benefits arising from additional and better paid local employment.

The following policy sets out the Economic Strategy for this Plan.

Policy SP02 - Economic Growth

A minimum of 5,000 additional jobs is planned for in Thanet to 2031.

The aim is to accommodate inward investment in job creating development, the establishment of new businesses and expansion and diversification of existing firms. Sufficient sites and premises suited to the needs of business are identified and safeguarded for such uses. Manston Business Park will be the key location for large scale job creating development.

Land is identified and allocated to accommodate at least 65ha of employment space over the period to 2031. Land and premises considered suitable for continued and future employment use will be identified and protected for such purpose.

Thanet's town centres are priority areas for regeneration and employment generating development, including tourism and cultural diversification, will be encouraged.

The growth of the Port of Ramsgate is supported as a source of employment and as an attractor of inward investment.

New tourism development, which would extend or upgrade the range of tourist facilities particularly those that attract the staying visitor, increase the attraction of tourists to the area and extend the season, will be supported.

Development is supported that enhances the rural economy subject to protecting the character, quality and function of Thanet's rural settlements.

Employment Land

1.27 The employment land strategy sets out how the Council proposes to support job growth through the allocation of employment land for development, the safeguarding of existing premises and flexibility regarding the types of development considered appropriate. The supply of employment land is supported by the town centre strategy which also provides land for economic development and job growth.

1.28 The National Planning Policy Framework (NPPF) requires that local planning authorities set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable growth, identify strategic sites to meet anticipated needs over the plan period, support existing business sectors and plan for new and emerging sectors. It also requires flexibility and states that the long term protection of sites with little chance of being used for employment purposes should be avoided.

1.29 In accordance with the NPPF an assessment of current and future growth sectors has been carried out along with an assessment of Thanet's employment sites and land available.

1.30 Forecasts show that Thanet will need in the region of 15 hectares of employment land (B1, B2 and B8 uses) over the plan period. Methodology and discussion of this is contained in the employment growth topic paper and the Economic and Employment Assessment 2012.

1.31 The 15 hectares is significantly below the amount of land that was allocated in the 2006 Thanet Local Plan.

1.32 The Economic and Employment Assessment in 2012 and the Employment Land Review 2010 both indicate that the land requirement to the end of the plan period is low. This is consistent with past trends showing low take up of employment land. The ELR states 7.7 hectares of employment land is needed to 2026 and the Economic and Employment Assessment 2012 states that 15 hectares of employment land is needed to 2031. The National Planning Policy Framework requires that we should avoid the long term protection of allocated sites where there is no reasonable prospect of them being used for that purpose. This brings into question the need to maintain an oversupply in Thanet's employment land portfolio.

1.33 In 2012 the Pfizer pharmaceutical plant at Sandwich closed and the site has been designated as the Discovery Park Enterprise Zone. With the range of benefits offered by its enterprise zone status available just across the district boundary the site is likely to have a positive impact on the demand for employment in Thanet.

1.34 There is a need to provide land for potential inward investment and for growing existing businesses to relocate to. There is also a need for affordable premises for the indigenous market and start up space also fulfils an important role.

1.35 Thanet needs to cater mainly for small to medium sized businesses and tourism related trade. Some land needs to be made available for larger businesses but some of these types of businesses may be drawn towards Discovery Park Enterprise Zone and Thanet's employment allocations will complement this trend. Some larger established sites such as Pysons Road, Haine Road and Westwood Industrial Estate are in need of some investment to secure their renewal and/or upgrade. Good quality, popular sites that are within the urban and rural confines are retained and protected. Of particular importance are quality sites that support Thanet's small and medium enterprises such as Fullers Yard and Manston Green. As far as possible there is a balanced distribution of sites across the District.

1.36 There is a need to keep a range of sites for cheap premises and business start ups. Thanet also needs to retain some sites that can accommodate uses such as paint spraying and tyre recycling. The range of sites include some in the rural area to support the rural economy. A "flagship" site for inward investment that can also accommodate growing indigenous businesses is provided for at Manston Business Park. There is also a need for "flexible" sites where alternative non Class B uses will be allowed. This reflects the current trend and ensures land is provided to meet all types of economic development.

1.37 Thanet's portfolio of employment sites caters for all of these uses both in terms of new sites and existing sites protected for future employment purposes. The following policy identifies Thanet's employment allocations, where new employment generating development will be promoted and supported.

Policy SP03 - Land Allocated for Economic Development

At the following sites land is allocated for business and employment generating purposes:

1. Manston Park, Manston

2. Eurokent Business Park, Ramsgate

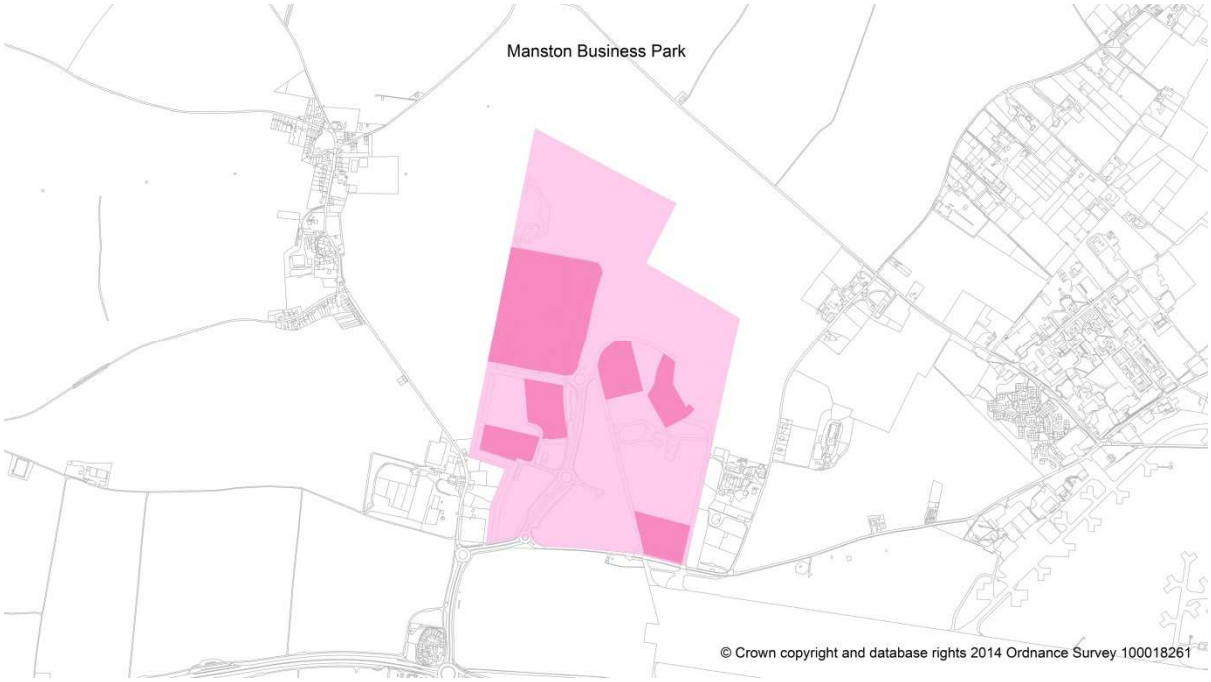
3. Thanet Reach Business Park, Broadstairs

4. Hedgend Industrial Estate, St Nicholas

At Manston Park and Hedgend Industrial Estate development will be restricted to use classes B1 (business), B2 (general industry) and B8 (storage and distribution). Thanet Reach Business Park is also suitable for education uses.

Manston Business Park

Map 6 – Manston Business Park



1.38 Manston Park is a prime business investment location, being strategically located at the centre of Thanet and adjacent to Manston Airport. It also has easy accessibility from the centres of population, the port at Ramsgate and excellent road links to the rest of Kent and the UK via the A299 and M2.

1.39 Approximately half of the site is owned by East Kent Opportunities which is a joint venture between Kent County Council and Thanet District Council. The aim for the joint venture is to bring forward economic growth and regeneration in Thanet. Manston Business Park is approximately half developed, and there is some infrastructure in place ready for the rest of the site to be developed. Whilst development on the site has been slow to come forward in the past, more recent developments have included speculative business units, and purpose built accommodation. The site provides a good opportunity for existing growing businesses in Thanet to re-locate to.

1.40 The focus for development of the site should be office, industrial and warehousing, whilst some mixed use including additional business support services and training facilities which demand a location outside of Westwood and of the coastal urban belt will be considered appropriate where this would serve to attract new or support existing job creating development.

Policy SP04 – Manston Business Park

Manston Park is allocated and safeguarded for business purposes within classes B1 (business), B2 (general industry) and B8 (storage and distribution).

Development proposals will need to comply with all of the following criteria:

1) Provide green infrastructure to create an attractive environment compatible with its location and boundaries adjoining the countryside.

2) Be accompanied by a transport assessment and travel plan unless the development is considered too small to have a significant impact. This should specifically consider improvements to public transport to enable access from Thanet's main residential areas to Manston Business Park by a range of means of transport.

3) Safeguard land traversing the site to accommodate a new road alignment from Columbus Avenue to the Airport and to take account of the need to safeguard the operational capability of Manston Airport.

4) Safeguard land within the site to enable future extension of Columbus Avenue northwards to link directly with the B2050.

Manston Airport

1.41 Given the recent closure of Manston Airport, there is an opportunity to review the viability of an operational airport at Manston and to consider future options for the vast area of land around the airport. It is considered that a successful airport has the potential to be a significant catalyst for economic growth. The Council can continue to support proposals that would maintain the operational part of the airport to encourage future air travel and aviation related operation at Manston.

1.42 To safeguard an operational airport at Manston, the Council is aware of the need to prevent developments that might prejudice the future operation and expansion of the airport, or be adversely affected by Airport operations. The Civil Aviation Authority has identified development safeguarding zones around the airport. Within these zones, the local planning authority is required to consult the airport operators regarding different forms of development that might affect Airport operations. These safeguarding zones should therefore be retained to ensure that the future aviation operations at the airport are not prejudiced.

1.43 The Local Planning Authority will take account of airport feasibility studies and the interest of potential airport operators and the interest of other commercial developers in relation to the future development options, in addition to its own assessment about development which might prejudice the development of the airport.

1.44 In view of the various options available to the Council for the future of the Manston Airport site as an airport operation and aviation activities and other developments, these need to be explored and assessed for the wider area of the airport and its environ through development plan making process. The area should be designated as an “opportunity area” for which the District Council will prepare Area Action Plan (AAP) Development Plan Document. The AAP for Manston Airport will set out the development framework for the development and regeneration of the area. A consideration of the AAP should be the promotion, retention, development and expansion of the airport and aviation related operations. This should be supported by a feasibility study and a viable business plan. The alternative option for the AAP should be to assess mixed-use development that will deliver significant new high quality skilled and semi-skilled employment opportunities, residential development, sustainable transport and community facilities. These options should be subject to Habitat Directive and Habitat Regulation assessment (HRA).

Policy SP05 – Manston Airport

The site of Manston Airport and the adjoining area will be designated as an “Opportunity Area” for the purposes of preparing the Manston Airport Area Action Plan” Development Plan Document. The Manston Airport AAP will explore through the development plan process the future development options for the site of the airport and the adjoining area. A consideration of the AAP should be the retention, development and expansion of the airport and aviation operations where supported by a feasibility study and a viable

Business Plan, while exploring alternative options for the future development of the area for mixed-use development.

Whilst the Manston Airport Area Action Plan is being prepared and until adopted by the Council as a development plan for the Manston Airport area, the following policy for the Manston Airport will apply.

Proposals at the airport, that would support the development, expansion and diversification of Manston Airport, will be permitted subject to all of the following requirements.

1) That there be Demonstrable compliance by the applicants with the terms of the current agreement under section 106 of the Town and Country Planning Act 1990 as amended or subsequent equivalent legislation.

2) That new built development is to be designed to minimise visual impact on the open landscape of the central island. Particular attention must be given to roofscape for the purposes of minimising the mass of the buildings at the skyline when viewed from the south.

3) The provision of an appropriate landscaping schemes, to be designed and implemented as an integral part of the development.

4) That any application for development for the purpose of increasing aircraft movements in the air or on the ground, auxiliary power or engine testing, to be supported by an assessment of cumulative noise impact and the effectiveness of mitigation measures to be implemented in order to minimise pollution and disturbance. The acceptability of proposals will be judged in relation to any identified and cumulative noise impact, the effectiveness of mitigation and the social and economic benefits of the proposals.

5) The provision of an air quality assessment in compliance with Air Quality Management plan to demonstrate that the development will not lead to a harmful deterioration in air quality. Permission will not be given for development that would result in national air quality objectives being exceeded.

6) That any new development which would generate significant surface traffic must meet requirements for surface travel demand.

7) That it must be demonstrated both that new development cannot contaminate groundwater sources and that appropriate mitigation measures will be incorporated in the development to prevent contamination.

8) There will be no significant harm to Thanet's SSSI/SAC/SPA/Ramsar sites. A Habitats regulations assessment will be required.

2 - Town Centre Strategy

2.1 The town centre strategy sets out how Thanet's town centres will develop, the inter-relationship between them, and how the towns commercial functions will support and contribute to the overall economic strategy for the District.

2.2 The National Planning Policy Framework states that planning policies should be positive and promote competitive town centre environments and set out policies for their management and growth over the plan period. Plans should recognise town centres as the heart of the community and pursue their vitality and viability. A network of centres should be defined that reflects the relationship between them in order to guide future development.

2.3 The strategy for Thanet's town centres seeks to reinforce the different but complementary roles of the primary centre at Westwood and of the coastal town centres of Margate, Ramsgate and Broadstairs. The objectives of the hierarchy are to:

- Safeguard and sustain Westwood Cross's role in preventing retail expenditure leaking outside the district.
- Enable the coastal towns to achieve and maintain a viable, diverse and sustainable commercial base.
- Ensure the scale of development at the District and Local Centres is sufficient to serve local catchments but not harmful to the function of the town centres.
- Allow residential development in locations that support the function of the town centres.

2.4 The Council is required to set out a network and hierarchy of centres. Identifying the existing hierarchy provides an understanding of the role and function of the town centres and their inter-relationship. A major factor in determining the role of the centres is the catchment which they serve. Canterbury is the pre-dominant centre in the wider sub region of East Kent. Thanet's hierarchy of centres is set out below:

2.5 Westwood - This centre sits at the top of the hierarchy as it caters for high order need, attracts the major national retailers and has a catchment that covers the whole of Thanet as well extending to areas outside of the District.

2.6 Coastal Town Centres - Margate, Broadstairs and Ramsgate. The catchments of these town centres are their individual town populations and tourist trade with a wide range of shops to cater for everyday need, special interest and the tourist trade. These towns have traditionally attracted national retailers and services as well as local businesses.

2.7 District Centres - Cliftonville, Westgate, Birchington and Minster. These centres cater for local needs and services. They serve large residential and semi-rural locations but catchments are limited and these locations are not appropriate for large scale retail development.

2.8 Local Centres - Several across the District such as Westbrook and St Peters. These cater for a more restricted local need and tend to have a small catchment. These centres provide services such as takeaways, hairdressers and small convenience stores. Business is often local rather than the national multiples. These centres are not appropriate for large scale retail development.

2.9 The Council wishes to maintain the current retail hierarchy as it has been functioning successfully. Thanet currently retains 84% of retail expenditure within the District and given this healthy retention rate there is no need to increase Thanet's market share within the sub region. However, in order to maintain the current market share the following growth will be required over the plan period:

- 34,300 square metres of floorspace selling comparison (high street style) goods. The majority of this is needed at Westwood which requires 27,870 square metres.
- 3,941 square metres of floorspace selling convenience goods is needed. The majority of this is needed in Margate and Westwood which together require 3,277 square metres.

2.10 Convenience retailing is currently skewed towards the large supermarkets clustered around the Westwood area and this trend is likely to continue. However, the Council would like to encourage more convenience provision within the coastal town centres.

2.11 In addition to this an assessment has been made of other uses that are traditionally found in high street locations and support the retail function of centres – these include uses such as banks, building societies restaurants, take aways, and drinking establishments and are known in planning terms as the A2-A5 use classes. The assessment concluded that a total of 9,560 square metres of floorspace is needed in the district to support the retail function of town centres. Much of this is shown to be needed at Westwood although uses such as restaurants would support the tourism appeal of the coastal town centres.

2.12 Town centres are hubs of the community and as such are not just retail areas. They contain a number of uses including leisure and tourism uses. Although no need for major commercial leisure facilities such as cinemas has been identified there is a need to be flexible within the town centres in order to support the tourism economy.

Table 1 below sets out the retail need for Thanet's town centres:

Table 1 – Thanet's Retail Need

	Convenience sqm	Comparison (high street goods) sqm	A2-A5 uses sqm	Total Need sqm
Westwood	1,154	27,870	7,256	36,280
Margate	1,123	1,372	624	3,119
Broadstairs	792	4,091	1,221	6,104
Ramsgate	376	584	240	1,200

Policy SP06 – Thanet's Town centres

Provision is made for a range of town centre uses reflecting the individual role, character and heritage of the town centres, including provision for retail development as referred in Table 1 above.

Westwood

2.13 Westwood has emerged as a commercial hub between the coastal towns. Its Westwood Cross town centre, established in 2005 has served to stem leakage of retail, expenditure outside the district. The primary task of the Local Plan will be to guide land use and investments that will maintain its role.

2.14 The Plan's vision is that Westwood has developed and consolidated into a mixed use hub with an excellent range of homes, schools, leisure, sports, shops and other facilities in a pleasant and convenient environment. New homes close to the town centre sustain and benefit from a wide range of services which are accessible on foot and by cycle. In particular the presence of the University, the Marlowe Academy and Innovation Centre have helped create a diverse and enterprising community.

The key issues for Westwood are:

- developing it into a fully-fledged residential community
- scale and timing of any expansion appropriate to 2031,
- the range of uses appropriate
- optimising safe movement by pedestrians and cyclists within the commercial area.
- Successively reducing current levels of traffic congestion

2.15 Westwood Cross opened in June 2005 consolidating what had become piecemeal retail development in the Westwood area. Since its opening there have been a number of further developments such as the development of the leisure complex and numerous developments at and improvements to the surrounding retail parks. Westwood has proved highly successful in its aims of clawing back retail expenditure formerly lost to locations outside the District boundary. It has secured its place as the preferred location for the large format style of retailing favoured by the national chains. This style and scale of retail was never before available in Thanet.

2.16 Figures show that in the region of 27,000 square metres of retail floorspace is needed at Westwood to maintain the status quo. However, much of this floorspace is already taken up by recent permissions leaving no reason to significantly expand the boundaries of the town centre. The remaining floorspace need at Westwood to the end of the plan period can be accommodated amongst the existing town centre development by way of redevelopment and re configuration.

2.17 Sainsburys have an approval for a major redevelopment of the site which comprises approximately 14,000 square metres of convenience floorspace as well as an element of retail floorspace selling high street goods. The scheme includes road improvements the road layout around the Westwood area and will improve traffic flow.

2.18 The adjacent housing allocation and flexible employment allocation at Eurokent supports tourism and leisure uses as well as B1 uses and will serve to add footfall to the town centre and increase its vitality, viability, accessibility and sustainability

2.19 In addition to the 1020 new homes under construction, Westwood is identified as a wider strategic housing allocation to enable its development as a sustainable mixded use business and residential community.

2.20 Westwood embraces a number of neighbourhood areas which together will serve to transform it into a new business and residential community. It will also integrate with neighbouring communities including Newington, an area suffering deprivation, and whose residents will benefit from connectivity to its amenities and services. As a location for strategic housing development, Westwood represents a major opportunity to redress the over-supply of flats in Thanet. This also provides the opportunity to create a strategic area of natural and semi-natural green space to increase provision of such open space in the District.

2.21 The area currently suffers from poor connectivity between sites, both vehicular and pedestrian. This is a challenge that needs to be addressed in the future development of Westwood.

2.22 Westwood lies at the intersection of the A256 and A254 and retains a partially piecemeal development pattern. Following the opening of Westwood Cross in 2005 alongside other retail parks and leisure development, the area has become a destination in its own right as well as a through route for traffic travelling into and out of the district and between Margate and Ramsgate. A key issue for Westwood will be to facilitate vehicular access to and around the area without the need to enter onto the main roundabout at the intersection of the A256 and A254.

2.23 Facilities to provide for public transport and encourage walking and cycling were established as part of the town centre development, including a bus hub for the frequent Loop bus service.

2.24 As part of the housing and commercial development already permitted in the area and now under construction, new road infrastructure is being provided which will help relieve peak time traffic congestion at the A256/A254 roundabout. However, inherent growth and development proposed in the Local Plan will potentially add to traffic flows compounding the need for a more comprehensive solution.

2.25 A Relief Scheme is in preparation to address this issue, which the Council will seek to implement. This will require developer-led solutions. A fundamental objective of this Scheme will be to realign traffic routes to enable free movement by pedestrians between town centre facilities.

2.26 As an emerging business and residential community there is scope to provide, locate and co-locate community services such as GP, youth service and library and other cultural facilities so as to be highly accessible on foot and by public transport.

2.27 Development proposals including residential may be required to provide for or contribute towards their provision, taking account of the plans and programmes of the service providers.

2.28 Jackey Bakers sports ground is Thanet's main area for sports and recreation purposes. The site provides the best opportunity to both enhance existing facilities, and in the longer term, to increase the level of facilities. There are current proposals for a new astro-turf pitch and pavilion with changing facilities.

Map 7 – Westwood Policy Map

Policy SP07 - Westwood

The Council will seek to support the evolution and development of Westwood as a mixed use business and residential community in line with the following area based policies, and identified on Map 7.

Development (in the vicinity of Westwood) will be required to have regard to and contribute towards implementation of a Westwood Relief Scheme. Development that would prejudice implementation of the Scheme will not be permitted. New development should also seek to improve pedestrian connectivity.

1) Westwood Town Centre

Retail development will be directed to the core town centre area at Westwood and complementary town centre uses will be accommodated within the wider town centre boundary, as defined by the primary and secondary frontages. Any development proposals should ensure there is no net loss in overall commercial floorspace.

2) Eurokent Mixed Use Area

Development of Eurokent will be for a mix of residential and business purposes, in accordance with a comprehensive development masterplan linking and integrating the development into the wider Westwood community.

Land at Eurokent will provide for:

- **in the region of 350 new dwelling houses, and**
- **the development and retention of 15.5 hectares of land for flexible business uses. Town centre uses that cannot be accommodated within the designated town centres due to format and scale can be located here.**

The masterplan shall incorporate, be informed by and/or address the following:

- **Small scale convenience retail provision required to accessibly serve the day to day needs of the community**
- **A minimum of 34 hectares of publicly accessible natural/semi natural open space in accordance with the requirements of Policy SP27**
- **A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation and the need to incorporate an element of housing to meet the needs of particular groups including specifically sheltered and extra care homes. The proportion of houses as opposed to flats should exceed as much as possible that in Policy SP18**
- **Contribute to new, or improvements to existing community facilities at Newington**
- **Liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure**
- **Archaeological assessment and the need to preserve and enhance the setting of heritage assets adjoining the site.**
- **A wintering and breeding bird survey to assess impact upon bird populations (including farmland birds) and the need to mitigate/compensate**
- **Clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites**

Proposals will be accompanied by a Transport Assessment informing the masterplan and including assessment of impact of development on the local road network and demonstrating measures to promote multi-modal access, including footway and cycleway connections and an extended bus service

accessible to the development. Development will be expected to provide an appropriate contribution to offsite highway improvements in respect of Westwood Relief Scheme, improvements to the A256 from Lord of the Manor and any other improvements identified in the Transport Assessment.

3) Thanet Reach Mixed Use Area

In accordance with Policy SP03 part of Thanet Reach is allocated for employment and education uses. The southern part of the site is allocated for residential development.

Margate

2.29 The vision for Margate is for it to evolve into a contemporary seaside resort based on its unique assets of a sandy beach, harbour, rich townscape, and on the success of a revived Dreamland Heritage Amusement Park and the Turner Contemporary Gallery. Margate's economic heart will be diversified through creative and cultural development and the town will no longer suffer disproportionately high levels of deprivation, transience and poor quality accommodation.

2.30 Positive signs of this step change are beginning to emerge with a 59% increase recorded in contacts to the Visitor Information Centre from November 2012 to March 2013, the second winter period since the Turner Contemporary opened.

2.31 Margate has experienced the most dramatic changes of all of the three major seaside towns in Thanet. Its decline from its position as one of the premier mass market holiday resorts in the mid-20th century is the main reason for the high levels of vacancy and decay along the seafront, High Street and the former hotel suburb of Cliftonville. Its historic development has provided a legacy of an old town and harbour and adjacent Georgian Squares whose quality and presence is not fully acknowledged or appreciated.

2.32 Margate has a number of commercial areas such as the Old town, College Square and the Upper and Lower high Street areas that perform different functions around the town. The upper and lower High Street along with the seafront have suffered from high vacancy rates although this is now beginning to improve

2.33 The Old Town area is a vibrant part of the town which contains many restaurants, cafes, gift shops and galleries. This area is popular with tourists and local people alike. This area of the town lends itself to tourism and leisure uses.

2.34 Considerable progress has been made towards safeguarding Margate's built heritage and diversifying its economy. A 'Townscape Heritage Initiative' (THI) historic building grant scheme, jointly funded by Thanet District Council and the Heritage Lottery fund, was operated in the Old Town area between 2003 and 2008 dispensing £1.2m in grants. Through this scheme, many properties which had been unused for many years were brought back into beneficial use as independent shops and cafes and creative businesses. In addition, major funding has been secured for the

regeneration of Dreamland Amusement Park. Kent County Council, the Arts Council England and SEEDA also demonstrated their commitment to the town through the successful completion of the Turner Contemporary Gallery.

2.35 Building upon this Dalby Square conservation area in Cliftonville West was designated in July 2010, and further designations are being considered. The Heritage Lottery Fund together with Thanet District Council agreed to fund another

2.36 Townscape Heritage Initiative grant scheme within the designated conservation area (which includes Dalby Square and parts of Arthur Road and Dalby Road), totalling £2.5m. The scheme's aim is specifically to improve the built environment of the area. It officially started in January 2013 and will run for 5 years.

2.37 Dreamland Amusement Park is synonymous with Margate as a seaside resort. The park closed after the 2006 season. Since its closure the Council has worked, alongside partners, to re-open Dreamland as an amusement park. The Council has compulsory purchased the site and wishes to realise a comprehensive scheme for Dreamland, maximising its potential to contribute to the economic well-being and attractiveness of Margate as a visitor destination. The vision is for the amusement park to open as a not for profit business comprising historic rides with classic side shows, cafes, restaurants, special events, festivals and gardens incorporating the restored famous scenic railway. This would serve as a major tourist attraction in Margate and a key part of the town's regeneration.

2.38 The run down Lido complex is situated close to the Margate Winter Gardens and Turner Contemporary and given its coastal location it provides an ideal opportunity for a leisure/tourism related development with uninterrupted sea views. The site is also an important heritage asset but is need of significant restoration and repair, which the Council considers should be the main focus for any redevelopment proposals.

2.39 Strategic Local Plan designations that are expected to help deliver the continued regeneration of Margate include Margate's Town Centre and Old Town area, Margate's seafront area, and Dreamland.

2.40 Margate has a number of sites which present the opportunity for mixed use re development that include residential. These will also contribute to the overall vibrancy and energy of the town. These sites include Arlington House, the Rendezvous site, the Centre, the Cottage car park and Bilton Square.

2.41 The Arlington House site is a highly prominent site in Margate and has permission for a supermarket. This decision is currently subject to legal challenge. Should this development not commence the Council considers that this site is suitable for mixed use redevelopment.

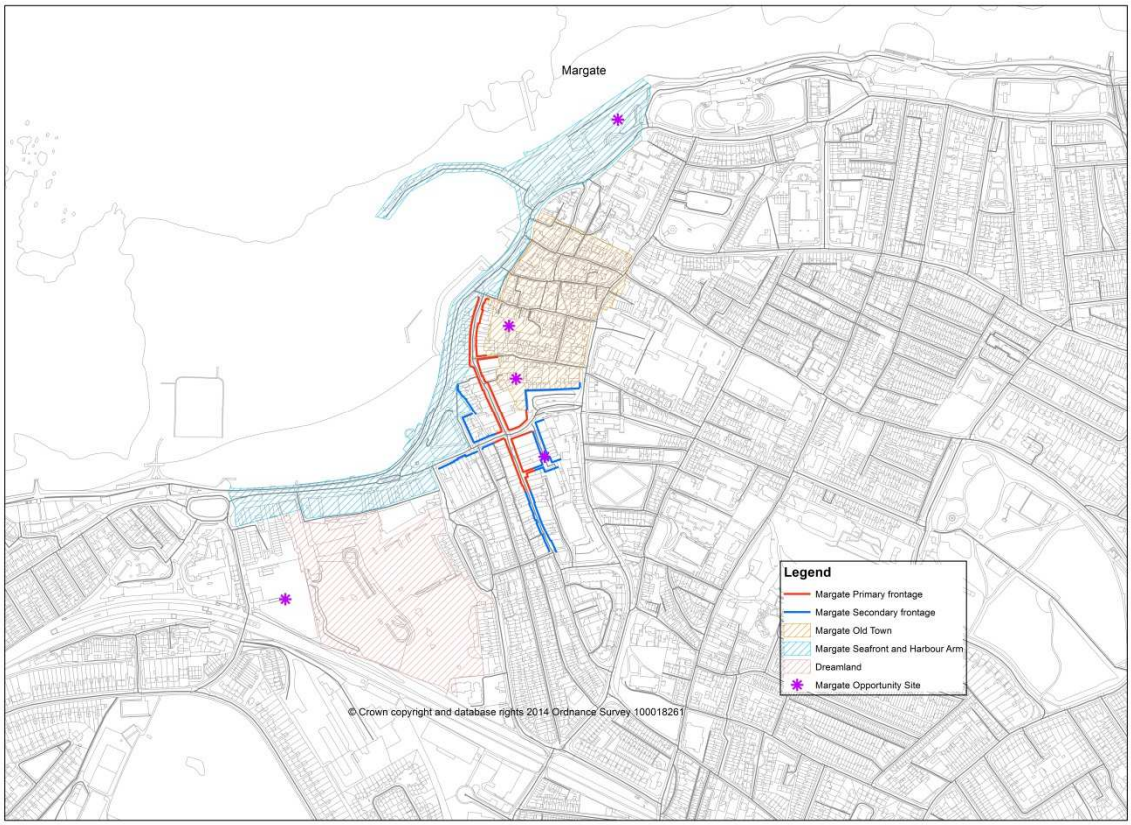
2.42 The strategy for Margate's core area is to support retail uses including banks, restaurants and drinking establishments in the Primary shopping frontage centred around the upper and lower High Street. The Old Town area will provide a range of town centre uses including cultural and creative industries. There will also be a designated Margate Seafront and Harbour Arm area that supports and encourages

seafront leisure uses that are sympathetic to the surrounding seafront architecture. Evidence shows that in Margate there is a need for an additional 3,119 square metres of retail floorspace to the end of the plan period. Current vacancy levels and the wider town centre designations can adequately accommodate this need.

2.43 Seafront areas are important to the vitality and viability of the coastal town centres as they attract tourists and provide a natural leisure focus for the towns in close proximity to the High Streets and main shopping areas. As such it is important that leisure and tourism uses are encouraged here that are complementary to the town centres and that encourage economic growth.

2.44 The cultural and economic regeneration of Margate needs to be supported by strategies that tackle the poor housing conditions and imbalances in the market. There is an important relationship between Margate's regeneration and the need to address the social, economic and environmental problems in West Cliftonville which are associated with its concentration of poor quality private rented accommodation. This will require a range of specific planned initiatives and interventions. In addition comprehensive regeneration will need to promote attractive and convenient links between Cliftonville West and Margate Seafront and town.

Map 8 – Margate Policy Map



Policy SP08 – Margate

The Council will seek to support the continued regeneration and development of Margate as a contemporary seaside resort in line with the following area based proposals, and as identified on Map 8.

1) Margate Town Centre

The focus for retail development will be in and around the High Street as defined by the Primary and Secondary Frontages.

2) Margate Old Town

Margate's Old Town area will continue in its complementary role, contributing to the vitality and viability of Margate's town centre, increasing footfall and enhancing quality and choice of facilities in the town centre. It will be a focal location for creative and cultural industries. Residential development will be permitted above ground floor level only and the Council will resist the loss of existing commercial premises in the area.

3) Margate Seafront and Harbour Arm

Within the seafront area of Margate and the Harbour Arm as indicated on Map 8, Leisure and tourism uses will be permitted, including retail, where they enhance the visual appeal of these areas and protect the seafront character and heritage. Residential development above ground floor will be permitted.

4) Dreamland

Dreamland will be developed as an amusement park and be a significant visitor attraction supporting the regeneration of the town.

Proposals that seek to extend, upgrade or improve the attractiveness of Dreamland as an amusement park will be permitted. Development that would lead to a reduction in the attractiveness, leisure or tourist potential will be resisted. Exceptionally, development of a limited part of the site may be accepted as a part of a comprehensive scheme for the upgrading and improvement of the amusement park. The scheme will be required to demonstrate that the future viability of the amusement park can be assured and the Council will negotiate a legal agreement to ensure that the proposed development and the agreed investment in the amusement park are carried out in parallel.

In the event that evidence, in the form of an independent professional assessment, is submitted (and accepted by the Council) as demonstrating that it is not economically viable to operate an amusement park on the whole or majority of the site in the foreseeable future, then proposals for redevelopment may be accepted subject to:

- **proposals demonstrating that such redevelopment would sustainably contribute to the economic wellbeing and rejuvenation of Margate, and**

being supported by a business plan demonstrating that such proposals are economically viable;

- **the predominant use of the site being for leisure purposes. (an element of mixed residential would be appropriate but only of such a scale needed to support delivery of the comprehensive vision for the site);**
- **compatibility with the context and proposals of the strategic urban design framework, and integration with appropriate proposals for redevelopment/refurbishment of neighbouring sites;**
- **proposals delivering a new road along the southern site boundary to enable the diversion of vehicular traffic from marine terrace. (a legal agreement will be required to ensure that a proportionate contribution will be made towards the cost of providing the new road and to appropriate improvements to create a pedestrian priority environment along Marine Terrace);**
- **retention of the scenic railway in situ as an operating feature within a green park setting appropriate to its character as a listed building; and**
- **proposals being accompanied by a traffic impact assessment.**

5) Opportunity Sites

There are Opportunity Sites identified on Map 8 which are considered suitable for mixed use town centre development. Residential development will be considered acceptable where this does not conflict with the area based criteria above.

6) The Lido

Proposals for leisure and tourism related uses will be supported at the Lido. Any development must respect and restore the site's status as a significant heritage asset.

Any development permitted by this policy must not adversely affect any designated nature conservation sites either directly or as a result of increased visitor pressure.

Ramsgate

2.45 The vision for Ramsgate is for maritime heritage, Royal Harbour, marina, beach and attractive waterfront, to provide the underlying flavour and economic base of its vibrant mix of town centre uses, visitor economy and café culture. The former surplus of small shops beyond the town's commercial core has been refurbished to provide quality residential accommodation and there is a viable balance and mix of residential and commercial use including specialty shopping.

2.46 Like Margate, Ramsgate has been adversely affected by the decline of the traditional resort holiday. However, with its magnificent Royal Harbour and nautical atmosphere Ramsgate has been quicker to recover. A café culture has developed around the harbour area and this needs to be further encouraged. With assistance

from area based renewal programmes, shops once empty are being converted to new homes, around a stronger commercial core. However, some neighbourhoods of the town centre hinterland such as parts of the east cliff area are still visibly in need of social, economic and physical revitalisation.

2.47 The key issue for Ramsgate town will be to maintain momentum so as to further improve the vitality, diversity and economic vibrancy of the town centre, secure refurbishment of the generally fine but often tarnished stock of historic buildings, support development of the visitor economy including cultural creativity, attract more economically active residents and strengthen the range of local services.

2.48 Ramsgate contains many separate commercial areas. As well as at the traditional focal point of the High Street commercial development has stretched to the upper High Street and the length of King Street. Over recent years as all High Streets have seen an increase in vacancies this commercial development has become somewhat sporadic and in some cases run down. The strategy of the Council has been and continues to be to draw commercial development back to the commercial heart of Ramsgate and allow the more peripheral areas of the town centre to revert to residential use. This strategy has been showing results and Ramsgate is benefitting from an improved public realm and so it is appropriate for this policy approach to be continued.

2.49 Ramsgate has a need for an additional 1,200 square metres of retail floorspace. The current vacancies and scale of the town centre boundary can adequately accommodate this in the plan period.

2.50 Retail development will be focused in Ramsgate’s core area with complementary town centre uses accommodated within the wider town centre boundary. Leisure and tourism uses will be particularly encouraged around the marina area.

2.51 Land at and adjacent to Ramsgate harbour is identified for a mix of uses including leisure, tourism, retail and residential purposes. Any proposals should have regard to the emerging Ramsgate Maritime Plan or any future plan for the Port and Royal Harbour.

2.52 The Royal Harbour and historic waterfront are important for both leisure and commercial users which is important for the vibrancy of the town. The seafront area is already has a thriving cafe culture. The Royal Harbour is a Grade II* listed structure and is at the heart of Ramsgate Conservation area. The regeneration of Ramsgate depends on the continued attractiveness of the Royal Harbour and new development in this area will need to preserve and enhance its character and appearance. It is a tourism and leisure attraction with significant potential and already offers much to smaller pleasure craft. Commercial fishing and ship repair are also carried out in the Royal Harbour.

2.53 The growth of the Port of Ramsgate (Kent's second Cross Channel port) is supported as a source of employment and as an attractor of inward investment. The Kent Minerals and Waste Local Plan 2013-2030 proposes to safeguard the port for the importation of minerals into Kent. In addition to the potential growth of Port trade

including passenger ferry operations, there is additional employment associated with marine engineering, including the use the port as a base to assemble and maintain offshore wind turbines, and other businesses benefiting from a port location.

2.54 The Council is producing a Ramsgate Maritime Plan which supports the Council's regeneration goal of accelerating economic growth to achieve greater productivity and profit for business in and around the port, more jobs, and increased prosperity for our residents and in particular:

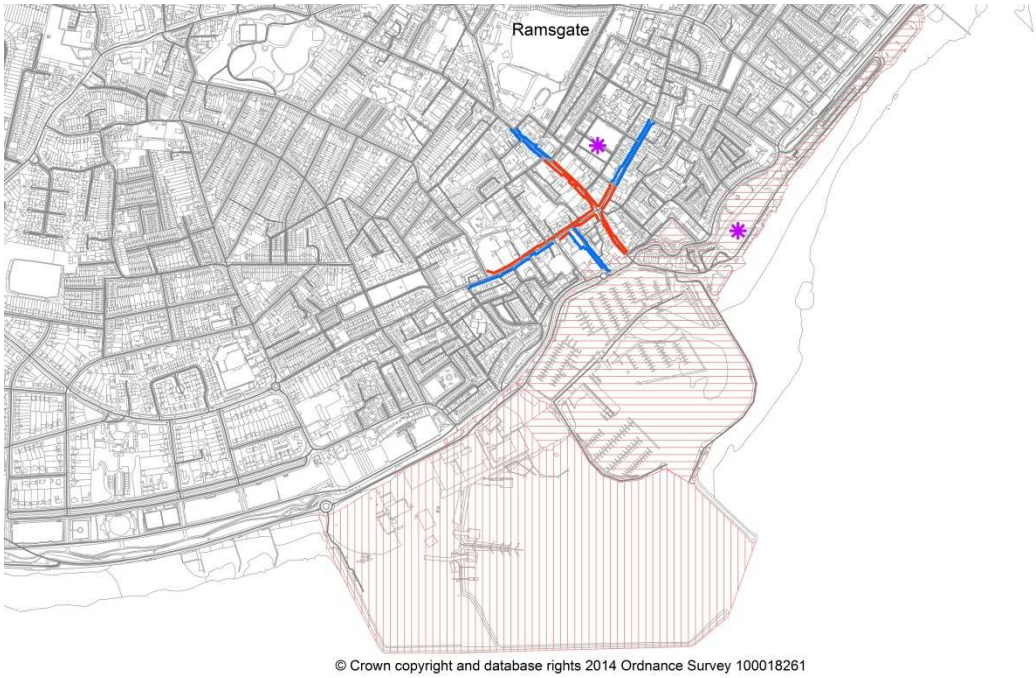
- builds on the unique conflux of a major seaport, international airport and high speed rail
- rebuilds our reputation as the UK's favourite visitor destination, and
- achieves those goals in ways that are safe, sustainable, and environmentally sensitive and which recognise the challenges posed by climate change

Further development will be permitted at Ramsgate Port that supports the aims of the Ramsgate Maritime Plan or any future plan which the Council adopts.

2.55 Any business plans and supplementary guidance will have regard to the need to make optimum use of the existing port land to protect and support diversification of its function.

2.56 Recognising the proximity of the Port to the Sandwich Bay -Thanet Coast SSSI/ SPA/Ramsar Site and Marine SAC, development proposals for growth would be subject to the Habitat Regulations and will need sensitive consideration in relation to nature conservation and landscape. Proposals would need an acceptable environmental assessment of their impact on the Harbour, its setting and surrounding property, and the impact of any proposed land reclamation upon nature conservation, conservation of the built environment, the coast and archaeological heritage, together with any proposals to mitigate the impact.

Map 9 – Ramsgate Policy Map



Legend

- Ramsgate Primary frontage
- Ramsgate Secondary frontage
- Ramsgate Waterfront and Royal Harbour
- Port Ramsgate
- Opportunity Site

Policy SP09 – Ramsgate

The Council will seek to support the continued regeneration and development of Ramsgate focusing around its maritime heritage and developing leisure role, in line with the following area based proposals, and as identified on Map 9.

1) Ramsgate Town Centre

The main focus for retail shall be the central High Street/Queen Street/King Street/Harbour Street area of the town and complementary town centres uses will be permitted in the wider town centre area, as defined by the primary and secondary frontages.

2) Ramsgate Waterfront and Royal Harbour

Land at and adjacent to Ramsgate Royal Harbour, as indicated on Map 9, is identified for development for a mixture of leisure, tourism, retail and residential purposes.

Any such proposals should have regard to the emerging Ramsgate Maritime Plan or any subsequent plan adopted by the Council. The following activities and development will be supported:

- **Eastern Undercliff - Mixed leisure, tourism and residential uses; and**
- **Ramsgate Royal Harbour - continued development of mixed leisure and marina facilities, in particular at the military road arches.**

All proposals must:

- **Take particular care in the design, location, use of materials and relationship of land-based facilities with open water, such as to protect important views and preserve or enhance the historical character of the Royal Harbour and seafront.**
- **Ensure the integrity of nature conservation interests within the adjacent SSSI-SPA-SAC-Ramsar site is maintained.**
- **Opportunity Sites**

3) Opportunity Sites

There are Opportunity Sites identified on Map 9 which are considered suitable for mixed use town centre development. Residential development will be considered acceptable where this does not conflict with the area based criteria above.

4) Ramsgate Port

The Council supports further development at Ramsgate Port which would facilitate its improvement as a port for shipping, increase traffic through the port, and introduce new routes and complementary land based facilities including marine engineering, subject to:-

- **a demonstrable port-related need for any proposed land based facilities to be located in the area of the port, and a demonstrable lack of suitable alternative inland locations; and**
- **compatibility with the character and function of Ramsgate waterfront and the Royal Harbour as a commercial leisure facility; and**
- **an acceptable environmental assessment of the impact of the proposed development upon the harbour, its setting and surrounding property, and the impact of any proposed land reclamation upon nature conservation, conservation of the built environment, the coast and archaeological heritage, together with any proposals to mitigate the impact.**

Land reclamation will not be permitted beyond the western extremity of the existing limit of reclaimed land.

Broadstairs

2.57 Broadstairs is an attractive town with a thriving town centre and is a popular location for visitors and residents who enjoy its heritage, Dickensian past, beach, local events and picturesque waterfront. Broadstairs has a strong commercial and visitor economy and has been resilient during the economic downturn. It is important to maintain and enhance the town's attractive character and economic base.

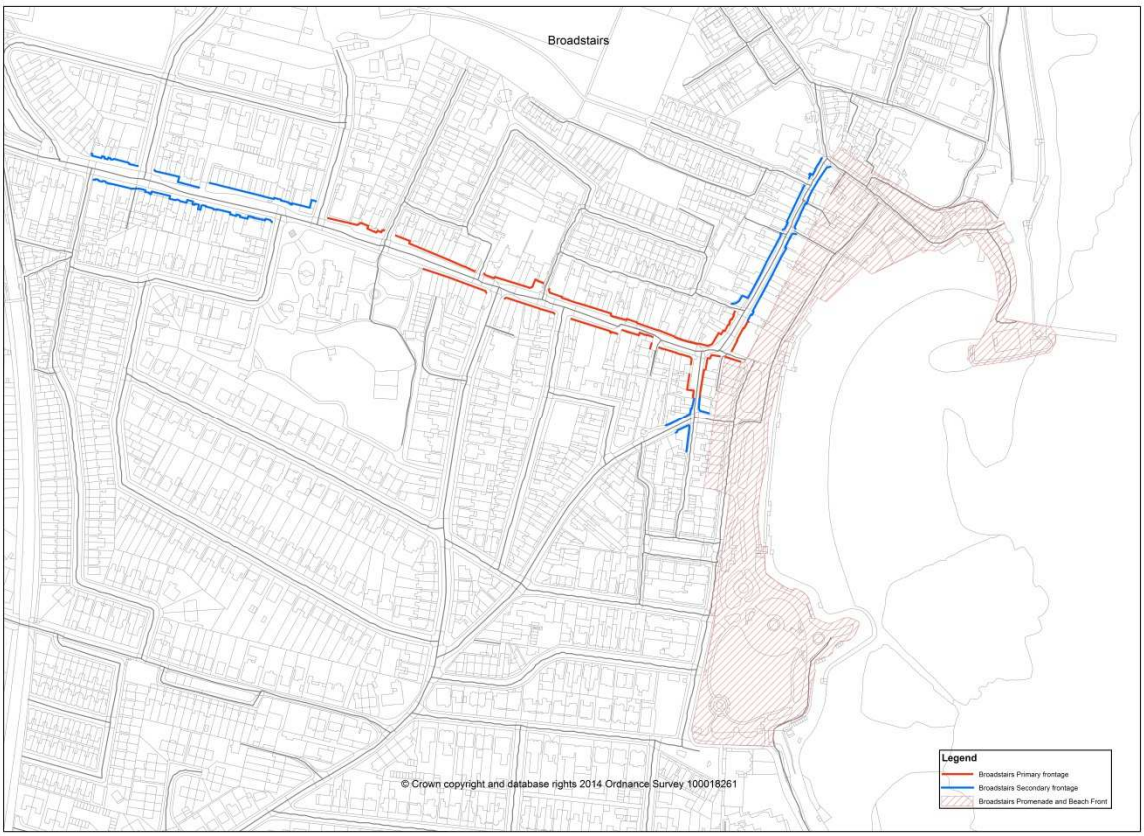
2.58 Broadstairs is a popular shopping destination characterised by small independently owned shops. The town has many independent shops interspersed with cafes, restaurants and drinking establishments that have enabled the town to buck the trend of high vacancy rates. The town has a particular demand for retail premises selling high street style goods (comparison goods).

2.59 There is a need for in the region of 6,000 square metres of additional retail floorspace to the end of the plan period. The prime focus for retail centres around the High Street but with supporting town centre uses along Albion Street and the upper end of High Street toward the railway station. The town centre is largely linear in character and there is little scope for physical expansion and development of the town centre. In order to accommodate retail need in the future it will be necessary to be flexible and allow some development on the edge of the town centre as close as possible to the High Street.

2.60 Broadstairs promenade and beach front is an important part of the town and is an attraction in itself, drawing families to the area. It contains a mix of cafes, restaurants and drinking establishments as well as residential uses and areas of open space. It is important that existing commercial premises are retained in order to maintain the commercial function of this area as a link between the beach and the High Street. Development in this area should contribute to and support the vibrancy of the town centre but also respect its peaceful and unique character.

2.61 The town is linear in style with separate beachfront and town centre areas and the town would benefit from improved pedestrian connectivity between these two areas.

Map 10 – Broadstairs Policy Map



Policy SP10 - Broadstairs

The Council will seek to support proposals that maintain and enhance the role and character of Broadstairs as a popular attractive small seaside town in line with the following area based proposals, and as identified on Map 10.

1) Broadstairs Town Centre

The focus for retail will be the lower High Street and Albion Street with complementary town centre uses in the wider area, in accordance with the Primary and Secondary Frontages.

New retail development will be acceptable on the edge of Broadstairs town centre, subject to Policy E05. Proposals will be required to provide direct pedestrian links to the High Street, be well related to the retail core, centres of population and be accessible by a range of means of transport.

2) Broadstairs Promenade and Beach Front

Opportunities to enhance the use and attractiveness of the promenade, seafront and beach are welcomed particularly where they achieve improved connectivity between the town centre and beach front. Within this area small scale leisure and tourism uses will be permitted, including retail, where they do not harm the character and heritage interest of the surrounding area. Within

Victoria Gardens open space policies will prevail. Change of use of existing commercial premises in this area will be resisted.

Any development permitted by this policy must not adversely affect any designated nature conservation sites either directly or as a result of increased visitor pressure.

3 - Housing Strategy

3.1 The Plan's housing strategy sets out how the Local Plan seeks to meet the housing needs of Thanet alongside other partners including the Council's housing regeneration, empty property and strategy functions. The Local Plan proposes to do this by:

- identifying sufficient and suitable land for expected population growth,
- requiring the right types of homes, including affordable homes, to be provided to support economic growth and to meet the needs of the local community,
- supporting the re-use of empty properties and restricting the loss of existing residential property, and
- supporting area specific regeneration objectives.

3.2 The National Planning Policy Framework (NPPF) aims to boost the housing supply and expects Local Plans to meet the full objectively assessed needs for market and affordable homes.

3.3 The key driver of housing growth in Thanet has been the number of in-comers choosing to live in the district. Further in-migration will be needed to provide an adequate labour supply to deliver the economic strategy.

3.4 The Council's Housing Strategy seeks to create sustainable communities, recognising the need for Thanet's residents to have access to high quality housing which they can afford.

3.5 In particular it recognises the need for a greater emphasis on provision of family homes that need for affordable housing outweighs supply, the importance of bringing empty property back into use to provide new homes, and the need to work with the private sector to drive up standards in the private rented sector. Its main objectives are to: -

- Deliver a range of homes to meet the local housing need which residents can afford
- Make better use of the existing housing stock across all tenures and improve housing conditions
- Enable vulnerable people access to good quality housing and to live independently
- Provide an accessible housing options service for Thanet residents
- Deliver housing in support of our regeneration and economic development objectives

3.6 Reflecting this, an imperative of the housing strategy of the Local Plan will be to facilitate delivery of the type and quality of homes that will meet the needs of settled and mixed communities including in particular those aspiring to take advantage of and generate new employment opportunities.

Amount of Housing

3.7 Housing provision is made for 12,000 additional homes over the 20 year period to 2031. This reflects forecasts based on recent migration trend based population projections and the labour requirements supporting the Council's aspirations for economic and employment growth. In line with the forecasts the housing provision is attributed evenly over four 5 year periods.

Policy SP11 - Housing Provision

Provision is made for a total of 12,000 additional homes in the period to 2031, with notional delivery across the period as indicated below.

Period	2011-16	2016-21	2021-26	2026-31	Total
Additional homes	3000	3000	3000	3000	12000

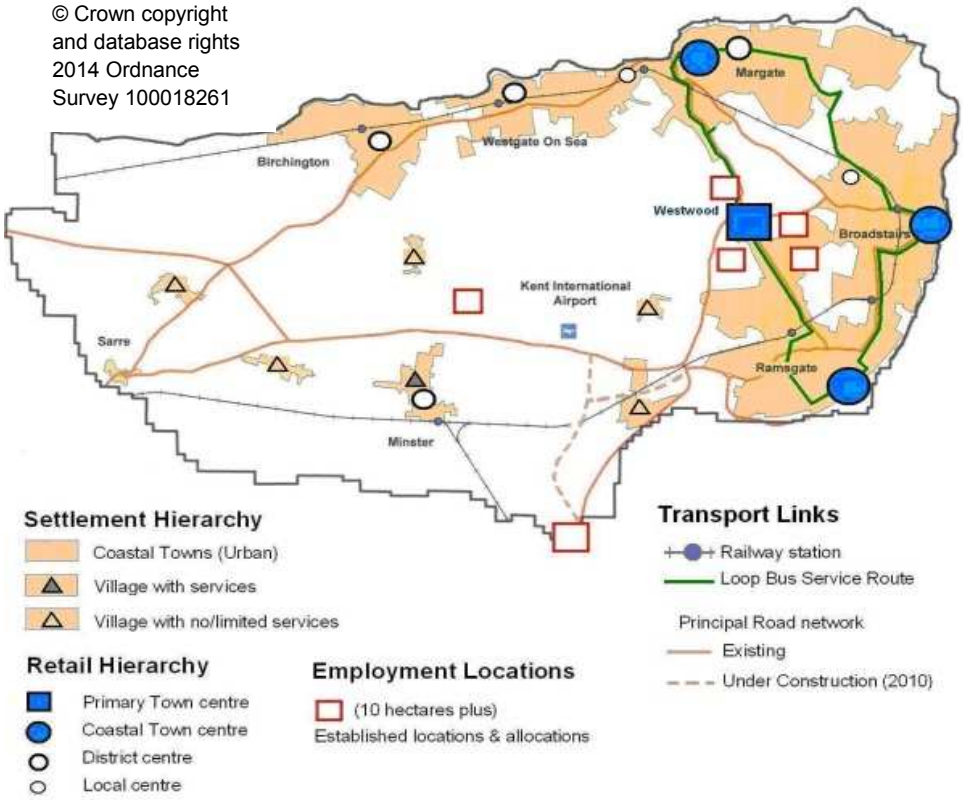
Location of Housing

3.8 Identification and allocation of housing land has been informed by assessment of the sustainability of individual sites through the Strategic Housing Land Availability Assessment alongside the strategy for the planned location of homes whose key principles are to:-

- optimise use of capacity from sites in the built up areas of the coastal towns,
- focus remaining provision at sites abutting those areas, and
- make modest provision at rural settlements to meet identified need for affordable homes and to provide locational choice at a scale compatible with their character and access to services and facilities.

This approach has been informed by, and served to formalise, a settlement hierarchy indicated diagrammatically on Map 11 below.

Map 11 – Settlement Hierarchy



3.9 A number of allocated sites are of strategic importance for delivering the quantity and type and variety of homes required to deliver the strategy. These are identified as Strategic sites. The distribution of allocated housing land is illustrated below.

3.10 Within total housing provision shown below the Strategic Housing Land Availability Assessment suggests capacity to deliver some 2,950 dwellings exists by way of sites which have already received planning permission. In addition some 400 dwellings have already been delivered since the start of the Plan period.

Table 2 – Total housing provision

Period	2011-2031
Strategic Sites	
Westwood	1450
Birchington on Sea	1000
Westgate on Sea	1000
Manston Green	700
Non-Strategic Sites/areas	
Westwood	1405
Margate & Cliftonville	1267
Ramsgate	1827
Broadstairs & St Peters	483

Birchington on Sea	138
Wesgate on Sea	199
Rural Settlements	485
Windfall/broad area	1644
Completed since 2011	402
Total	**12000**

Area Specific Objectives

3.11 Reflecting the make-up of the housing stock and specific issues in different parts of Thanet, the Council has identified, and will seek to achieve, the following area based objectives. It will expect applications for residential development to demonstrate that full account has been taken of these.

Table 3 – Area Specific Objectives

Area	Area specific housing objectives
District wide	Increase the proportion of houses (non flatted homes) within the overall dwelling stock. Safeguard and increase the stock of family homes. Increase the stock of affordable homes Safeguard and enhance the character and amenity of existing residential neighbourhoods.
Westwood	Transform the neighbourhood into a mixed business and residential community benefiting from mutual proximity, accessibility and supporting amenity infrastructure. Contribute a significant addition to the district's stock of non-flatted accommodation including family sized houses and of affordable homes.
Coastal town centres	Contribute to area regeneration objectives expressed in policy or supplementary guidance, and, where appropriate, in line with specific site development briefs.
Cliftonville West & Margate	Establish a mixed, inclusive and settled community through improvements to the quality and configuration of residential accommodation and its environment and diversity of tenure.

	Apply public sector intervention and finance to pump-prime private sector investment.
King Street, Ramsgate	Improve the visual appearance of the area and provide good quality housing that is affordable and well managed.
Newington & Millmead	Establish a mixed, inclusive and settled community through improvements to the quality and configuration of residential accommodation and to the local environment and diversity of tenure.
Rural settlements	Accommodate additional homes to provide locational choice at a scale compatible with the size and character of the settlement and in light of accessibility of services and community facilities. Increase the stock of affordable housing at a scale commensurate with any outstanding local need.

Strategic Housing Allocations

Strategic Housing Site Allocations.

3.12 The existing built up parts of the district will continue deliver additional housing. However, a significant amount of greenfield housing land is required to meet the housing target. Assessment has revealed that some of the suitable and sustainably located greenfield sites identified are large and some are adjoining or in mutual proximity. These sites provide the opportunity to deliver development at a scale that will serve both to facilitate a step change in delivering the type of homes required to meet need and secure the infrastructure required to support them. Such large and clustered sites have been identified as strategic housing allocations that will be of particular importance in delivering the Plan's housing objectives.

This section identifies, and sets out policies, for housing sites of strategic significance to the Local Plan strategy.

3.13 The geographical extent indicated for individual strategic site allocations represents the anticipated maximum land requirement. Proposals will be expected to consider, and where possible accommodate, notional maximum dwelling capacities indicated together with all other relevant policy requirements within a lower level of greenfield land take.

Policy SP12 - Strategic Housing Site Allocations.

The sites listed below are identified as Strategic Housing Sites. Applications to develop such sites shall be accompanied by a detailed development brief including an illustrative site master plan featuring all elements of the proposal and indicating phasing of development and supporting infrastructure.

Applications will be determined in light of the site specific policies located in the relevant parts of the Thanet Places section.

A - Westwood

B - Birchington

C - Westgate on Sea

D - Manston Green

Policy SP13 Strategic Housing Sites - Manston Green

Land is allocated for up to 700 new dwellings at a maximum density of 35 dwellings per hectare net at land known as Manston Green. Built development will be focused at the northern part of the site taking account of the considerations below. Proposals will be judged and permitted only in accordance with a development brief and master plan for the whole site incorporating

1) a minimum of 9 HA of open space in accordance with the standards set out in Table 7.

2) a fully serviced area of 2.05 HA (to be provided at the cost of the developer) to accommodate a new two form-entry primary school

3) small scale convenience retail provision required to accessibly serve day to day needs of the development.

Phasing of development will be in accordance with Policy H01(1). The development shall provide for construction of the school to 1 form entry at such stage of development as required by the County Council as education authority.

Master planning will be informed by and address:

1) pre-design archaeological assessment taking account of presence of significant and sensitive remains

2) the setting of listed buildings at Ozengall

3) the need for disposition of development and landscaping to enable a soft edge between the site and open countryside and minimise impact on long views southwards toward Pegwell Bay.

4) predicted aircraft noise

5) the alignment of the runway and the operational needs of the airport.

6) Sustainable urban drainage taking account of the site's location in the Groundwater Primary Source Protection Zone

7) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

8) a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.

9) liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure

10) a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation of the need to incorporate an element of housing to meet the needs of particular groups including specifically sheltered and extra care homes. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Proposals will be accompanied by a Transport Assessment informing the Master plan including

1) assessment of the impact of development on the local road network; in particular capacity issues affecting junctions along Haine Road including that with Staner Hill

2) demonstrating measures to promote multi-modal access, including footway and cycleway connections and an extended bus service accessible to the residential development.

Development will be expected to provide an appropriate contribution to off-site highway improvements.

3.14 Westgate-on-Sea and Birchington, along with Garlinge and Westbrook form part of the continuous urban coastal belt of Thanet, located to the west of Margate.

3.15 Westgate comprises in the main high quality residential environments and was originally developed as a seaside resort for the upper and middle classes. It has a small commercial centre which serves the surrounding residential community, as well as a train station with routes to Margate, and the rest of Thanet, as well as Faversham and London. Between Westgate and Margate are the smaller suburbs of Westbrook and Garlinge, both of which also have small commercial centres that serve the local community.

3.16 Although forming part of the urban coastal belt, Birchington is a large village with an existing population of approximately 10,100. It has a good sized and well-

functioning commercial centre which serves the surrounding residential community. The village has a train station with routes to Margate, and the rest of Thanet as well as Faversham and London, with regular bus services running to Canterbury. Birchington Square lies on the main route to Margate for those travelling into the District from the west, and as such at peak times suffers from traffic congestion. This has also resulted in the area suffering from higher levels of air pollution.

3.17 These settlement are considered to be sustainable locations for new development, with good access to local services, including schools and other community facilities, as well as convenient transport options to the rest of the Thanet and locations outside of the District.

Policy SP14 - Strategic Housing Site at Birchington

Land is allocated for up to 1,000 new dwellings at a maximum density of 35 dwellings per hectare net at Birchington. Proposals will be judged and permitted only in accordance with a development brief and master plan for the whole site including provision within the site of

1) a new link road to serve the development and extending from Minnis Road and the A28.

2) a minimum of 11 HA of open space in accordance with the standards set out in Table 7

3) a fully serviced site of 2.05 HA (to be provided at the cost of the developer) for a two-form entry primary school.

4) small scale convenience retail provision required to accessibly serve day to day needs of the development.

Phasing of development will be in accordance with Policy H01(1). The access road and serviced school site shall be programmed for delivery as agreed by the county council as highway and education authority respectively.

Master planning will be informed by and address:

1) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

2) a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.

3) pre-design archaeological evaluation.

4) liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure including gas supply

5) a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

6) the need to preserve the listed buildings on the site and respect the setting of Quex Park.

7) The need for disposition of development and landscaping to enable a soft edge between the site and open countryside.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation of the need to incorporate an element of housing to meet the needs of particular groups including specifically sheltered and extra care homes. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Proposals will be accompanied by a Transport Assessment informing the Master plan including assessment of impact on the A28, including at its junction with Park Lane, and of impact the junction of Manston Road, Park Lane and Acol Hill and demonstrating measures to promote multi-modal access, including footway and cycleway connections and an extended bus service accessible to the residential development. Development will be expected to provide an appropriate contribution to off-site highway improvements including for Birchington Square/Park Lane.

Policy SP15 - Strategic Housing Site at Westgate on Sea

Land to the east and west of Minster Road, Westgate is allocated up to 1,000 new dwellings at a maximum density of 35 dwellings per hectare net. Phasing of development will be in accordance with Policy H01(1). Proposals will be judged and permitted only in accordance with a development brief and master plan for the whole site including provision within the site of

1) a minimum of 11.1 HA of open space in accordance with the standards set out in Table 7.

2) provision for small scale convenience retail provision required to accessibly serve day to day needs of the development

3) a fully serviced area of 2.05 HA (to be provided at the cost of the developer) to accommodate a new two form-entry primary school

4) Development will be expected to provide an appropriate contribution to off-site highway improvements.

5) A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation of the need to incorporate an element of housing to meet the needs of particular

groups including specifically sheltered and extra care homes. The proportion of houses/bungalows as opposed to flats should exceed that in policy SP18 as much as possible.

Master planning will be informed by and address

1) a transport assessment (including modelling of junctions of the A28 with Minster Rd, Briary Close and Garlinge High Street, the junction of Minster Rd with Shottendane Rd the junction of Brooke Avenue with Maynard Avenue), and incorporate

- **measures to promote multi-modal access, including footway and cycleway connections, and an extended bus service accessible to the new dwellings.**
- **appropriate road and junction improvements and signalling.**

2) an archaeological evaluation

3) the need to safeguard the setting of scheduled ancient monuments and the listed Dent de Lion Gateway

4) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

5) a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.

6) liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure including gas supply

7) a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

8) appropriate arrangements for surface water management in line with Margate Surface Water Management Plan.

9) the need for disposition of development and landscaping to take account of public rights of way and enable a soft edge between the site and open countryside.

Policy SP16 Westwood Strategic Housing

Land is allocated for up to 1,450 new dwellings at a maximum density of 40 dwellings per hectare net at Westwood. This allocation adjoins land already subject to planning permission for 1020 dwellings at the junction of Nash Lane/Haine Road. Proposals will be judged and permitted only in accordance

with a development brief and master plan for the whole site integrating with development at the adjoining site. The Masterplan shall incorporate:

highway improvements including widening of Nash Road and links to Nash Road and Manston Road.

a minimum of 16.63 HA of open space in accordance with the standards set out in Table 7

small scale convenience retail provision required to accessibly serve day to day needs of the development.

Phasing of development will be in accordance with Policy H01(1). The access road shall be programmed for delivery as required by the county council as highway authority.

Master planning will be informed by and address:

pre-design archaeological assessment.

the need to preserve heritage farm buildings on the site

the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.

liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure

a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

appropriate arrangements for surface water management in line with Margate Surface Water Management Plan.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation of the need to incorporate an element of housing to meet the needs of particular groups including specifically sheltered and extra care homes. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Proposals will be accompanied by a Transport Assessment informing the Master plan including assessment of impact of development on the local road network and demonstrating measures to promote multi-modal access, including footway and cycleway connections and an extended bus service accessible to the residential development. Development will be expected to

provide an appropriate contribution to off-site highway improvements including in respect of Westwood Relief Scheme.

Development will be expected to provide an appropriate contribution to provision, where require, of a new school off-site.

Disposition of development and landscaping will be expected to take account of the presence of the overhead electricity transmission lines, retain an undeveloped corridor as an extension of the open area of Green Wedge to the east of the site, and enable a soft edge between the site and open countryside.

Policy SP17 - Land fronting Nash and Haine Roads

Land fronting Nash and Haine Roads is allocated for residential development with a notional capacity of 1,020 new dwellings or such capacity as may be demonstrated appropriate in light of the need to provide a school on site and/or any subsequent masterplan reflecting a maximum notional density of 40 dwellings per hectare net. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible. The development will incorporate an element of affordable housing in line with policy SP19.

Development shall be permitted only in accordance with an agreed master plan for the whole site and shall:

Provide for any highway improvements identified as necessary in a traffic assessment and the development master plan. Individual phases of development will be required to make provision pro-rata towards such improvements.

As required provide a fully serviced area of 2.05 hectares (to be provided at the cost of the developer) for a new two form entry school as an integral part of the development.

Incorporate and provide for connections and improvements to footpath and cycle networks facilitating walking, cycling and public transport to, from and within the site, including provision of or contribution to improvements to public transport services.

Reserve a minimum of 2 hectares to enable provision of a medical centre and provide a community assembly facility.

Reserve and provide a minimum of 1.75 hectares as local open space (including an equipped play area and casual/informal play space) together with an area of usable amenity space as an integral part of the design of the development. Where feasible the area of local open space should be larger than the minimum indicated above having regard to the standards set out in Table 7.

Incorporate landscaped buffer zones adjacent to any new road infrastructure and along the boundaries to adjacent to open farmland.

Provide and maintain appropriate equipment for continuous monitoring of local air quality to inform the Council's ongoing air quality review and assessment programme.

Applications for successive phases of development will have regard to the need to integrate as far as feasible with any approved master plans relating to neigbouring areas addressed in this policy and with Westwood Relief Scheme.

Type and size of dwellings

3.18 The Strategic Housing Market Assessment (SHMA) identified as a critical challenge tackling the impact of an ageing population, and forecast loss of younger age groups with the resultant potential loss of working age population.

3.19 Subsequent economic and population forecasts based on the economic aspirations and housing provisions in this Local Plan also predict for Thanet an increase in the ageing population (especially those above retirement age). However, they do also predict that the Plan's strategy will see an increase in younger age groups.

3.20 Both the SHMA and the subsequent forecasts referred to above show that single person households are expected to increase in number. The SHMA notes however that there is a greater supply of smaller units than of family homes and houses, and that this demographic trend should not dictate policy. Indeed it notes that in aiming to deliver substantive regeneration and economic strategies the housing role in turning round economic performance is both to provide appropriate and attractive housing for higher earners and facilitate retention of local young families.

3.21 The SHMA notes that the housing stock is characterised by a combination of dense provision, overprovision of smaller flats and flatted buildings, and a shortage of larger homes of three bedrooms and more. It states that it is important that future development policy prioritises a rebalancing of stock to incentivise the provision of family homes and control the expansion of "flatting" of larger homes, while at the same time recognising solid demand for smaller homes including from young single people and increasing numbers of older single people.

3.22 In assessing housing needs the SHMA considers information about aspirations, economic development plans for the sub-region, opportunities to attract mature working households that new rail links will bring and priority need for affordable housing. It recommends broad proportions of the sizes and types of market and affordable homes that should be provided. This is shown in the tables below.

3.23 In exercising policy SP18, the Council will have regard to the relevant conclusions of the Strategic Housing Market Assessment or any bona fide evidence serving to refresh or update it.

Table 4 Market homes (houses includes bungalows) (from SHMA table 12.22)

Table 4 – Market Homes

Household type	Singles	Couples with no children/ singles /needing support	Couples with children	Couples with children	Couples with children	All
Dwelling type	1 bed flats	2 bed flats	2 bed houses	3 bed houses	4 + bed houses	
Percentage	20%	10%	25%	35%	10%	100%

Table 5 Affordable homes (houses includes bungalows) (from SHMA table 12.14)

Table 5 – Affordable Homes

Household type	Singles	Couples with no children / singles /needing support	Couples with children	Couples with children	Couples with children	All
Dwelling type	1 bed flats	2 bed flats	2 bed houses	3 bed houses	4 + bed houses	
Percentage	27.2%	12.5%	15%	34.1%	11.3%	100%

3.24 Previous dwelling completions in Thanet District have included a large share of flatted accommodation. Consequently, in line with the SHMA recommendations it is important to increase the proportion of houses in the overall stock. Accordingly proposals will be expected to deliver at least the proportion of houses (as opposed to flats) in line with Policy SP18. It is recognised that in some instances there may be reasons such as configuration of buildings contributing to townscape quality why only flatted accommodation will be feasible. Schemes proposing a higher proportion of flats will need to be accompanied by a supporting justification.

Policy SP18 - Type and Size of Dwellings

Proposals for housing development will be expected to address the SHMA recommendations regarding the make-up of market and affordable housing types and sizes needed to meet requirements.

The Council will encourage proposals incorporating a higher proportion of houses as opposed to flats than recommended in the SHMA. Proposals for developments incorporating a higher proportion of flats than recommended in the SHMA will be expected to include site specific justification for the proportion and mix proposed.

Proposals to revert or convert properties currently used as flats to use as single family or single household accommodation will be permitted where a satisfactory standard of accommodation can be provided.

Residential development proposals involving the net loss of dwelling houses suited to modern living requirements will not be permitted, unless the proposal complies with Policy H9 (Houses in Multiple Occupation).

In the event of conflict between this policy and the Cliftonville DPD the latter shall prevail.

Providing affordable homes

3.25 Affordable housing includes social rented, affordable rented and intermediate housing, provided for households whose needs cannot be met by the market. The Strategic Housing Market Assessment's (SHMA) analysis is that tackling the backlog of need is an enormous task.

3.26 Through its functions as housing and planning authority the Council will aim to maximise the number of decent affordable homes that can viably be delivered alongside market homes in order to meet need. Negotiating elements of affordable housing in new schemes will contribute valuably to meeting local need.

3.27 Reflecting economic viability considerations in general the Council will negotiate for an element of 30% affordable housing in any residential development.

3.28 In applying the following policy, site specific considerations will be taken into account in relation to the element of affordable housing that will be expected. The presumption is that the affordable element will be delivered on the application site, unless robust justification exists for provision on an alternative site in the developer's ownership and control, or for a financial contribution in lieu of on-site provision which will help to deliver strategic housing objectives. It is accepted that on sites comprising a total of 15 dwellings or less, a financial contribution may be a more practical means of securing an element of affordable housing. The formula for calculating contributions will be featured in the Planning Obligations and Developer Contributions Supplementary Planning Document.

3.29 Developers will be required to demonstrate how any affordable housing will be made available to households unable to obtain adequate housing through the private market and will be expected to engage with registered providers. (The Council can

provide a list of provider partners). This may be secured by entering into a planning agreement. The developer will be required to demonstrate that enjoyment of the affordable housing as such can be guaranteed for successive as well as initial occupiers for the foreseeable future. However, eligibility of owners to acquire/staircase to full ownership is acknowledged as an exception.

3.30 In light of the SHMA recommendations, the Council will seek to achieve and monitor delivery of, a target that 70% of affordable homes should be focused on social rented housing and 30% focused on intermediate housing. This target will remain subject to review in light of any bona fide evidence serving to refresh or update the SHMA.

Policy SP19 - Affordable Housing

Residential development schemes will be expected to include an element of affordable housing of 30%.

4 - Environment Strategy

Protecting the Countryside

4.1 The National Planning Policy Framework (NPPF) states that local plans should take account of the roles and character of different areas, promoting the vitality of our main urban areas and recognising the intrinsic character and beauty of the countryside.

4.2 Thanet's open countryside is particularly vulnerable to development because of its limited extent, the openness and flatness of the rural landscape and the proximity of the towns. Thanet's countryside provides important landscapes that contribute to its sense of place, as well as making Thanet an attractive place that people want to come to. Much of the countryside is classified as 'best and most versatile agricultural land'. The countryside also supports a variety of habitats and species, particularly a number of important species of farmland birds which have declined in numbers over the last few decades.

4.3 There is a presumption against development in the countryside as the sites allocated in this plan meet the development needs of the district. The Council has assessed all of the sites put forward, and some have been allocated in the countryside where this has been considered appropriate to meet the needs of sustainable development. In addition it is proposed to rectify a minor discrepancy in the alignment of the confines as identified in the Thanet Local Plan 2006 to include a small area of private garden land adjoining 92 Park Road, Birchington.

4.4 The Council considers that it is essential to protect the countryside through planning policy in view of its vulnerability to sporadic forms of development and will locate all but essentially rural development in the Thanet towns. The only exception to this will be proposals for development that meet the criteria set out in paragraph 55 of the NPPF.

- The essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- Where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- Where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- The exceptional quality or innovative nature of the design of the dwelling. Such a design should:
- Be truly outstanding or innovative, helping to raise standards of design more generally in rural areas
- Reflect the highest standards in architecture
- Significantly enhance its immediate setting; and
- Be sensitive to the defining characteristics of the local area

The following policy seeks to achieve the objective of safeguarding the geological and scenic value of the coast and countryside.

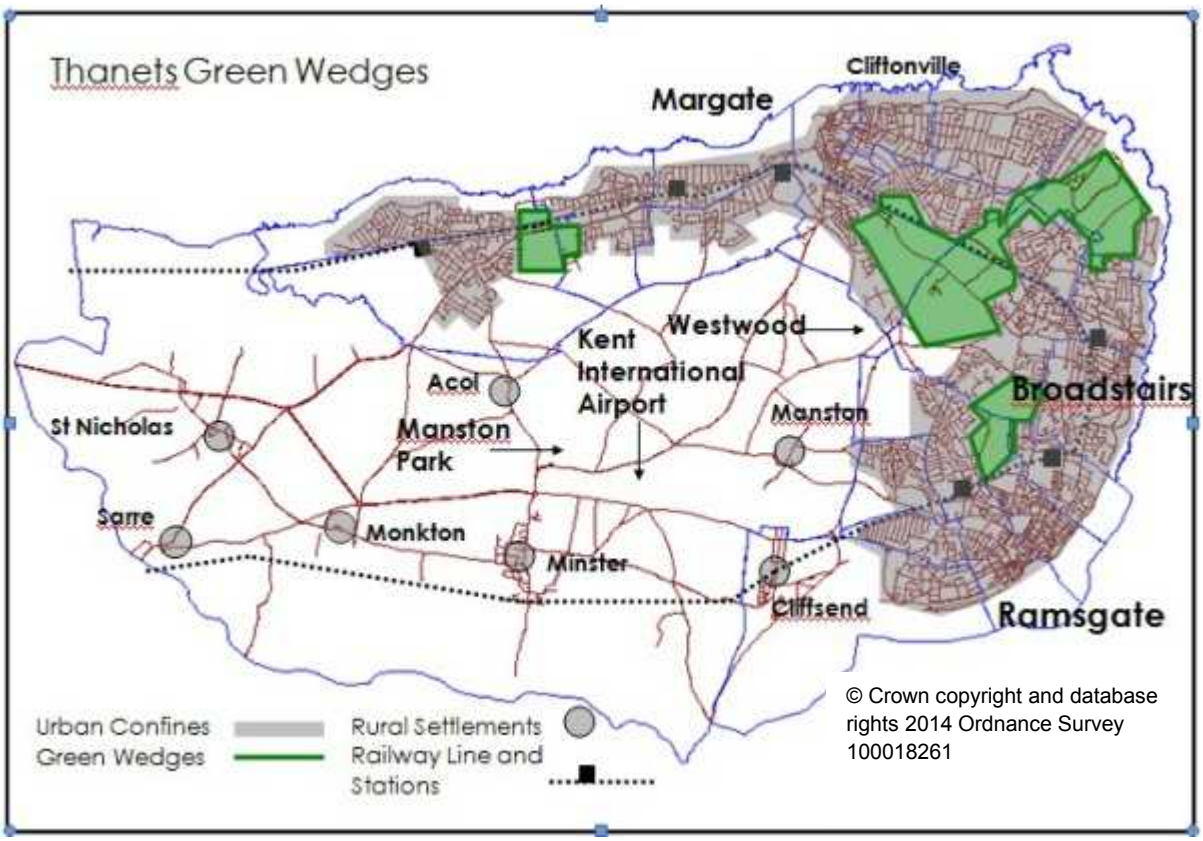
Policy SP20 – Development in the Countryside

Development in the countryside outside of the urban and village confines, as identified in the Thanet Local Plan 2006, and not otherwise allocated for development, will not be permitted unless there is a need for the development that overrides the need to protect the countryside and any adverse environmental effects can be avoided or fully mitigated.

Green Wedges

4.5 The coastal towns of Thanet are separated by three particularly important areas of open countryside which are known as the Green Wedges and shown on Map 12.

Map 12 - Green Wedges



4.6 The Green Wedges are significant in shaping the character of Thanet which has historically been a 'horseshoe' of built development wrapping around the coast. The Green Wedges provide a clear visual break when passing between the towns, giving a recognised structure and identity to Thanet's settlements. The Green Wedges are distinct from other types of open space as they provide a continuous link between the open countryside and land which penetrates into the urban areas.

4.7 The three Green Wedges differ in size and character. The largest is the one that separates Margate and Broadstairs. Substantial areas of this Green Wedge consist of high quality agricultural land in large open fields without fences or hedgerows. Other parts have isolated belts of woodland. The other two Green Wedges which

separate Birchington and Westgate, and Broadstairs and Ramsgate are considerably smaller but perform a very significant function and, due to their limited extent are also potentially more vulnerable to development pressures.

4.8 There is very limited built development within the Green Wedges. The areas have level or gently undulating landform and generally sparse vegetation. The public perception of space, openness and separation is largely gained from roads and footpaths that run through or alongside the Green Wedges in undeveloped frontages. These factors allow many extensive and uninterrupted views across open countryside, enabling people to find the recreational, scenic or amenity resources they require without having to travel long distances. This is important as it adds to the quality of life and well-being perceived by people in the community

4.9 The aesthetics of the Green Wedges are varied, and they are not always accessible to the public. There is an opportunity to enhance the Green Wedges by creating and enhancing wildlife habitats, for example to encourage farmland birds, and to make the areas more accessible, potentially for recreation use. This may require changing farming activities.

4.10 The principal functions of and stated policy aims for Thanet's Green Wedges are:

- Protect areas of open countryside between the towns from the extension of isolated groups of houses or other development.
- Ensure physical separation and avoid coalescence of the towns retaining their individual character and distinctiveness.
- Conserve, protect and enhance the essentially rural and unspoilt character, and distinctive landscape qualities of the countryside that separates the urban areas, for the enjoyment and amenity of those living in, and visiting, Thanet.
- Increase access and usability without compromising the integrity of the Green Wedges.

4.11 Local Plan policies have historically been used to prevent urban sprawl, maintain the separation of the Thanet towns and prevent their coalescence, preserving their unique identities. The Green Wedge policy has been consistently and strongly supported at appeals. Inspectors' comments in appeal decisions, and the Inspector's Report to the Thanet Local Plan Inquiry, highlight the significance of the open countryside between the Thanet Towns, in providing visual relief in a highly urbanised area.

4.12 Some areas of the Green Wedges are vulnerable to development pressures, and some sites within them have been suggested as housing allocations. The Council has assessed the sites put forward in the Green Wedges and found that the allocation of some sites proposed in the Green Wedges would cause less harm than others. However, although allowing some small scale development may not significantly diminish the Green Wedge, the cumulative impact of several small scale developments could be of detriment to the Green Wedges and cause new development pressures where there are currently none. It could also set a precedent of releasing Green Wedge sites and result in further development within the Green Wedges which would diminish their functions.

4.13 The Council considers the Green Wedges still perform a highly significant function which overrides the need for development, and should continue to be protected through planning policy and meet the strategic objective of retaining the separation between Thanet's towns and villages with the following policy.

Policy SP21 - Safeguarding the Identity of Thanet's Settlements

Within the Green Wedges new development (including changes of use) will not be permitted unless it can be demonstrated that the development is:

1) not detrimental or contrary to the stated aims of the policy; or

2) essential for the proposed development to be located within the Green Wedges.

Open sports and recreational uses will be permitted subject to there being no overriding conflict with other policies, the wider objectives of this plan and the stated aims of this policy.

Proposals for development that include measures that will create or enhance wildlife habitats and biodiversity within the Green Wedges, or will improve the quality of the green wedges by providing high quality public amenity space will be supported.

Views and Landscapes

4.14 The National Planning Policy Framework (NPPF) states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

4.15 Thanet has historically been recognised for its distinctive wide, simple and unrestricted views and dramatic chalk cliffs along parts of its coastline.

4.16 Thanet has a distinct landscape area defined by the former limits of the island that was cut off from the mainland by the Wantsum Channel until it silted up around 1000 years ago, along with post 1801 settlements and irregular fields bounded by roads, tracks and paths. The Wantsum has a history of reclamation and usage stretching back to at least the 12th and 13th centuries in connection with the considerable ecclesiastical estates in the region.

4.17 The contribution Thanet's landscapes make to Thanet's sense of place and island characteristics is very strong, as well as providing economic benefits in making the district an attractive place that people want to come to. Tourism and recreation uses compatible with Thanet's historic landscapes would be encouraged. Development would be expected to respect the diverse landscape characteristics of the countryside and coast.

4.18 The character of the landscape within Thanet's countryside is varied, ranging from the distinctive sweep of Pegwell Bay, the flood plains of the River Stour and former Wantsum Channel, the open slopes of the former Wantsum Channel North

Shore, the level to undulating Central Chalk Plateau, the wooded parkland at Quex and the urban coast. There have been a number of surveys and assessments which identify these landscapes - details of these can be found in the Natural Environment Topic Paper. Developers may be required to submit a Landscape and Visual Impact Assessment with planning applications likely to have a significant impact on the landscape. The Landscape Institute provides guidance on carrying out such an assessment.

Pegwell Bay

4.19 Pegwell Bay is an extensive area of mixed coastal habitats, including mudflats, saltmarsh and coastal scrub. These habitats form an open and relatively unspoilt landscape, with a distinctive character. The area possesses a sense of remoteness and wildness despite the relative proximity of development. Among its most important features in the area is the unique sweep of chalk cliffs viewed across Pegwell Bay from the south. This landscape creates large open skies.

The Former Wantsum Channel

4.20 This area includes the flood plain of the River Stour, and historically represents the former sea channel, the Wantsum Channel, which previously separated the Isle of Thanet from mainland Kent and which silted up over several centuries. The area is characterised by a vast, flat, open landscape defined by the presence of an ancient field system, defined by an extensive ditch and dyke system, the sea walls and isolated groups of trees. These elements provide important visual evidence of the physical evolution of the Wantsum Channel and, like other marsh areas in Kent, produce huge open skies.

The Former Wantsum North Shore

4.21 This area largely comprises the distinctive and often quite steep hill slopes leading down from the Central Chalk Plateau to the former Wantsum Channel. The landscape is very open with few features and the former shoreline is more distinct in some places than in others, with the variation in the contour pattern. From the upper slopes it affords extensive views across the whole of the former Wantsum Channel to the slopes on the opposite banks and in many places to the sea. The former shoreline is more distinct in some places than in others, with the variation in the contour pattern. However, it also provides the unique setting of the former channel side villages of Minster, Monkton, Sarre and St Nicholas, and the smaller, originally farm based, settlements of Shuart, Gore Street and Potten Street. These elements provide important visual evidence of the growth of human settlement, agriculture and commerce in the area.

4.22 The openness of this landscape provides wide and long views of the former Wantsum Channel area and Pegwell Bay. The area also possesses a large number of archaeological sites (including scheduled ancient monuments); numerous listed buildings (including Minster Abbey, the churches at Minster, Monkton and St Nicholas, and Sarre Mill); and the historical landing sites of St Augustine and the Saxons, Hengist and Horsa.

The Central Chalk Plateau

4.23 The central part of the District is characterised by a generally flat or gently undulating landscape, with extensive, unenclosed fields under intensive arable cultivation. This open landscape is fragmented by the location of large scale developments such as the airport, Manston Business Park and a sporadic settlement pattern to the north of the airport. The character of this area is also defined by the proximity of the edges of the urban areas.

Quex Park

4.24 The Park is unique within the Thanet context, comprising a formal and extensive wooded parkland and amenity landscape within an otherwise open intensively farmed landscape. It possesses a formal landscape structure and gardens that act as an effective setting to Quex House. The parkland is intensively cultivated between the tree belts, with limited grazing pasture remaining. Two important historic features of the Park are the Waterloo Tower and a round castellated brick tower to the north of the main House.

The Urban Coast

4.25 The urban areas of Thanet form an almost continuous conurbation along the coast between Pegwell Village and Minnis Bay. With the exception of the Green Wedges, this area is heavily urbanised. The coastal strip is characterised by the presence of traditional seaside architecture, active harbour areas and beaches and some extensive public open clifftop areas. The pattern of bays and headlands provides long sweeping and panoramic views of the coast, which are often complimented by a positive relationship with adjacent built development.

The following policy aims to safeguard and enhance the open and historic characteristics of Thanet's countryside and landscapes.

Policy SP22 – Protection and Enhancement of Thanet's Historic Landscapes

Development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance:

1. **Thanet's local distinctiveness including historical, biodiversity and cultural character**

2. **Gaps between Thanet's towns and villages**

3. **Visually sensitive skylines and seascapes**

Within the landscape character areas identified, the following policy principles will be applied:

1. **At Pegwell Bay priority will be given to the conservation and enhancement of the natural beauty of the landscape over other planning considerations;**

2. **In the former Wantsum Channel area, new development will not normally be permitted;**

3. **In the Wantsum Channel North Shore Area, development will only be permitted that would provide opportunities for enhancement and would not damage the setting of the Wantsum Channel, and long views of Pegwell Bay, the Wantsum Channel, the adjacent marshes and the sea;**

4. **On the Central Chalk Plateau, a number of sites are identified for various development purposes. Where development is permitted by other policies in this plan, particular care should be taken to avoid skyline intrusion and the loss or interruption of long views of the coast and the sea and proposals should demonstrate how the development will take advantage of and engage with these views;**

5. **At Quex Park, new development proposals should respect the historic character of the parkland and gardens; and**

6. **At the Urban Coast, development that does not respect the traditional seafront architecture of the area, maintain existing open spaces and long sweeping views of the coastline will not be permitted.**

Development proposals that conflict with the above principles will only be permitted where it can be demonstrated that they are essential for the economic or social well-being of the area or for reasons where the need for the development outweighs the detriment to the landscape. The developer may be required to submit a Landscape and Visual Impact Assessment with any development proposals likely to have a significant landscape impact.

Green Infrastructure Network

4.26 The National Planning Policy Framework (NPPF) states that local plans should plan positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure. It states that local ecological networks should be identified and these should include the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors, stepping stones that connect them, and areas identified by local partnerships for habitat restoration or creation.

4.27 Planning policies should promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species.

4.28 The NPPF also states that international, national and locally designated nature conservation sites should be protected, with appropriate weight given to the importance of their designation.

4.29 The NPPF states that existing open space, sports and recreational buildings and land (including playing fields) should not be built on unless it can be demonstrated that the land is surplus to requirements or if it would be replaced by equivalent or improved provision. Planning policies should also protect and enhance public rights of way and access.

4.30 Thanet boasts a wealth of natural features including internationally and nationally designated sites and associated species, a magnificent coastline, chalk cliffs, geological features and areas of open countryside with distinctive landscapes and views. It is important that these are maintained and enhanced, and be better linked to provide a comprehensive green infrastructure network.

4.31 Natural England defines Green Infrastructure (GI) as:

'….. a strategically planned and delivered network comprising the broadest range of high quality green spaces and other environmental features. It should be designed and managed as a multifunctional resource capable of delivering those ecological services and quality of life benefits required by the communities it serves and needed to underpin sustainability. Its design and management should also respect and enhance the character and distinctiveness of an area with regard to habitats and landscape types.

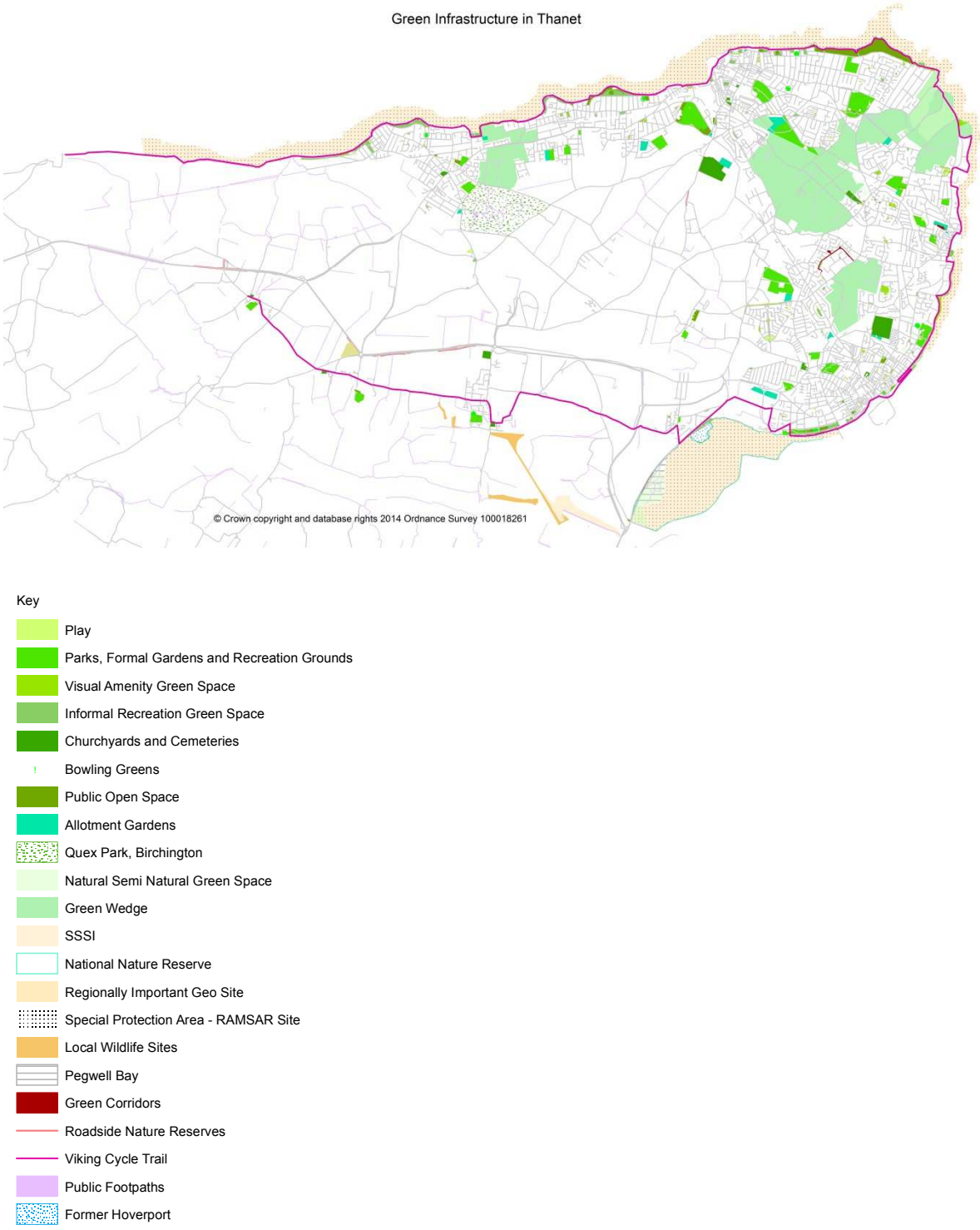
Green infrastructure includes established green spaces and new sites and should thread through and surround the built environment and connect the urban area to its wider rural hinterland. Consequently it needs to be delivered at all spatial scales from sub-regional to local neighbourhood levels, accommodating both accessible natural green spaces within local communities and often much larger sites in the urban fringe and wider countryside.'

4.32 A working group of the East Kent councils has established an East Kent GI typology in order to maintain a consistent approach towards Green Infrastructure. This encompasses the following types:

- Biodiversity
- Linear Features
- Civic Amenity

Thanet's existing Green Infrastructure is shown on Map 13 below.

Map 13 – Thanet's existing Green Infrastructure



4.33 There are various Green Infrastructure projects being progressed by the Council and other organisations, and also a number of community projects. These include Dane Valley Woods, West Undercliff Village Green, Friends of Mocketts Wood, Montefiore Woodland and the Windmill Community Allotments. Some major planning applications have included provision for new green infrastructure including Hereson School the Westwood Housing site adjacent to Westwood Cross, Land atNash Road/Haine Road and the Minster Housing site at Molineux Road. Methods of providing and enhancing green infrastructure include:

- Integration of Sustainable Drainage Systems (SUDs)
- Planting of hedgerows
- Provision of green roofs
- Creation of ponds
- Creation of urban green corridors
- Creation of roadside verges
- Tree planting
- Provision of off-site enhancements

4.34 The Council seeks to continue increasing and enhancing Thanet's Green Infrastructure network, and encourages new community green infrastructure projects.

This policy aims to deliver the strategic objectives by protecting, maintaining and enhancing biodiversity and the natural environment and creating a coherent network of green infrastructure.

Policy SP23 – Green Infrastructure

Thanet's Green Infrastructure network is an integral part of the design of all major development. Opportunities to improve Thanets green infrastructure network by protecting and enhancing existing green infrastructure assets and the connections between them, should be included early in the design process for major developments.

Development should make a positive contribution to Thanet's Green Infrastructure network by:

- **Creating new wildlife and biodiversity habitats**
- **Providing and managing new accessible open space**
- **Mitigating against the loss of any farmland bird habitats**
- **Providing private gardens and play space; and/or**
- **Contributing towards the enhancement of Thanet's Biodiversity Opportunity Areas or the enhancement of the Green Wedges**

Investment and developer contributions should be directed to improve and expand green infrastructure and provide connecting links where opportunities exist.

Biodiversity Enhancements

4.35 Biodiversity Opportunity Areas (BOAs) have been identified to facilitate the delivery of landscape scale habitat recreation and restoration, and to connect designated sites and priority or Biodiversity Action Plan habitats. Thanet has two BOAs:

- Thanet Cliffs and Shore – covers the majority of the internationally and nationally designated coastal habitats, extending through Thanet as far as Whitstable.
- Lower Stour Wetlands – The Lower Stour wetlands extend from the mouth of the old Wantsum channel across reclaimed marshland to the former mouth of the river Stour, and then continue around the coast to the Sandwich mudflats and sand dunes and the Lydden valley.

The following policy aims to meet the strategic objective of protecting, maintaining and enhancing biodiversity.

Policy SP24 – Biodiversity Enhancements

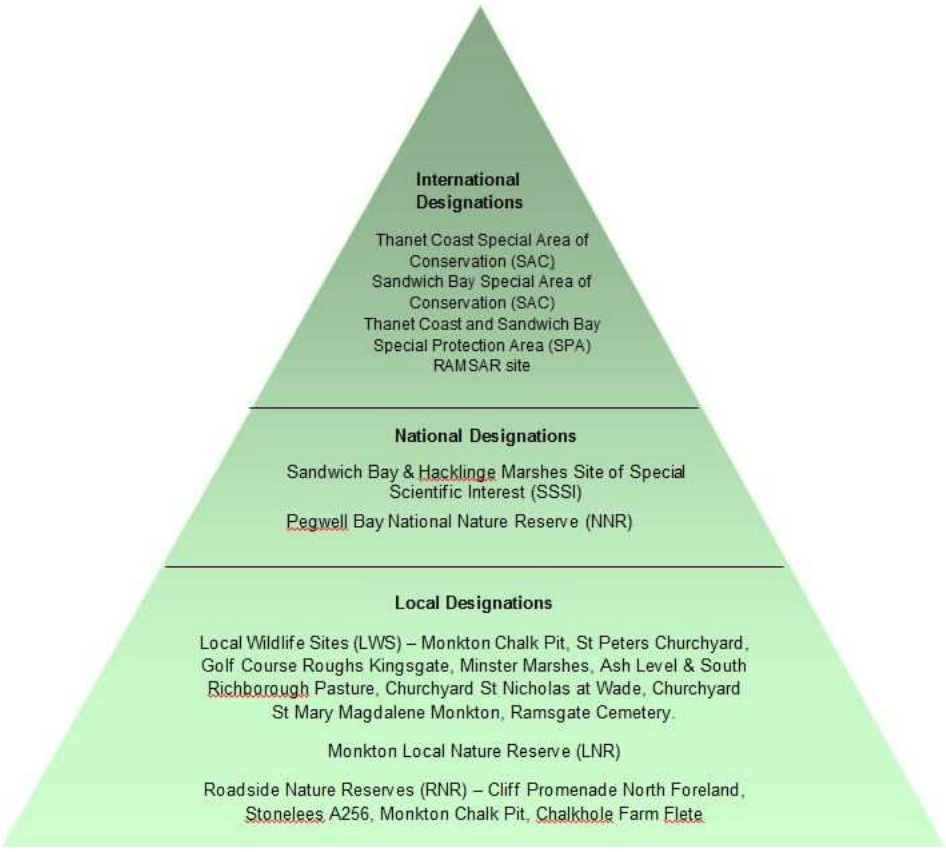
Biodiversity Opportunity Areas and the Green Wedges are protected from inappropriate development, and proposals which would provide enhancements and contribute to a high quality biodiverse environment will be supported.

National and International Designations

Protection of the European Sites, Sites of Special Scientific Interest and National Nature Reserve

4.36 Designated sites of international, national and local value and extensive areas of wetland and farmland habitat harbour both protected and priority species. The diagram below shows the hierarchy of these designations from international, national to local importance.

Diagram 1 – Hierarchy of National and International Designations



4.37 The European sites (Special Protection Area, Special Area of Conservation and RAMSAR) are defined under European laws and comprise a network of sites across Europe designated for their important habitat and/or birds. Most of the Thanet coastline is designated and is important for its intertidal chalk, caves, species (such as blue mussel beds and piddocks), dunes and mudflats, and certain migratory and breeding bird species.

4.38 The nationally designated sites (Sites of Special Scientific Interest and National Nature Reserve), also cover the coastline, and have similar features to the international sites, including over 30 nationally rare species of terrestrial and marine plants, 19 nationally rare and 149 nationally scarce invertebrate species and roost sites for migrating and wintering birds.

4.39 The Thanet Coast is also a designated Marine Conservation Zone.

4.40 The Thanet Coast Project was established in 2001 and is tasked with much of the delivery of the North East Kent Marine Protected Area (NEKMPA) Action Plan and therefore delivery of the majority of the objectives of the Thanet Cliffs and Shore Biodiversity Opportunity Area (BOA) within Thanet. The main aims of the project are to :-

- Raise awareness of the important marine and bird life, and how to avoid damaging them.
- Work with local people to safeguard coastal wildlife and implement the Management Scheme Action Plan.

- Encourage and run wildlife related events and make links with wildlife, green tourism, coastscape and the arts.
- Be a focal point for enquiries and gathering information on coastal wildlife and environmental issues.
- Keep everyone informed with progress through various means, including newsletters, articles and stakeholder workshops.

4.41 The Thanet Project has been very successful in the last nine years with the following activities and projects set up to deliver these objectives:-

- 10 coastal codes of conduct formulated with stakeholders to alleviate the impacts of human activities on the European sites.
- One scientific research code formulated by The North East Kent Scientific Coastal Advisory Group.
- A twice yearly Thanet Coast newsletter.
- Educational activities and resources for all ages.
- Volunteering opportunities from volunteer wardens to participation in ecological research.

4.42 Recreational pressure at the European sites, particularly the SPA, has given cause for concern from Natural England and the Kent Wildlife Trust regarding the impact of disturbance to over-wintering birds. There is further concern regarding the impact of increased recreational pressure as a result of population increases.

4.43 Evidence suggests that new housing development in Thanet has the potential to increase the recreational impacts on the SPA resulting from the increase in population. This may have an adverse impact on the species for which the SPA has been designated. The actual level of impact from individual developments may not be significant, however the in-combination effect of all housing developments proposed in the district cannot rule out a significant impact.

4.44 A mitigation strategy is being prepared to ensure that mitigation measures are put in place to enable growth and development without compromising the integrity of the European Sites. The mitigation strategy will be reviewed and updated regularly.

The following policy seeks to protect, maintain and enhance biodiversity and the natural environment where it is designated for its international and national importance.

Policy SP25 – Protection of the European Sites, Sites of Special Scientific Interest and National Nature Reserve

Development that would have a detrimental impact on the European Sites, Sites of Special Scientific Interest or National Nature Reserve will not be permitted.

Planning permission may only be granted when it can be demonstrated that any harm to internationally and nationally designated sites resulting from that development will be suitably mitigated.

Proposals for residential development must include an assessment of significant effect and measures to mitigate against the effects of potential increased recreational pressure on protected sites.

Proposals for major residential developments must include provision of open space suitable for dog walking and general recreation, in accordance with policies SP23.

In developing these measures, regard must be had to the SPA Mitigation Strategy which requires a financial contribution towards wardening, and applicants must demonstrate clearly how they are meeting the strategy and how they will ensure that development will mitigate against any increase recreational pressure on designated sites.

Protection of Open Space

4.45 Thanet's urban areas are interspersed with a variety of areas of open space. These include: parks, informal recreation green space, natural and semi natural green space, amenity green space, outdoor sports facilities, play areas, cemeteries and allotments.

These form part of Thanet's green infrastructure network and shown on the green infrastructure map.

4.46 The National Planning Policy Framework (NPPF) states that existing open space, sports and recreational buildings and land (including playing fields) should not be built on unless it can be demonstrated to be surplus to requirements, the loss would be replaced by equivalent or better provision or the development is for alternative sports and recreation provision. The NPPF also states that planning policies should protect and enhance public rights of way and access. Kent County Councils Countryside and Coastal Access Improvement Plan identifies the need for planning policies to protect or enhance PROW.

4.47 The following policies meet the objectives of promoting physical and mental well-being, safeguarding and enhancing the geological and scenic value of the coast and countryside, retaining the separation between Thanets towns and villages and enhancing biodiversity and the natural environment.

4.48 Open space is a scarce commodity within Thanet's urban areas. Once such areas are lost to development, it is very difficult to provide satisfactory replacements within the immediate vicinity. Open spaces can provide for a wide variety of activities from organised sport to simple relaxation and opportunities for walking. Open space and amenity areas are vital for people's health and quality of life.

4.49 Local Green Spaces can be designated by communities through the local or neighbourhood planning processes. As set out in the NPPF, once designated, a local green space will be afforded the same protection as Green Belts and new development will not be permitted other than in very special circumstances. The NPPF sets out the circumstances under which development may be permitted. Green spaces can only be designated where all of the following apply:

- The green space is in reasonably close proximity to the community it serves.
- The green area is demonstrably special to a local community and holds a particular local significance.
- The green area concerned is local in character and is not an extensive tract of land.

The following policy seeks to protect Thanet's areas of open space from built development and states the circumstances under which development may be permitted.

Policy SP26 – Protection of Open Space

Built development or change of use will not be permitted on areas of open space identified as part of Thanet's green infrastructure network (including Public Rights of Way) unless:

1) It is for an open recreation or tourism uses and is of appropriate scale and design for its setting. Any related built development should be kept to the minimum necessary to support the open use, and be sensitively located.

2) There is an overriding need for development that outweighs the need to protect open space and cannot be located elsewhere, in which case provision of alternative open space of an equivalent size must be made elsewhere.

New development that is permitted by virtue of this policy should make a positive contribution to the area in terms of siting, design, scale and use of materials.

Built development in any areas designated as Local Green Spaces will only be permitted if the proposal meets the exception criteria set out in the National Planning Policy Framework.

Provision of accessible natural and semi-natural green space

Provision of Accessible Natural and Semi Natural Green Space, Parks, Gardens and Recreation Grounds

4.50 The provision of larger areas of open space will be delivered most appropriately through strategic allocations and should be considered intergral to the masterplanning of development proposals. The Open Space Audit 2005 identified an under provision of natural and semi natural green space of 0.95ha per 1000 population. In order to achieve the recommended 2ha of open space per 1000 population an additional provision of 34ha is needed. The audit found the provision of parks, gardens and recreation grounds to be sufficient at the time of the audit, at 1.06ha per 1000 population. In order to maintain this standard a further 18ha per 1000 population will be required. These standards are set out in Table 7.

4.51 Allotment sites are a statutory requirement for the Council but are usually managed by town or parish councils. A list of allotments, both under Council or local management, is provided at Appendix C. Allotments serve not only local residents by offering them a chance to grow their own fruit and vegetables but also by offering them physical activities in relation to healthy diet, activity and general well being. The overall benefits of allotments include:

- Providing a sustainable food supply
- A healthy activity for people of all ages
- Fostering community development and cohesiveness
- Acting as an educational resource
- Providing access to nature and wildlife and acting as a resource for biodiversity

- Providing open spaces for local communities
- Reducing carbon emissions through avoiding the long distance transport of food

4.52 The provision of allotments is considered a service best provided at local level, therefore the council will no longer offer allotment sites to applicants whose address is outside the Margate and Westgate area. Applicants applying from Ramsgate, Broadstairs, Birchington or the Thanet villages will be advised to contact their respective Parish or Town Council unless there are extenuating circumstances.

4.53 The change in management of allotments will be reflected in the waiting lists for the sites. Parish and Town councils are consulted on all planning applications received by the Council.

4.54 The audit found the provision of allotments to be sufficient at the time of the audit, at 0.19ha per 1000 population.

4.55 In order to maintain this standard a further 18ha per 1,000 population will be required. These standards are set out in Table 7.

The following policy seeks to ensure the recommended provision of natural and semi natural green space, parks, gardens and recreation grounds is provided for and will contribute to Thanet's green infrastructure network.

Policy SP27 – Provision of Accessible Natural and Semi Natural Green Space, Parks, Gardens and Recreation Grounds

The Council will require suitably and conveniently located areas of usable amenity space, adequate to accommodate the demands for passive recreation generated by residential development.

Sites of 50 dwellings or more will be required to provide natural and semi natural green space and local parks, formal gardens, allotments and recreation grounds to meet the standards set out in Table 7.

The Council will expect appropriate arrangements for maintenance and management, responsibility for which will be vested in a particular individual, or, subject to commuted payment to meet such costs, in the district, town or parish council. Such arrangements will be secured by entering into a planning agreement.

Any areas of accessible natural and semi natural green space, parks, gardens and recreation grounds created by virtue of this policy will be protected from development by policy SP26 – Protection of Open Spaces.

Quality Development

4.56 The National Planning Policy Framework (NPPF) places high importance on good design stating that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life. Planning should seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Permission should be refused for development of poor design that fails to take the opportunity to improve the character and quality of an area.

4.57 Thanet's towns, villages, coast and countryside enjoy a diverse and rich built heritage which contributes significantly to the Thanet's unique sense of place and identity. There are 21 conservation areas and approximately 2,500 listed buildings – the highest concentration for a local authority in the South East. However there are some areas in the district where the townscape quality is less attractive, with developments of mediocre and poor quality, and areas of neglect. The historic town centres contain a high concentration of listed buildings. The urban areas have been developed to a high density, with high numbers of flats – largely due to the availability of large properties formerly used as hotels which lend themselves to conversion to flats, and the subdivision of larger family homes. Some of the urban areas boast a rich architectural heritage including attractive Victorian terraces and Regency squares and large and attractive art deco properties along the coasts. Some suburbs and the rural villages are characterised by lower density development, with large, well-spaced properties and a number of tree lined streets.

4.58 Good design can help improve and enhance areas by ensuring high quality developments, and can help reduce the opportunities for crime and the fear of crime. The NPPF re-iterates and reinforces the role of Design Review in ensuring high standards of design. Design Review is an independent and impartial evaluation process in which a panel of experts on the built environment assess the design of a proposal. The projects that Design Review deals with are usually of public significance, and the process is designed to improve the quality of buildings and places for the benefit of the public.

4.59 Developers proposing projects of public significance (such as urban extensions or town centre mixed use developments) will be required to seek a Design Review by an independant design panel. This should be carried out at an early stage in the process. The South East Regional Design Panel can be contacted at Kent Architecture Centre. www.architecturecentre.org Developers proposing projects that are of national significance or that will have a profound impact on the regional and local environment will be required to seek a National Design Review with the CABE team at the Design Council, www.designcouncil.org.uk.

This objective of this policy is to ensure that new development is built to the highest attainable quality.

Policy SP28 – Quality Development

New development will be of a high quality inclusive design. Developers will be required to seek an independent Design Review for development proposals on sites with a prominent visual impact, or which are of national significance.

Heritage

4.60 The National Planning Policy Statement (NPPF) states that local plans should set out 'a positive strategy for the conservation and enjoyment of the historic environment'. It places emphasis on putting heritage assets to viable uses, the wider benefits that can be achieved by the conservation of the historic environment and the desirability of new development in making a positive contribution to local character and distinctiveness. It also includes criteria which would need to be fulfilled for a proposed development which would lead to substantial harm or loss of a heritage asset.

4.61 Thanet's historic and natural environment defines the character and setting of the district, and contributes significantly to residents' quality of life. It is important to maintain and enhance the historic and natural environment against the background of a successful, growing district.

4.62 The district can trace its origins to pre-historic activity with the remains of all periods from the Neolithic to Modern recorded within the area, consisting of both burial and settlement archaeology.

4.63 It is this rich heritage and the close proximity to the sea that gives the district its special character and distinctiveness, this is emphasised by the large number of highly graded designated heritage assets, often connected to the strong relationship with the sea either in the form of commerce, health or leisure.

4.64 Thanet can be described as a district with a diverse and vibrant character. The character of the coastal areas owes much to the juxtaposition of grand seafront developments and the smaller scale domestic 'vernacular' buildings associated with working harbours and holiday resorts.

4.65 The character of the rural areas owes much to the strong links with early Christianity and the ensuing development of medieval parishes centred around the church.

4.66 Some of the special qualities of Thanet's historic environment include:

- The richness of 18th, 19th and 20th century development linked to the sea, including grand residential terraces, harbours, leisure and health facilities as well as defence.
- The strong associations with internationally recognised people including AW Pugin, Sir Moses Montefiore and George Sanger and their significant legacies within the built environment.
- The presence of significant historic technical innovation, including the Scenic Railway, Clifton baths, Albion Gardens and Quex tower
- The wealth of public and private historic open spaces including many planned squares, parks, cemeteries, chines, cliff top promenades, coastal topography and significant views
- The Victorian/Edwardian suburbs and post-war housing developments (including Westgate on Sea)

- Locally distinctive materials, flint, clinker brick, Kentish red bricks and Kent pegs
- 21 conservation areas which vary considerably in age, size, character and style.
- Approximately 2,500 statutory listed buildings in Thanet - the highest concentration in the South East.
- A number of highly significant Grade I or II* listed buildings, including St Augustine's and Sir Moses Montefiore Synagogue, Ramsgate, Scenic Railway, Margate.
- 13 Scheduled Ancient Monuments including Minster Abbey.
- A designated Registered Park and Garden; Albion Gardens in Ramsgate.
- A richness in archaeological remains. The remains of all periods from Neolithic to Modern are recorded within the area and consist of both burial and settlement archaeology.

4.67 A Heritage Strategy is being prepared for Thanet. It is proposed that the strategy will be developed alongside the Local Plan and we have started to develop an evidence base to support this strategy and the Local Plan. The evidence includes assessing the significance of heritage assets in the area, including their settings, and the contribution they make to their environment. It also involves assessing the potential of finding new sites of archaeological or historic interest.

4.68 The preservation of Thanet's heritage is considered to be an economic asset, and its maintenance and protection plays an important role in the Districts economy.

4.69 The Council's aim is to work with property owners and other stakeholders in the historic environment to both protect and enhance the historic environment and ensure its economic viability for future generations. The following policy sets out how it intends to achieve this.

Policy SP29 - Conservation and enhancement of Thanet's historic environment

The Council will support, value and have regard to the significance of Heritage Assets by:

1) Protecting the historic environment from inappropriate development

2) Encourage new uses where they bring listed buildings back into use, encouraging their survival and maintenance without compromising the conservation of the building.

3) Seeking the provision of appropriate research for all applications relating to the historic environment on key sites as identified through the Heritage Strategy.

4) Facilitating the review of Conservation Areas and the opportunities for new designations.

5) Recognising other local assets through Local Lists.

6) Offering help and advice and provide information about the historic environment by offering guidance to stakeholders, producing new guidance leaflets and reviewing existing guidance leaflets and promoting events which make the historic environment accessible to all.

7) Agreeing Article 4 Directions which will be introduced and reviewed as appropriate

8) Supporting development that is of high quality design and supports sustainable development

All reviews and designations will be carried out in consultation with the public in order to bring a shared understanding of why asset and areas are being designated.

Climate Change

4.70 The National Planning Policy Framework (NPPF) expects a pro-active approach against climate change and states that adapting to, and mitigating against the effect of, climate change are core planning principles. This can be achieved by planning for new development in locations and ways which reduce greenhouse gas emissions, actively support energy efficiency improvements to existing buildings and set any building sustainability standards in line with the Government's zero carbon buildings policy.

4.71 The NPPF lists expectations to improve energy efficiency in new development in terms of decentralised energy and sustainable design, and ways of increasing the use and supply of renewable and low carbon energy. It stresses the importance of addressing longer term factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape.

4.72 Climate change is a change in weather patterns, caused by the increased levels of carbon dioxide in the atmosphere produced by the use of fossil fuels.

4.73 The effects of climate change are already being seen in Kent, and include:

- more erratic weather conditions including an increase in the number of 'hot weather' events, storms and also freezing temperature events;
- increase in sea levels and wave crest;
- increase in coastal water temperature;
- length of growing season has extended by 1 month since 1990; and
- increases in flooding and droughts.

4.74 The Government's Zero Carbon policy requires all new homes from 2016 to mitigate, through various measures, all the carbon emissions produced on-site as a result of the regulated energy use. This includes energy used to provide space heating and cooling, hot water and fixed lighting, as outlined in Part L1A of the Building Regulations. Provision can be made for offsetting though off-site 'Allowable Solutions' which minimise costs and unlock off-site abatement which can be more effective than on-site abatement. Allowable Solutions can be in the form of:

- On site options – eg led street lights, pv panels, electric vehicle charging.
- Near site options – eg financial contributions towards site based district heating scheme, retro fitting of low/zero carbon technologies to local communal buildings.
- Off site options – investment in energy from waste plants, investment in district heating pipe work.

4.75 The Council has adopted the Climate Local Kent commitment for Thanet. Climate Local is a Local Government Association initiative to drive, inspire and support council action on a changing climate. The initiative supports councils' efforts both to reduce carbon emissions and also to improve their resilience to the effects of our changing climate and extreme weather. The Climate Local Kent Commitment sets aims which include:

- 34% reduction in emissions by 2020 (2.6% reduction per year).
- Retrofitting to existing homes.
- Reduce water consumption from 160 to 140 litres per person per day by 2016.
- Increase renewable energy deployment in Kent by 10% by 2020.

The following policy aims to ensure new development minimises the impacts of climate change through mitigation and adaptation measures, and reduce Thanet's carbon footprint.

Policy SP30 – Climate Change

New development must take account of:

- **Adapting to Climate Change by minimising vulnerability, providing resilience to the impacts of climate change and complying with the Government's Zero Carbon Policy**
- **Mitigating against Climate Change by reducing emissions**

5 - Community Strategy

Healthy and Inclusive Communities

5.1 The National Planning Policy Framework (NPPF) acknowledges the link between planning and healthy communities and states that the planning system should support strategies to improve health and cultural well being, promote healthy communities and identify policies that will deliver the provision of health facilities. It encourages policies that will facilitate social interaction and healthy inclusive communities.

5.2 Health issues are addressed in this plan in the following policy areas (relevant local plan section in brackets):

- Housing quality and design (Housing and Quality Development sections)
- Transport (Transport section)
- Economic development, employment skills and training (Economy section)
- Access to and provision of local services (Community Facilities Section)
- Community safety and crime (Quality Development Section)
- Access to fresh food (Open Space provision in Quality Environment Section)
- Risk and vulnerabilities to climate change impacts (Climate Change section)

The following policy sets out how the plan will contribute towards a healthier community.

Policy SP31 – Healthy and Inclusive Communities

The Council will work with relevant organisations, communities and developers to promote, protect and improve the health of Thanet's residents, and reduce health inequalities. Proposals will be supported that:

1) Bring forward accessible and new and/or community services and facilities, including new health facilities.

2) Safeguard existing community services and facilities.

3) Safeguard or provide open space, sport and recreation and enabling access to nature.

4) Promote healthier options for transport including cycling and walking.

5) Improve or increase access to a healthy food supply such as allotments, markets and farm shops.

6) Create social interaction and safe environments through mixed uses and the design and layout of development.

7) Create a healthy environment that regulates local climate.

Community and Utility Infrastructure

5.3 The National Planning Policy Framework requires local plans to make provision for infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change. It also requires the provision of infrastructure for health, security, community, cultural, gas, electricity, emergency services and fibre-optic cables.

5.4 It is important that there is sufficient community infrastructure to support new development. This includes provision of adult social services, education, health facilities, libraries, childcare and youth services.

5.5 Advanced high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.

5.6 The Council is working with Kent County Council and other services providers to ensure sufficient infrastructure is provided for. An Infrastructure Delivery Plan is being prepared alongside the Local Plan to identify infrastructure requirements.

The following policies seek to achieve the objectives of accommodating the development needed whilst providing and improving access to community and utility infrastructure.

Policy SP32 – Community Infrastructure

Development will only be permitted when provision is made to ensure delivery of relevant and sufficient community and utility infrastructure. Where appropriate, development will be expected to contribute to the provision of new, improved, upgraded or replacement infrastructure and facilities.

Provision of Schools

Expansion of Primary and Secondary Schools

5.7 Kent County Council, as education authority, has identified from the population and growth forecasts set out in this plan that Thanet's primary and secondary schools will need to expand. The Council will work with KCC to identify and safeguard land to accommodate any required expansions.

Policy SP33 - Expansion of Primary and Secondary Schools

The Council will support the expansion of existing and development of new primary and secondary schools in Thanet to meet identified needs and will work with Kent County Council in identifying, allocating and safeguarding land as appropriate.

6 - Transport Strategy

Safe and Sustainable Travel

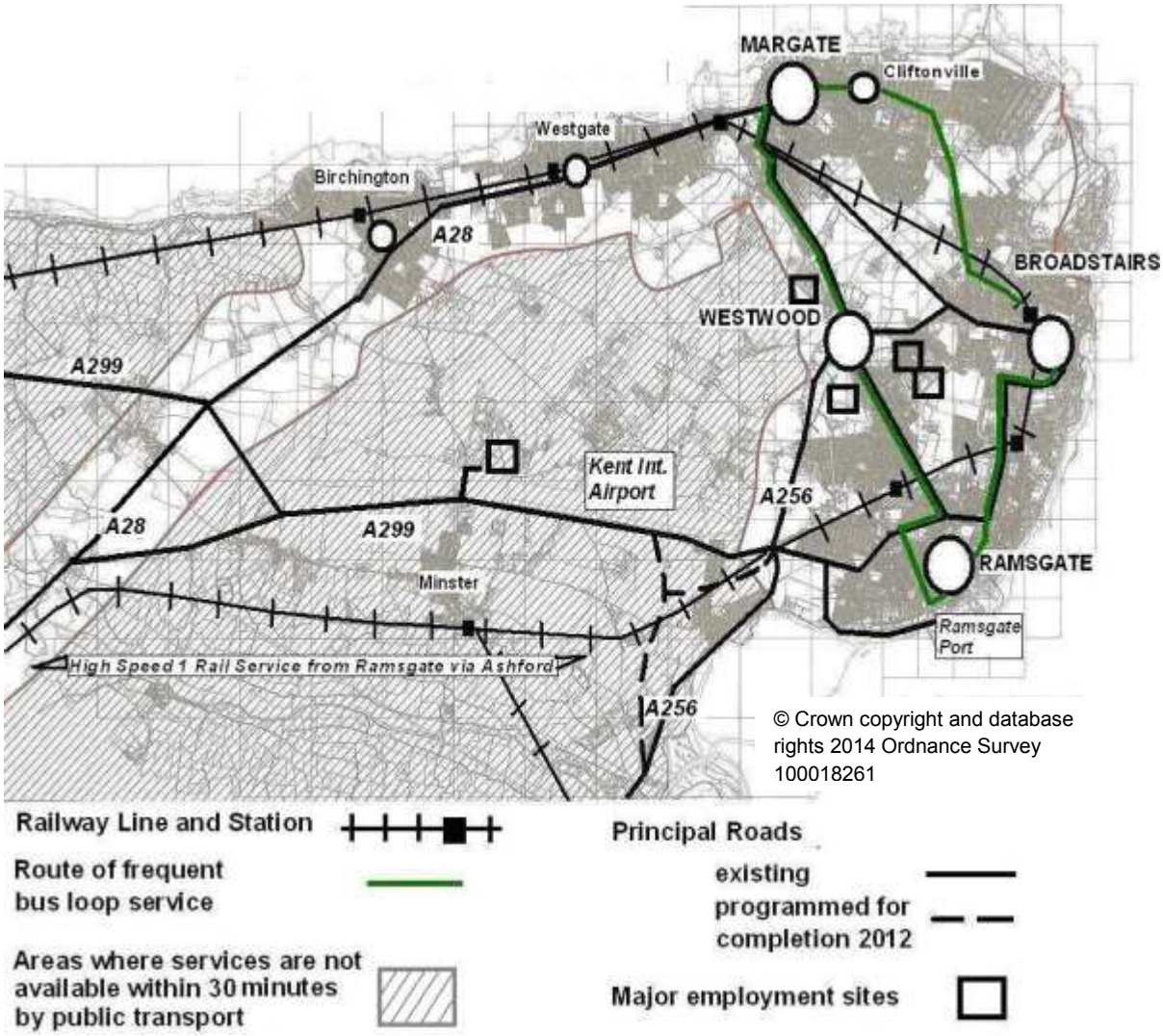
6.1 The National Planning Policy Framework (NPPF) states that transport policies have an important role to play in facilitating sustainable development and in contributing to wider sustainability and health objectives. Key messages include that the transport system needs to be balanced in favour of sustainable transport modes, giving people real choice about how they travel. Local Plan policies are expected to aim for a balance of land uses to encourage people to minimise journey length for employment, shopping, leisure, education and other activities.

6.2 Transport is a critical factor to Thanet's aspirations for sustainable economic regeneration. Thanet's citizens need to go to work, school, shops and to access other services as part of their daily lives. Goods need to be moved to support employment and economic growth. Thanet does not at present suffer significant levels of congestion, traffic noise, pollution and delays such as experienced in urban centres elsewhere in Kent. A high proportion of Thanet's population has no access to a car. However this has potential to change and some traffic congestion already occurs at certain junctions at peak times. Thanet has an attractive environment and is a pleasant place to live and work. Its environment is also a potential asset in attracting investment. The intention is to maintain that situation while attracting and accommodating appropriate development in support of regeneration. Accordingly, key actions will be to manage mobility by putting in place an efficient and effective, sustainable transport system.

6.3 With an airport and a major port, Thanet has an international Gateway function important for economic development across the region. The introduction of high speed trains connecting Thanet with the High Speed 1 (HS1) service has reduced journey times from Ramsgate to London by over 30 minutes. Manston Business Park is a location of strategic importance. A surface access strategy and travel plan will be required alongside planned growth to promote sustainable travel, particularly by the workforce.

6.4 Kent County Council's Transport Delivery Plan "Growth without Gridlock" identifies strategic transport projects to support Kent's sustainable economic growth. It recognises the potential of Manston Airport to cater for increasing freight and passenger movements. It also acknowledges the need and potential for coastal areas to derive greater benefit from the High Speed 1 rail service including through potential increases to line speeds for domestic link services, and a new railway station. The HS1 services need to be integrated with the wider public transport network and meet the needs of people who elect to access them by car.

Map 14 – Thanet's Transport Infrastructure



6.5 Thanet's services and most employment sites are clustered in and around the coastal centres and Westwood. These are close to Thanet's existing communities, including the deprived neighbourhoods, and highly accessible by public transport including the frequent "Loop" bus.

6.6 An efficient and convenient public transport system and direct walking and cycling routes need to be at the heart of the transport network to reduce the risk that growth may cause traffic congestion, noise and air pollution, or isolate disadvantaged communities.

6.7 Within the context of an established development pattern, the most significant change likely to generate demand for travel will result from new housing development. It is necessary, therefore, to consider the location of development in areas accessible to a range of services on foot and by public transport, preventing urban sprawl and improving local high streets and town centres. Methods such as providing showers and changing facilities in employment related development and locating cycle parking close to town centres/entrances will also help reduce the need to travel by car.

6.8 Thanet and Kent County Council are jointly preparing a Thanet Transport Strategy to help increase the efficiency and effectiveness of the transport system, achieve a shift to more sustainable travel patterns and modes and to identify the transport infrastructure and improvements required to support implementation of the Local Plan. The following sections address challenges identified in the draft Strategy.

Policy SP34 - Safe and Sustainable Travel

The Council will work with developers, transport service providers, and the local community to manage travel demand, by promoting and facilitating walking, cycling and use of public transport as safe and convenient means of transport. Development applications will be expected to take account of the need to promote safe and sustainable travel. New developments must provide safe and attractive cycling and walking opportunities to reduce the need to travel by car.

Accessible Locations

6.9 Guiding the location, scale and density of new development is an important way of reducing the need to travel, reducing travel distances, and making it safer for people to use alternatives to the car. Consistent policies directing location of travel generating uses will also guide infrastructure investment further supporting integration of transport and land use.

Policy SP35 - Accessible location

Development generating a significant number of trips will be expected to be located where a range of services are or will be conveniently accessible on foot, by cycle or public transport. The Council will seek to approve proposals to cluster or co-locate services at centres accessible to local communities by public transport and on foot.

Transport Infrastructure

6.10 The Transport Strategy aims to promote walking, cycling and use of public transport as well as improvements to the road network to facilitate sustainable choice and safe and convenient travel. Where the need for improvements arises wholly or largely from proposed development the developer will be expected to contribute towards required improvements as set out in the Transport Strategy and Infrastructure Delivery Plan.

6.11 While this Plan seeks to increase use of sustainable modes of transport, people will continue to make use of private cars and planned growth will increase travel demand. Traffic flows within Thanet are generally unrestricted. However, there are a number of locations where traffic flow issues need to be addressed. These are “Victoria” traffic lights Margate, Coffin House Corner Margate, Marine Terrace Margate, Dane Court Roundabout Broadstairs and the “Spitfire” junction, near

Manston airport. The Council will seek to implement solutions to address identified capacity issues in the road network.

Policy SP36 - Transport Infrastructure

Development proposals will be assessed in terms of the type and level of travel demand likely to be generated. Development will be permitted only at such time as proper provision is made to ensure delivery of relevant transport infrastructure. Where appropriate, development will be expected to contribute to the provision, extension or improvement, of walking and cycling routes and facilities and to highway improvements.

Subject to individual assessments, schemes may be required to provide or contribute to:

Capacity improvements/connections to the cycle network

Provision of pedestrian links with public transport routes/interchanges

Improvements to passenger waiting facilities

Facilities for display of approach time information at bus stops along identified quality bus corridors

Improvement and expansion of public transport services

Improvements to the road network in line with schemes identified through the Transport Strategy.

Connectivity

6.12 Thanet's location in the south east corner of England has previously been seen as a disincentive to investors, but now the transport infrastructure in place offers attractive business opportunities with an integrated transport hub, maximising on the potential of High Speed One from Ramsgate, the Port and Manston Airport. Recent years have seen the completion of the A299 Thanet Way and its new connection to the now completed East Kent Access route. This road infrastructure gives direct connectivity between the ports of Dover and Ramsgate, Manston Airport and the rest of Britain's strategic road network.

6.13 Introduction of the High Speed 1 (HS1) rail service and dualling of the principal East Kent Access route network into Thanet have improved perceptions of the district as a credible location for investment. Prospective investments in line speeds along the domestic link to HS1 will result in further significant reduction in journey times between Thanet and St Pancras.

Policy SP37 - Connectivity

The Council will continue to lobby for investments to secure further improvements to rail journey times for CTRL including domestic services between Ashford and Ramsgate.

Strategic Road Network

6.14 The Highways Agency has identified potential capacity issues at junctions on the Strategic Road Network at the M2 junction 7 (Brenley Corner) and at the A2/A256 junction. While these junctions are located some distance from Thanet, development in the district may add to cumulative impact upon them as a result of overall growth in the sub region. This reinforces the importance of promoting sustainable modes of travel, as a way of minimising the impact (as per Policy SP34).

Policy SP38 - Strategic Road Network

In conjunction with neighbouring districts the Council will prepare a joint assessment of planned development and the expected volume and direction of road traffic movement it would generate to understand its potential impact on these junctions and how this may, if appropriate, be mitigated.

New Rail Station

6.15 The introduction of faster trains on the Ramsgate to St Pancras route, utilising the High Speed rail link (HS1) means that Ramsgate is only 76 minutes from London for much of the day. As a result Thanet has to potential to become a more attractive location for people employed in London seeking to live in a more pleasant environment.

6.16 Kent County Council, through its Local Transport Plan 'Growth without Gridlock', and the South East Local Enterprise Partnership, through its Strategic Economic Plan support the provision of a new Parkway railway station to the west of Ramsgate close to Cliffsend village. In promoting delivery of the project Kent County Council has identified a preferred location west of Cliffsend.

6.17 Thanet District Council supports the principle of a new railway station at a suitable location along the rail-side area west of Ramsgate. The following policy safeguards land at the preferred location west of Cliffsend for the Parkway project including an area for car parking and a notional road access to East Kent Access road. In addition the Council will continue to investigate and press for improvements to the running times of trains between Thanet and Ashford with a view to reducing the journey time from the Parkway to less than 60 minutes.

6.18 In supporting the principle of a new railway station emphasis will be placed on its accessibility by public transport and road (including sufficient car parking) for established and planned residential areas. Thanet’s more densely populated areas and planned strategic housing sites are generally well served by existing railway

stations and or public transport as well as having good access to a range of services. New housing development is proposed on the edge of Ramsgate and at the village of Cliffsend in close proximity to the new railway station.

Policy SP39 - New Rail Station

Planning permission will be granted for a new railway station at a suitable location on land west of Ramsgate alongside the existing railway line. Land west of Cliffsend (shown on the map below) is safeguarded for this purpose. Proposals will be required to specifically demonstrate all of the following:

1) Satisfactory vehicular access arrangements from East Kent Access

2) Suitable level of car parking

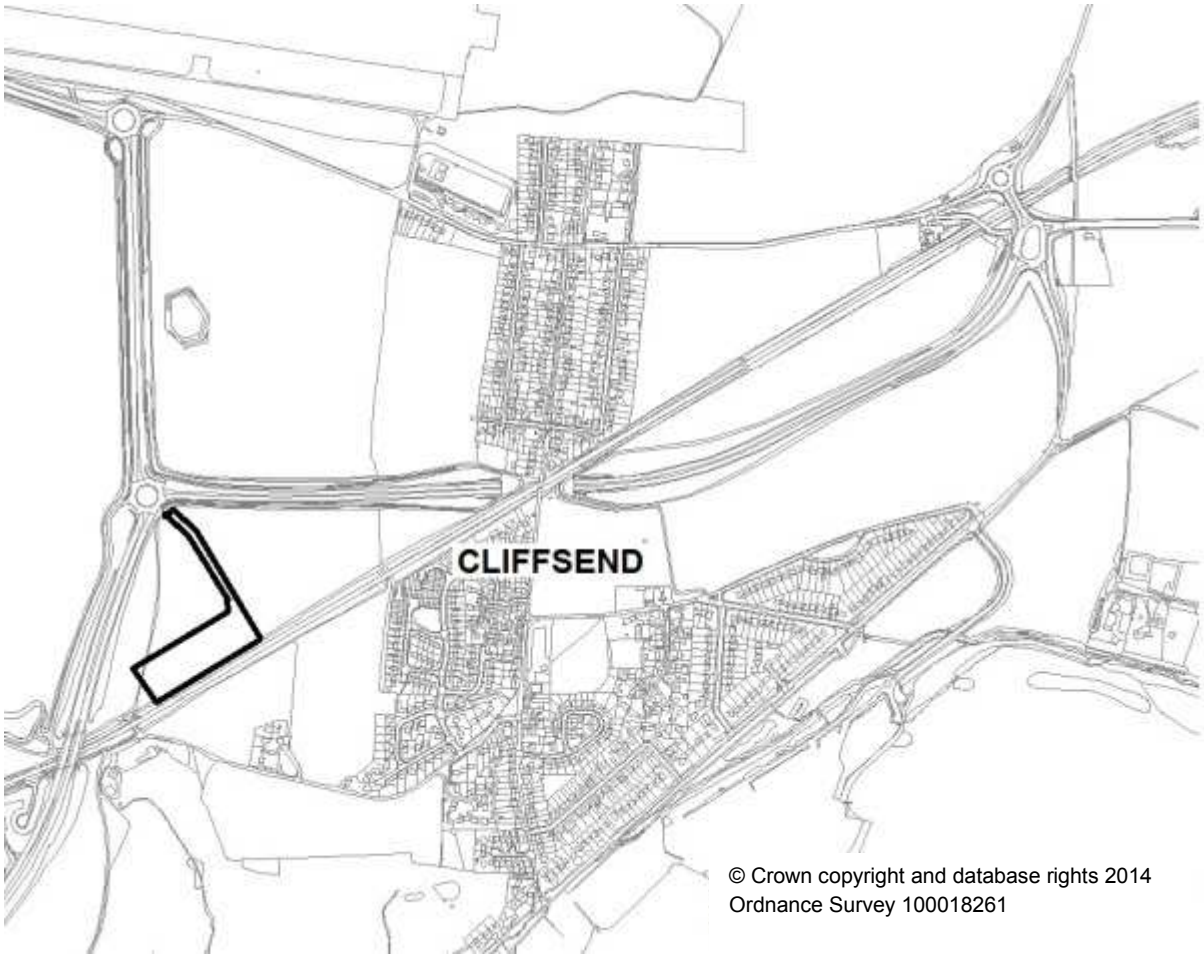
3) Integration with wider public transport services

4) Mitigation of any noise impacts on sensitive receptors

5) Compatibility with the landscape character of its location

6) Located to minimise the loss of best and most versatile agricultural land

Map 15 – New Rail Station



Development Management Policies

7 - Economy

Retention of existing employment sites

7.1 The Council considers that it is essential that employment premises are retained in order to conserve stock for future use. Sites have been assessed for their compatibility with the plan's employment land strategy. The sites listed below contibute postively and are retained and protected for employment purposes accordingly:

Policy E01 - Retention of existing employment sites

The following sites will be retained for employment uses falling within Use Classes B1 and B8 in locations close to residential areas, with additional B2 in appropriate locations away from residential development:

1. All sites specifically identified under [the allocations policy]; and

2. Existing business sites and premises identified set out below:

Cromptons site, Poorhole lane Broadstairs

Pysons Road Industrial Estate, Broadstairs

Thanet Reach Business Park (part), Broadstairs

Dane Valley Industrial Estate St.Peters, Broadstairs*

Northdown Industrial Estate St.Peters, Broadstairs

Manston Business Park (part), Manston

Manston Green, Manston

Manston Road Depot, Margate

Westwood Industrial Estate, Margate*

Fullers Yard, Victoria Road, Margate

Laundry Road Industrial Estate Minster

Eurokent Business Park (part), Ramsgate*

Leigh Road Industrial Estate, Ramsgate

St.Lawrence Industrial Estate, Ramsgate

Princes Road Depot/Pioneer Business Park, Ramsgate

Whitehall Road Industrial Estate, Ramsgate

Hedgend Industrial Estate, Thanet Way, St.Nicholas-at-Wade

Tivoli Industrial Estate, Margate

Manston Road Industrial Estate (part), Ramsgate

*** these are flexible employment sites, where wider employment generating uses will be allowed in addition to B1, B2 and B8 uses. Development must be compatible with neighbouring uses. Proposals for main town centre uses should also comply with Policy E05 - the sequential test.**

7.2 Flexible uses include leisure, tourism and other town centre uses which due to scale and format cannot be accommodated within town centres. They also include uses known as sui generis which do not fall into a category in the Use Classes Order. These include uses such as car show rooms and crèches.

Home Working

7.3 The National Planning Policy Framework requires the Council to consider the plan for flexible working practices such as the integration of residential and commercial uses within the same unit.

7.4 The proportion of people that are home working is relatively high in Thanet according to the Economic and Employment Assessment 2012. It is not clear from the evidence whether these are small local business starting up from home or employees of companies located potentially outside the District. In either case this is considered beneficial to the Thanet's economy as a result of money spent in the District. The close juxtaposition of home and work can reduce car use, and is therefore environmentally sustainable, particularly bearing in mind the growth of fast broadband. It is therefore considered important that improvements to digital infrastructure are supported.

7.5 Flexible office space (workhubs) with professional equipment and meeting space that can be hired and used in an ad hoc manner by home based workers can also support home working. Business advice may also be important. It is considered that these facilities can be accommodated on identified Business Parks or in the town centres.

7.6 Some small scale home-working may not require planning permission. However, where home-working does require planning permission consideration should be had to the impacts upon the neighbourhood, including for example traffic, noise and disturbance. The Council supports such proposals but wishes to ensure that any potential impact is acceptable, as set out in the following policy.

Policy E02 - Home Working

Proposals for the establishment of a business operating from a residential property will be permitted, provided that it can be demonstrated that the proposed use would not result in:

1) Detrimental impacts on residential amenity by reason of dust, noise, smell, fumes or other emissions;

2) Additional traffic flows or vehicle parking in the vicinity, at a level that would be harmful to residential amenity or highway safety; or

3) The erosion of the residential character of the area.

Policy E03 - Digital Infrastructure

Proposals for the installation of digital infrastructure will be required, on allocated sites in this plan.

Retro-fitting in existing urban areas and villages will be supported, subject to no detrimental impacts on listed buildings, the character and appearance of conservation areas and historic landscapes

8 - Town and District Centres

Primary and Secondary Frontages

8.1 The National Planning Policy Framework requires local planning authorities to define the extent of primary and secondary frontages within town centres and set policies to make clear which uses will be permitted in such locations.

8.2 Healthy shopping centres rely on control over the number and location of non-retail premises within the main shopping area. The success of any particular centre is dependent, at least in part, upon retaining a reasonably close grouping of shops selling a wide range of products. This allows customers to fulfil the majority of their shopping needs in one trip, as well as providing the opportunity for comparing the price and availability of less frequently purchased goods. The existence of non-retail businesses in primary shopping areas can inhibit these activities by reducing the range of shops, and thereby potentially reducing the number of people visiting the centre, as well as making the centre less compact and therefore less convenient. However town centres perform a greater function than just retail centres. They are hubs of the community and encompass cultural, leisure, arts and heritage uses that in turn support the tourism industry and therefore in line with the strategy for the town centres outlined earlier it is considered appropriate to provide a generous secondary frontage in the coastal town centres in order to maintain and support this trend.

Policy E04 - Primary and Secondary Frontages

Primary and Secondary Frontages are defined for Westwood, Margate, Ramsgate and Broadstairs.

Within the Primary Frontages the following development will be permitted:

1) Use Classes A1, A2, A3, A4 and A5.

2) Residential and Class B (a) offices will be permitted above ground floor level only.

Within the Secondary Frontages the uses referred to in the preceding clause will be permitted as well as all other town centre uses stated in the National Planning Policy Framework including hotels and residential.

Sequential and Impact Test

8.3 Local planning authorities are required by the National Planning Policy Framework to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Applications for main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well

connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

8.4 The NPPF requires that town centre development takes places on sites within designated town centres and only there are no suitable, viable or available sites should edge of centre or out of centre locations be considered and it requires the reasons for rejecting more central sites to be clearly explained.

8.5 This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

8.6 The NPPF also requires that applications for town centre development outside of the defined town centres above a certain threshold are accompanied by an impact test in order to assess the impact on vitality and viability of the town centres. The thresholds for Thanet are set out in policy below.

Policy E05 - Sequential and Impact Test

Proposals for main town centre uses should be located within the designated town centres of Margate, Ramsgate, Broadstairs and Westwood, comprising the primary and secondary frontages. Where this is not possible due to size, format and layout town centre uses should be located on the edge of town centres or on employment land designated for flexible uses. Outside these areas applicants should demonstrate that there is no sequentially preferable location within the catchment of the proposed development.

Applications for development above the following thresholds should be accompanied by an impact assessment:

1) Urban area – 1,000 square metres

2) Rural area - 280 square metres

The impact assessment should include:

- **the impact of the proposal on existing, committed and planned public and private investment in a town centre or town centres in the catchment area of the proposal; and**
- **the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.**

Applicants should demonstrate flexibility on issues such as format and scale and will be expected to provide the Council with robust evidence of this.

Where an application fails to satisfy the sequential test or is likely to have an adverse impact, it will be refused.

District and Local Centres

8.7 District and Local centres perform an important role in the retail hierarchy catering for basket and top up shopping located in sustainable locations often walkable from residential areas. Developments in local parades and centres should primarily serve the community within which they are located with catchment areas of not more than 800 metres.

8.8 Thanet's District centres consist of Cliftonville, Birchington, Westgate and Minster. There are number of smaller local centres throughout the District.

8.9 The important function of District and Local Centres, particularly the services they provide for the elderly and infirm should not be compromised by an overconcentration of residential accommodation.

Policy E06 - District and Local Centres

Proposals for additional shopping provision at traditional district and local centres will be permitted where the proposals meet a local need, are of a scale appropriate to the particular centre and not more than 1000 square metres.

Residential accommodation will be permitted in District and Local centres where this would not fragment or erode the commercial frontages of such locations to a degree that compromises footfall or otherwise undermines the function of the centre.

9 - Tourism

Tourist Accommodation

9.1 The provision of sufficient quality tourist accommodation is necessary to increase tourist spend and help to extend the tourist season, which is are objectives of the Council's Economic Development and Regeneration Strategy and a strategic priority of this Plan.

9.2 Existing hotel provision in the District caters well for the budget hotel market and this has been increasing in recent years, but is lacking in hotels at the top end of the market. There is also a shortage of family holiday accommodation. Hotel facilities must be attractive to tourists to capitalise on the trend for shorter breaks in the UK and demand for better overall quality and service. There is increasing demand for boutique and designer hotels fuelled by more sophisticated tastes.

9.3 Other than caravan accommodation Thanet has relatively few self-catering facilities. Touring and camping is a popular choice of tourist accommodation and is an up and coming market. Thanet is currently underprovided with these types of facilities and the Council aims to take advantage of this high demand.

9.4 It is therefore important to provide for new and protect tourist accommodation of all types and for all budgets to attract a range of staying visitors to the area, which the following policies seek to achieve.

Policy E07 - Serviced Tourist Accommodation

The Council will permit the development of new serviced tourist accommodation, including extensions and improvements to existing accommodation, where this would be well related to existing built development and subject to the following criteria:

1) Scale and impact on the surrounding area, including impact upon the road network.

2) Accessibility by a range of means of transport.

3) Outside of the built up area hotel development should respect landscape character and nature conservation value.

4) Sufficient mitigation against any increase in recreational pressure on designated nature conservation sites.

Policy E08 - Self Catering Tourist Accommodation

Proposals for the development, diversification, upgrade or improvement of self-catering accommodation will be permitted subject to the following criteria:

1) appropriate siting, design, scale and access

2) be well related to the primary and secondary road network

3) be capable of being extensively landscaped such that its impact on the character of the area is minimised.

Policy E09 - Protection of Existing Tourist Accommodation

Proposals that would result in the loss of existing tourist accommodation with 10 or more bedrooms will not be permitted unless it can be demonstrated that:

1) the hotel/guesthouse or self-catering accommodation is no longer viable* for such use; and

2) alternative types of holiday accommodation suitable for the property (including dual use for out of season times) are not viable*.

*** In order to demonstrate that the existing tourist accommodate is not viable, evidence will be required to show that the facility has been marketed extensively for at least a year and at a competitive price. Evidence will also be required of occupancy rates for the previous 3 years, and any other relevant factors such as previous marketing or business plans, locational factors and ease of access for visitors by a range of means of transport. In assessing whether the accommodation is not viable the Council may seek the independent views of industry experts.**

Thanet's Beaches

9.5 Thanet possesses a large number of sandy beaches, whose characters range from intensively holiday-oriented beaches (eg: Marine Sands, Margate) to undeveloped beaches with a natural character and appearance (eg: Grenham Bay, Birchington). The different types of beach offer opportunities for different types of recreational activity. In the interests of choice, the Council believes that it is desirable to ensure that the differences of character are maintained, and where appropriate, enhanced. Most beaches along the Thanet coast are internationally important for their wintering bird populations.

9.6 The Council's Destination Management Plan is considering potential locations for additional beach development, including accommodation, would be appropriate and viable. It is also investigating ways to improve the management of the beaches for the benefit of the tourism economy.

9.7 The following policies divide the beaches into three broad categories, in order to direct and restrict development appropriately to maintain and enhance their

individual function and character, and to protect the designated nature conservation sites.

9.8 It should be noted that the intermediate category includes beaches which have scope for some further development, as well as those which are fully developed within the terms of the Policy.

9.9 To provide for a variety of tastes and choice in the type of recreational activities, associated service facilities and degree of solitude on Thanet's coastline, the following Policies will apply to beach development.

Policy E10 - Major Holiday Beaches

On those beaches identified as major holiday beaches below, the Council will support proposals for the provision and upgrading of a wide range of recreational facilities and services including tourist accommodation:

1) Main Sands, Margate

2) Ramsgate Main Sands

3) Viking Bay, Broadstairs

Proposals must also comply with the heritage policies of this plan and the National Planning Policy Framework.

At Margate Main Sands recreational facilities will be concentrated on that part of the beach at the junction of Marine Terrace and Marine Drive and the built form shall not project above the level of the seafront promenade.

Development proposals must fully mitigate against any impact upon the designated nature conservation sites, and will be subject to the Habitats Regulations.

Policy E11 - Intermediate Beaches

On those beaches identified as intermediate beaches below, and where scope exists for such development, the Council will support proposals for small scale tourism and leisure development (e.g. tourist accommodation, kiosks supplying food and refreshments, beach huts and beach furniture), subject to the scale of provision being consistent with the intermediate status of the beach and satisfactory design and siting of development:

1) Dumpton Gap (part)

2) Joss Bay

3) Louisa Bay

4) Minnis Bay (part)

5) St Mildred's Bay

6) Stone Bay

7) Walpole Bay

8) Westbrook Bay

9) Western Undercliff, Ramsgate

10) Westgate Bay

Development proposals must fully mitigate against any impact upon the designated nature conservation sites, and will be subject to the Habitats Regulations.

Policy E12 - Undeveloped Beaches

On, or adjacent to undeveloped beaches identified on the policies map, priority will be given to the maintenance and enhancement of their natural and undeveloped character. New development including new built facilities, the provision of public car parking facilities and new or improved vehicular access to serve such beaches will not be permitted. In the event that development is exceptionally permitted, proposals must fully mitigate against any impact upon the designated nature conservation sites, and will be subject to the Habitats Regulations.

Language Schools

9.10 Thanet contains a considerable number of language schools and a large percentage of students using these services stay with Thanet families or as paying guests. In 2009 the contribution of Language Schools to the Thanet's economy was £14 million. In 2011 £11,433,000 was spent on accommodation alone, this was up 6% on 2009.

9.11 English language schools in Thanet are therefore a major contributor to the local economy, and offer potential for encouraging the next generation of visitors to this part of Kent. The Council wishes to encourage this sector of the local economy to grow.

9.12 However language schools can cause issues with noise and disturbance particularly where there are concentrations of such facilities in an area potentially resulting in large gatherings of young people. These issues need to be balanced with the benefit to the local economy, as set out in the following policy.

Policy E13 - Language Schools

Language schools will be permitted subject to:

1) The number of students to be accommodated, the hours of operation, the range of facilities provided and the relationship with adjoining properties not resulting in an unacceptable impact on the amenities of adjacent occupiers or on the character of an area as a whole through noise or general disturbance;

2) The use of the property as a language school not resulting in an over-concentration of such uses in a particular locality to a level where the character of that area is materially altered.

Quex Park

9.13 Quex Park Estate is set in 250 acres of parkland and trees in Thanet's otherwise wide open landscapes.

9.14 The major attraction and point of interest is the Powell Cotton Museum which is one of the finest collections of natural history and ethnographic artefacts in existence. This was established in 1896 by Major Percy Horace Gordon Powell-Cotton. The collections support the study, understanding and enjoyment of zoological, cultural and ecological diversity of Africa and the Indian sub-continent.

9.15 The Quex Park Estate contains a wealth of heritage assets. The Mansion House dates back to the early 1400s but this was demolished between 1769 and 1849 by John Powell who replaced it with an elegant Regency home. There are also acres of historic gardens and natural woodland with traditional Victorian layout and landscaping which includes built heritage of a walled garden and green houses.

9.16 A restoration project is currently underway which includes renewed garden design based on their traditional layout and planting and restoration of the historic greenhouses.

9.17 Other heritage assets at Quex Park include the Three Towers. The Round Tower build in 1814, the Waterloo Tower built in 1819 and the clock tower above the listed coach house. The turret clock, by Benjamin Lewis Vulliamy, was installed in 1837 and sounds the quarters and the hour.

9.18 Quex Park farms 1500 acres in house plus a further 1500 acres under contract agreements with other local farmers. The main enterprises are potatoes, wheat, oilseed rape as well as a single suckling beef herd. The potatoes are used to make Kent Crisps which are widely distributed around the Country. The oilseed rape is used to produce a range of Kentish oils made by Quex foods. The Park also contains bee hives and the honey is sold locally.

9.19 The profitability of farming alone was not able to provide for the upkeep of the historic buildings and parkland despite registration for charitable status. As a result the Estate has diversified its many redundant buildings.

9.20 Therefore as well as the Museum, house and gardens Quex Estate houses Quex Barn farmers market and restaurant, Jungle Jims children's indoor and outdoor play area, the Secret Garden centre, a paintballing arena, the Quex Maize Maze, the Craft Village, Build a Base (an indoor games arena) and Mama Feelgoods Boutique café. In addition to these individually managed enterprises the Estate also hosts weddings. The Estate as whole employs in the region of 140 people.

9.21 Quex Park is also involved in conservation and habitat creation. 55 species of bird have been spotted and over 200 trees and 3 miles of hedgerow have been created in the last decade. The Estate is involved in several conservation schemes and has a total of 150 acres in conservation management; 50 acres of which is dedicated to wildlife strips planted with native grass species to encourage insects, small rodents and birdlife; 40 acres is dedicated to low level grazing management adjacent to the River Stour to encourage native plant species and ground nesting birds; and 63 acres of summer fallow encourages bird species. The Quex Estate also has chalk caves which are home to three species of bat.

The following policy seeks to promote further development of the Quex Park Estate to support its diversification as a local enterprise, providing valuable economic and tourism benefits whilst protecting the Parks character and heritage.

Policy E14 - Quex Park

Farm diversification projects and tourism and leisure development at Quex Park Estate will be supported where they contribute to the upkeep of the Quex House and Gardens and the Powell-Cotton Museum and promote the Estate as a destination for tourism and leisure. Projects should be in keeping with the parkland character of the Estate, conserve and enhance the heritage assets and the Park's biodiversity.

10 - The Rural Economy

10.1 The National Planning Policy Framework requires that Local Plans support the sustainable growth and expansion of all types of business and enterprise in the rural areas, promote the development and diversification of agricultural and other land based rural businesses, support sustainable rural tourism and leisure developments that benefits businesses in the rural area and promote the retention and development of local services and community facilities. There is also the requirement for the Local Plan to address the needs of the food production industry and any barriers to investment that planning can resolve.

New build development for economic development purposes in the rural area

10.2 The NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by supporting sustainable growth and expansion of all types of business and enterprise in rural areas, through well designed new buildings.

The Council wishes to support a sustainable rural economy and rural economic development of an appropriate scale and the following set policies seek to address this.

Policy E15 - New build development for economic development purposes in the rural area

Well designed new build development for economic development purposes will be permitted within the identified confines of the villages and at a scale and form compatible with their character.

Conversion of rural buildings

10.3 An important consideration for the rural economy and rural diversification is the reuse of redundant buildings. The National Planning Policy Framework (NPPF) states that planning authorities should support the expansion of all types of business and enterprise in rural areas through the conversion of existing buildings.

10.4 Such conversions might be particularly desirable where buildings are listed, or have other landscape value, and their long-term retention may be sought for these reasons.

10.5 Disused rural buildings may hold species protected by the Wildlife and Conservation Act 1981 and other legislation, for example, bats or barn owls. The conversion of such buildings should make provision for their continued use by protected species which are present. If this is not possible, an alternative roosting site should be provided nearby.

Policy E16 - Conversion of rural buildings for economic development purposes

Where it can be demonstrated that the building is not needed for agricultural use the conversion of rural buildings to other uses for economic development purposes will be permitted where all the following criteria are met:

1) Their form, bulk and general design are in keeping with the character of the surrounding countryside.

2) The proposed use is acceptable in terms of its impact on the surrounding area and the local highway network.

3) Demonstrate through a structural survey that the building is capable of conversion.

4) Any alterations associated with the conversion would not be detrimental to the distinctive character of the building (or its setting), its historic fabric or features.

5) If the building forms part of a complex of agricultural or industrial buildings, a comprehensive strategy is put forward which shows the effects on the use of the remaining complex, and on any listed buildings and their settings.

6) Where the building currently contains protected species, mitigation should be provided.

Farm Diversification

10.6 The NPPF requires that planning policy should promote the development and diversification of agricultural and other land-based rural businesses.

10.7 The Council wishes to support proposals for diversification that will strengthen and protect the productive base of the farm unit that allows the farmer to continue to farm. An example would be a farm retail unit. The Council will expect an outline farm plan to be submitted with any planning application, indicating how the new diversification schemes integrates with and contributes to the overall business plan for the farm. By granting planning consent for acceptable diversification projects, the Council is indicating its long term support for a continuing viable agricultural community in Thanet.

10.8 However, farm diversification projects have the potential to result in adverse effects, for example, traffic and landscape impacts, and the depletion of financial and land resources. Applicants will therefore need to carefully assess the implications of new proposals, both for their own benefit, and to enable the Local Planning Authority to give support to acceptable and viable schemes.

The following seeks to achieve this balance.

Policy E17 - Farm Diversification

Proposals to diversify the range of economic activities on a farm will be permitted if all the following criteria are met:

1) The proposal is complementary to the agricultural operations on the farm, and is operated as part of the farm holding.

2) There would be no irreversible loss of best and most versatile agricultural land.

3) The likely traffic generation could be safely accommodated on the local highway network.

Proposals should where possible utilise available existing farm buildings.

Best and most versatile agricultural land

10.9 The Agricultural Land Classification system (ALC) provides a method for assessing the quality of farmland to enable informed choices to be made about its future use within the planning system and the presence of best and most versatile agricultural land should be taken into account alongside other sustainability considerations when determining planning applications.

10.10 The National Planning Policy Framework (NPPF) requires that planning authorities should take into account the economic and other benefits of best and most versatile land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality. The majority of agricultural land in Thanet is best and most versatile and therefore the following policy applies.

Policy E18 – Best and Most Versatile Agricultural Land

Except on sites allocated for development by virtue of other policies in this Plan, planning permission will not be granted for development which would result in the irreversible loss of best and most versatile agricultural land unless it can be clearly demonstrated that:

1) the benefits of the proposed development outweigh the harm resulting from the loss of agricultural land, and

2) there are no otherwise suitable sites of poorer agricultural quality that can accommodate the development.

Applications for solar parks on best and most versatile agricultural land should comply with Policy CC07 - Solar Parks

Agricultural related development

10.11 The National Planning Policy Framework (NPPF) requires that Local Plans should support the needs of the food production industry. Agricultural related businesses are those that are not part of a farm business, such as producing and packing operations. These value adding operations are an important part of the rural economy but their scale and location should respect the character and appearance of the rural area.

Policy E19 - Agricultural Related Development

Development related to the agricultural industry will be approved subject to landscape, traffic and other planning considerations, and the scale of the development being acceptable.

11 - Housing

Identification and Release of Housing Land for Development

Allocated sites

11.1 Sites allocated for housing (including strategic site allocations) are shown on the maps and featured in a list of housing site allocations in the appendix. Notional dwelling unit capacities indicated are for the purposes of illustrating total land supply and do not signify that consent will be granted for particular numbers of dwellings at any site. Capacity on individual sites will be considered in light of planning policy and usual development management considerations.

11.2 The geographical extent indicated for site allocations affecting greenfield land represents the anticipated maximum land requirement. Proposals will be expected to consider, and where possible accommodate, notional maximum dwelling capacities indicated together with all other relevant policy requirements within a lower level of greenfield land take.

11.3 Sites will be released for development over specific time periods. The purpose of this is to ensure that the rate of release and take up is reasonably related to expected need and demand, taking account of the economic strategy and geared to planned infrastructure provision.

11.4 This Local Plan does not identify or allocate potential housing sites likely to accommodate four or less dwellings. Such proposals will be assessed in relation to policy HO1.

11.5 Land allocated for residential use will be safeguarded for that purpose in the interest of maintaining a suitable, sustainable and sufficient land supply and reducing the need to find less sustainable alternatives.

Unidentified housing sites

11.6 Sites not previously identified and allocated in Local Plans (sometimes referred to as “windfall” sites”) have contributed significantly in recent years to housing delivery in the district. It is anticipated that these will continue to come forward. Such opportunities can serve to make effective use of previously developed land and helpfully augment the housing land supply. For the purposes of the following policy, previously developed land is as defined in the NPPF and does not include residential gardens.

11.7 In the case of any allocation or unidentified housing site affecting a site within defined town centre primary frontages, within Margate seafront and harbour arm or within Ramsgate Waterfront and Royal Harbour area, residential development will be restricted to above ground floor level (in accordance with policies....

Policy H01– Housing Development

Permission for new housing development will be granted on:

1) sites allocated for such purposes, subject to consistency with indicative phasing ,

2) non-allocated sites within the existing built up confines consisting of previously developed land,

3) residential gardens where not judged harmful to the local area in terms of the character and amenity considerations set out in Policy QD01,

and provided that all the following criteria are met:

4) The relevant area specific housing objectives set out in the housing strategy section are addressed.

5) It is demonstrated that adequate infrastructure will be in place to serve each unit ready for occupation.

6) Satisfactory details are provided showing how any physical conditions including land stability and contamination, affecting the site can be overcome.

7) Sufficient mitigation is provided in accordance with Policy 25 to protect designated nature conservation sites.

8) There is no conflict with other policies.

In determining applications for development under this policy the Council will seek to ensure that development does not increase recreational pressure on designated nature conservation sites.

Alternative development on sites allocated for residential development will not be permitted.

Policy H04 applies to housing development at rural settlements.

11.8 Housing delivery will be monitored annually, and a housing implementation strategy will be put in place to facilitate delivery across the plan period including action that may be taken if necessary to maintain a rolling 5 year supply of deliverable housing sites.

Non-strategic Housing Allocations

Policy H02A – Land on west side of Old Haine Road, Ramsgate

Land to the west of Old Haine Road, Ramsgate is allocated for up to 250 new dwellings at a maximum density of 35 dwellings per hectare net. Proposals will

be judged and permitted only in accordance with a development brief and master plan for the whole site. This will be informed by and address: -

- **A Transport Assessment assessing impact on the local road network, demonstrating suitable access arrangements, identifying measures to mitigate impacts of development and demonstrating multi-modal access, including footway and cyclewway connections.**
- **A travel plan**
- **pre-design archaeological evaluation.**
- **a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.**
- **the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites**
- **a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.**
- **a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.**

Phasing of development will be in accordance with Policy H01(1)

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Disposition of development and landscaping will be expected to enable a soft edge between the site and open countryside

Development will be expected to provide for any highway improvements identified as necessary in a traffic assessment

Development will be expected to provide an appropriate off-site contribution to

- **highway improvements including in respect of Westwood Relief Scheme.**
- **provision, where required, of a new school.**

Policy H02B- Land fronting Nash Road and Manston Road

Land fronting Nash Road and Manston Road Margate is allocated for up to 250 new dwellings at a maximum density of 35 dwellings per hectare net. Proposals will be judged and permitted only in accordance with a development brief and master plan for the whole site, which will be informed by and address: -

1) A Transport Assessment including assessment of impact on the local road network and demonstrating measures to promote multi-modal access, including footway and cycleway connections. (Development will be expected to accommodate land required as part of a suitable scheme to enable traffic capacity issues at the Coffin House Corner junction, a strategic link road

through the site between Nash Road and Manston Road, and potential widening of Nash Road).

2) pre-design archaeological assessment.

3) the need to safeguard the setting of the listed building Salmestone Grange and the scheduled ancient monument.

4) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

5) a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.

6) the presence of the crematorium adjoining the site.

7) liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure including gas supply.

8) a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

9) appropriate arrangements for surface water management in line with Margate Surface Water Management Plan.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The design brief should feature and reflect investigation of the need to incorporate an element of housing to meet the needs of particular groups including specifically sheltered and extra care homes. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Disposition of development and landscaping will be expected to enable a soft edge between the site and open countryside and provide a green link between the cemetery and disused railway line to the east.

Phasing of development will be in accordance with Policy H01(1) (to be related to phasing of other sites impacting/dependent on road/junction improvements identified in the Transport Strategy).

Policy H02C– Land fronting Park Lane, Birchington.

Land fronting Park Lane, Birchington is allocated for up to 90 new dwellings at a notional maximum density of 35 dwellings per hectare net. Proposals will be judged and permitted only in accordance with a development brief for the entire site. The development brief shall: -

- **be informed by a full transport assessment addressing the impact of development on the junction of Park Lane and the A28, and the junction of Manston Road/Park Lane and Acol Hill.**

- **Demonstrate measures to promote multi-modal access, including footway and cycleway connections and an extended bus service accessible to the residential development.**

- **Accommodate suitable access onto Park Lane and a footway connection to the entire frontage to connect to the existing footway in Park Lane near to the access with Brunswick Road.**

- **Aim to integrate development with that at the adjacent land which is allocated as a strategic housing site.**

- **Reflect the need to consider and respect the setting of Quex Park and for disposition of development and landscaping to enable a soft edge between the site and open countryside.**

- **Include a wintering and breeding bird survey to assess impact on bird populations within the district and the need to mitigate/compensate.**

Development will be expected to provide an appropriate contribution to off-site highway improvements including for Birchington Square/Park Lane.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Policy H02D- Land south of Brooke Avenue Garlinge

Land south of Brooke Avenue Garlinge is allocated for up to 34 new dwellings at a maximum density of 35 dwellings per hectare net. Phasing of development will be in accordance with Policy H01(1). Development will be informed by

1) a Transport Assessment

2) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

3) a wintering breeding bird survey and the need to mitigate the effects of impacts associated with loss of existing agricultural land, scrub and neutral grassland.

4) archaeological evaluation.

Disposition of development and landscaping will be expected to enable a soft edge between the site and open countryside.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Policy H02E - land at Haine Road and Spratling Street, Ramsgate

Land is allocated for up to 85 new dwellings at a maximum density of 35 dwellings per hectare net at Haine Road and Spratling Street, Ramsgate

Phasing of development will be in accordance with Policy H01(1). Proposals will be judged and permitted only in accordance with a development brief and master plan for the whole site informed by a Transport Assessment and Travel Plan including assessment of impact on the local road network and demonstrating measures to promote multi-modal access

Development will incorporate and provide for suitable access arrangements together with suitable footway connections.

Master planning will be informed by and address:

1) liaison with service providers to investigate the need to upgrade the capacity of any utility services and infrastructure including gas supply

2) a statement of social impacts arising from the development and how any increased demand on community facilities will be addressed.

3) the need to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Disposition of development and landscaping will be expected to enable a soft edge between the site and open countryside.

Policy H02F - Land south of Canterbury Road East, Ramsgate

Land on the south side of Canterbury Road east is allocated for up to 27 new dwellings at a maximum density of 35 dwellings per hectare net. Phasing of development will be in accordance with Policy H01(1). Proposals will be

judged and permitted only in accordance with a development brief informed by archaeological evaluation and ecological evaluation.

A minimum of 30% of all dwellings will be affordable homes in accordance with Policy SP19. The proportion of houses as opposed to flats should exceed that in policy SP18 as much as possible.

Proposals will be required to clearly demonstrate how the SPA mitigation strategy as set out in Policy SP25 is being met and how it will ensure that development does not increase recreational pressure on designated sites

Disposition of development and landscaping will be expected to address the need to retain and enhance trees and hedgerows for their biodiversity interest.

Cliftonville and Margate

Cliftonville and Margate

11.9 The adjoining wards of Cliftonville West and Margate Central contain Thanet's most deprived neighbourhoods. This is manifested in high levels of economic dependency, and a fragmented community. The area has a predominance of cheap and poor quality rented accommodation often attracting vulnerable and transient people. The Cliftonville Development Plan Document contains planning policies restricting additional accommodation in forms likely to fuel or perpetuate these problems.

11.10 The Council and its partners including Kent County Council and the Homes and Communities Agency are implementing a concerted programme "Live Margate" to focus and stimulate further investment in making Margate and, in particular, these two wards, an area where people aspire to live. A central feature of the programme is purchasing existing properties and turning them into quality family homes. The following policy supports proposals resulting from or compatible with this initiative. In addition to relevant policies in the Cliftonville DPD, the following policy will apply.

Policy H03 - Cliftonville West and Margate central

Proposals to provide residential accommodation in Cliftonville West and Margate Central wards (as defined in the map below) will be expected to demonstrate compatibility with the following objectives:

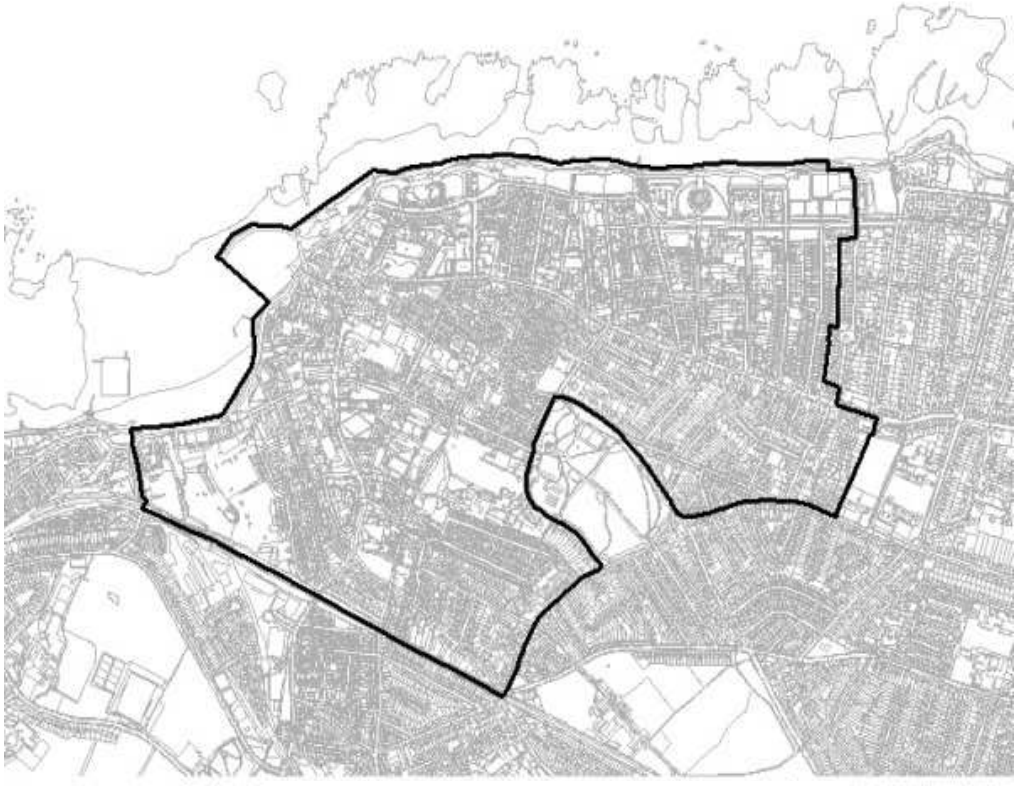
1) improving poor quality homes

2) increasing the number of family homes

3) creating mixed settled communities where families and individuals will want to live

4) improving the urban fabric or street scene and environment

Map 16 – Cliftonville West and Margate Central



Housing at Rural Settlements

11.11 Most of Thanet's villages consist of freestanding rural settlements. These comprise Acol, Cliffsend, Manston, Minster, Monkton, Sarre and St. Nicholas. Each makes its own contribution to the character and diversity of the Thanet countryside, and the Council considers that it is essential for them to retain their separate physical identity and vibrant communities. There are some settlements that, due to their mutual proximity, are potentially vulnerable to coalescence through the development along the road frontages that link them; for example, Minster to Monkton and Manston to Ramsgate. Policies protecting the open countryside and provide appropriate safeguards for this.

Housing at Rural Settlements

11.12 The National Planning Policy Framework notes that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. In support of the Local Plan's housing objectives the rural settlements are considered to have some scope for new housing development in order to meet local needs and augment locational choice within overall objectively assessed need. A separate housing topic paper considers the

scale of housing that could be accommodated at each of Thanet's rural settlements. This has helped to inform the following policy.

11.13 Policy H01(1) allocates specific sites for housing development including at some of the rural villages. These are listed below.

11.14 The following policy indicates the scale of housing development that may also be permitted on other sites in the rural settlements of Minster, Cliffsend, St Nicholas, Monkton, Manston, Acol and Sarre.

11.15 The impacts referred to in the policy will be considered cumulatively having regard to potential or completed development associated with site allocations and other development permitted in the settlement under policies H01, H04 and H05. In interpreting the following policy, the villages of Sarre, Manston and Acol are regarded as unsuitable for more than development of minor scale such as infilling within their built confines.

Policy H04 - Housing at Rural Settlements

Housing development will be permitted within the confines of the rural settlements subject to the provisions of policy H01 and the criteria below.

1) The proposal being compatible with the size, form, historic character and historic scale of growth of the settlement, and

2) In the case of development more than minor in scale accessible community services will be available.

The sites listed below are specifically allocated for residential development under policy H01. The appropriate dwelling capacity on each site will be considered in light of planning policy and usual development management considerations, and capacities featured in the housing sites allocations appendix should be regarded as a notional maximum.

Table 6 – Sites Allocated for residential development at Rural Settlements

Tothill Street, Minster (site reference S511/S436 & S85)
Foxborough Lane (south side), Minster (site ref ST6)
Station Road, Minster (Site ref S088)
Land at The Length, St. Nicholas (Site ref S509)
Land at Manor Road, St Nicholas (Site ref S488/R25-146)
Land at 71-75 Monkton Street, Monkton (site ref S240)
Land at Walter's Hall Farm, Monkton (site ref ST6)

Builders yard south of 116-124 Monkton Street, Monkton (site ref S543/R25-135)

Land south side of A253, Cliffsend (site ref S468)

Land north of Cottington Road, Cliffsend (site ref S435(2)

Land south side of Cottington Road, Cliffsend (site ref S416/S541)

Jentex site Canterbury Road West, Cliffsend (site ref S428)

Young's Nursery, Arundel Road, Cliffsend (site ref S455)

Applications for housing development at and adjoining the rural settlements will be expected to

a) demonstrate that engagement has taken place with the relevant parish council to: -

· **assess and where feasible incorporate an appropriate element of housing to meet any identified need for particular types of housing arising in the parish including sheltered and extra care housing.**

· **address how any affordable element to be provided can serve to address need arising in the relevant parish as priority.**

· **identify any community facilities required and scope for incorporating or contributing towards provision of these.**

b) be informed by liaison with the County Council as education authority regarding the need to accommodate or contribute to any required expansion or improvements to village primary school capacity.

Applications involving loss of agricultural land, scrub and neutral grassland should be accompanied by a wintering and breeding bird survey.

The following policies and informatives provide additional necessary guidance where required in respect of specific allocated sites.

Policy H04A - <u>Land at Tothill Street, Minster</u>

Proposals for residential development will be expected to

1) be informed by an archaeological pre-design evaluation and transport assessment. Vehicular access would need to be provided to Tothill Street and links southwards with existing development restricted to pedestrian and cycle

routes in order to limit additional traffic movement in the vicinity of Monkton Road and High Street.

2) provide an appropriate contribution to off-site highway improvements.

3) incorporate open space in accordance with the standards set out in Policy SP27, and in consultation with Minster Parish Council address the need to safeguard land suitably located within the site for expansion of the existing cemetery.

Informative

In light of the site's proximity to the cemetery and former transport depot and its location in an area with sensitive groundwater requiring continued protection consultation with the Environment Agency and contamination assessment is likely to be required.

Policy H04B - Land at Manor Road, Saint Nicholas-at-Wade

Proposals for residential development will be expected to

1) be informed by a transport assessment and may be required to contribute to traffic management measures to avoid increasing traffic movements at the junction of Manor Road with The Length.

2) incorporate open space in accordance with the standards set out in Policy SP27

Policy H04C Land at71-75 Monkton Street, Monkton

Proposals for residential development will be expected to be informed by an archaeological pre-determination evaluation

Informative.

In light of use for demolition yard and steel dismantling a preliminary contamination risk assessment may be required.

Policy H04D Land at Walter's Hall Farm

Proposals for residential development shall be informed by archaeological evaluation and development shall be disposed and designed so as to respect the setting of the listed building.

Policy H04E Land south side of A253, Cliffsend.

Proposals for residential development will be expected to:

- **be informed by a pre-design archaeological evaluation**

- **explore the potential of, and provide where possible, sustainable connections to the proposed Parkway station.**

- **be informed by contamination assessment to investigate potential pollution in light of the site's proximity to Jentex Petroleum.**

Access arrangements will need to be onto the A253 and avoid access or additional traffic onto Foad's Lane.

Policy H04F Land north of Cottington Rd, Cliffsend

Proposals for residential development will be expected to:

- **be informed by further archaeological assessment including fieldwork**

- **include a targeted assessment of the impact of development on the setting of St. Augustine's Cross.**

- **avoid excessive traffic use of Foad's Lane and include a transport statement taking account of traffic impacts onto the Foad's Lane area.**

- **explore the potential of, and provide where possible, sustainable connections to the proposed Parkway station.**

Policy H04G Land south side of Cottington Rd, Cliffsend

Proposals for residential development will be expected to

- **be informed further archaeological assessment including fieldwork**

- **include a targeted assessment of the impact of development on the setting of St. Augustine's Cross.**

- **Include a flood risk assessment.**

A transport statement will be needed to take account of traffic impacts onto Foad's Lane area, and proposals will be expected to explore the potential of,

and provide where possible, sustainable connections to the proposed Parkway station.

Informatives

a - Builder's Yard south of 116-124 Monkton Street, Monkton

Proposals for residential development will be expected to be informed by contact with Monkton Parish Council regarding the potential need to relocate/modernise the village hall and an enhanced communal area behind the street frontage.

In light of former builder's yard use a contamination assessment may be required.

b Jentex site, Canterbury Road West, Cliffsend

Proposals for residential development will need to be informed by the latest available predictions of aircraft noise.

Early consultation with Environment Agency and an assessment of potential contamination of ground and groundwater together with appropriate remedial measures may be required to address identified risk.

c Land at south side of Foxborough Lane, Minster

Presence of bat and reptile presence may require investigation.

Rural Housing Need

11.16 The National Planning Policy Framework expects a responsive approach to local housing needs in rural areas, and indicates that release of rural exception sites may be an appropriate means of responding to local need for affordable homes.

11.17 Rural housing needs surveys carried out in 2013 demonstrate that unmet local need exists for affordable housing in most of Thanet's rural settlements. Where the Council is satisfied that there is no viable scope to meet this need including under policies H01 or H04, it will consider exceptional site release in line with the following policy.

11.18 Any such release would be conditional upon the first and all subsequent occupiers being first time buyers who are already village residents or children of village residents, village residents living in unsuitable accommodation, dependents of village residents, people whose work is based in the village, or people (normally the

children of a household) with local connections who have been forced to move away from the village due to a lack of affordable or suitable housing.

11.19 Provision for some new village housing is made through other policies. Proposals on exceptions sites which include market housing or low cost housing giving only an initial one-time purchase subsidy will not be permitted.

11.20 Any exceptional consent will be subject to a legal agreement to ensure the housing is available to meet local needs in the long term.

Policy H05 - Rural Housing Need

Exceptionally consent will be granted for affordable housing development outside the confines of a rural settlement provided all the following criteria are met:

1) The affordable housing would be of a scale, type and mix to accommodate identified local need arising within the settlement/parish concerned.

2) The need has been demonstrated in a detailed parish survey, independently verified if required, and has the support of the relevant parish council.

3) There is no reasonable alternative means of meeting the identified need.

4) The location and form of development is acceptable in terms of access, proximity to local services, relationship to the rural settlement and landscape impact.

Agricultural dwellings

11.21 The National Planning Policy Framework states that isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.

11.22 Much of Thanet's countryside is in agricultural use. Planning permission will normally only be granted for a farm dwelling where an agricultural need has been demonstrated. In this context, need means the need of the particular farm business, rather than the owner or occupier of the farm or holding.

11.23 The District Council takes the view that, in Thanet, agricultural need is directly related to the security of certain types of livestock, and horticultural produce. Thanet's agricultural land is almost exclusively in arable production which, by its nature, is not as susceptible to damage as other forms of agriculture.

11.24 The pattern of agricultural holdings in Thanet is well-established and stable, and the agricultural area is generally in close proximity to the urban areas. In view of this, the Council believes that there is, generally speaking, little justification for new

agricultural dwellings. Proposals for agricultural dwellings required for security purposes will be expected to be supported by information demonstrating that alternative measures such as CCTV have been considered.

Policy H06 - New agricultural dwellings

The provision of new agricultural dwellings in the district will only be permitted where it is demonstrated that:

1) there is a genuine security concern which necessitates that provision; or

2) a new viable agricultural unit requires on-site accommodation for operational purposes; and

3) the proposal is acceptable in terms of access, design and location.

Where planning permission for a new dwelling is granted on the basis of agricultural requirements, a condition or legal agreement will be required to restrict occupation of the dwelling to agricultural workers and their dependents, or persons last employed in agriculture.

11.25 The Strategic Housing Market Assessment also considers the housing needs of families, older people, young people, people with disabilities, gypsies and travellers and students. The following additional policies aim to embrace needs and issues identified.

Care and Supported Housing

11.26 The range of accommodation needed by various groups in the community extends beyond conventional dwellings to more specialised forms of accommodation such as sheltered housing(specialist accommodation typically individual apartments with on-site support in secure surroundings), extra care housing (typically individual apartments for older people with varying levels of care need and benefiting from shared facilities such as laundry, lounges or garden), residential care homes and nursing homes providing 24/7 care. Kent County Council is preparing a strategy to help deliver choice and access to high quality accommodation to vulnerable adults eligible for care and support. A key principle of this is to ensure people are not isolated from their communities and are able to live healthily and safely in their own homes as long as they wish/appropriate. The accommodation strategy is informed by estimates of projected demand for need for particular types of accommodation. However, gaps in provision will be identified and addressed to reflect the objective of independent living and promoting appropriate housing and support to reduce reliance on residential and nursing care.

11.27 Thanet has historically been overprovided with some forms of accommodation which has caused concerns regarding importation and concentration of vulnerable and dependent people. For example in Spring 2013 it was estimated that nearly 2/3 of the 525 looked after children in Thanet were placed from areas outside the district; the majority of placed children being from outside Kent. While sympathetic to the needs of such people, the Council does not regard this overprovision of

accommodation to meet demand arising outside the local area as sustainable or conducive to a balanced and confident community. Therefore in considering individual proposals the Council will have regard to evidence of local need and, where applicable, the potential contribution development could make to the accommodation strategy for adult social care clients in Kent (Kent County Council).

11.28 The needs of the District for supported housing are an important consideration, and proposals meeting such need and in line with the Supporting People Strategy will be supported. Sheltered housing proposals will be supported where it is demonstrated that proposals would accommodate expected needs arising within the district.

11.29 For the purposes of planning policy, proposals for retirement homes, sheltered housing and extra care housing will, unless circumstances indicate otherwise, be regarded as residential dwellings and subject to usual planning policies for residential development. Where accommodation provides a higher level of care, such as nursing homes, then such uses will be regarded as Class C2 and specifically subject to clause 2 of the following policy.

11.30 The following policy seeks to facilitate an appropriate level of provision of good quality accommodation in line with the objective of supporting a balanced and inclusive community, and enabling independent living as far as possible.

Policy H07 - Care and Supported Housing

The Council will seek to approve applications that provide good quality accommodation that is needed to support the housing and care requirements of Thanet's community (including provision of facilities and services which will support independent living).

Where such accommodation falls within Use Class C2 proposals will be expected to demonstrate they are suitably located to meet the needs of the occupiers including proximity and ease of access to community facilities and services, and compatible with surrounding land uses.

Accessible Homes

11.31 Accessible homes are important not only to meet the independent living needs of Thanet's aging population but also those of other households who have mobility limitations for example as a result of disability. Lifetime homes are ordinary homes designed to incorporate features adding comfort and convenience and support the changing needs of their occupiers over different life stages. In light of recommendations in the SHMA the following policy aims to secure an element of new homes to be constructed to such standards.

11.32 Lifetime Homes do not accommodate the greater space and flexibility needs of all wheelchair users. It is estimated that by 2031 there would be some 100 wheelchair user households in Thanet with an unmet housing need. The following

policy therefore aims to offset that need through an element of new homes being constructed to wheelchair accessible standards. Applicants will be expected to demonstrate that such element complies with independent bona fide wheelchair standards.

11.33 The policy sets out target elements to be sought, and the precise level appropriate for any scheme will be subject to negotiation with developers taking account of appropriate factors such as the location of the site, accessibility of amenities and the nature of the proposed development.

Policy H08 - Accessible Homes

Developments comprising 15 or more dwellings will be expected to include an element of at least 20% across all tenures constructed to Lifetime Homes standards

Developments comprising 100 or more dwellings will be expected to include a minimum of 2% constructed to Wheelchair Accessible standards.

Houses in Multiple Occupation including student accommodation

11.34 Accommodation within a building can be regarded as non-self-contained where unrelated households share one or more facilities such as a bathroom or kitchen. Houses in Multiple Occupation (HMOs) are an example where a high degree of sharing of facilities is typical, and where living arrangements, being more intense than single family occupation, can give rise to noise, nuisance, more callers, a higher parking requirement and visual deterioration of buildings and gardens.

11.35 While the District Council does not wish to encourage proliferation of HMO's as a permanent measure, it does recognise that such sharing arrangements can provide a source of cheap rented accommodation, including affordable accommodation for students and supported housing. The previous Local Plan applied a criteria based policy, whose principles are considered to remain valid.

11.36 In 2010 government introduced new legislation signifying that planning permission would no longer be required for change of use of a dwelling house to a house in multiple occupations for up to 6 unrelated people. The Council subsequently approved an Article 4 direction so that planning permission would still be required for such change of use in Thanet.

11.37 The extent to which non-self-contained accommodation may generate the problems referred to above depends not only on intensity of occupation, sharing of facilities and management of the building, but also the nature of the area in which it is situated, the type of building, and the concentration of similar uses in its vicinity.

11.38 Alternative use of family homes as private student accommodation in the form of multiple occupations has caused local concerns focused on the neighbourhood around the Broadstairs University campus. Christ Church University and East Kent College are highly important for delivering skills required by the workforce, meeting the expectations of existing and potential employers and stemming out migration of young people. Supporting the functions of our higher and further education establishments includes the need to recognise demand arising for suitably located decent accommodation for students. At the same time it is essential to ensure that satisfying such demand does not result in undue concentration of non self-contained accommodation in order to avoid local disturbance and to maintain a mixed and settled community.

11.39 In 2014 the percentage of properties in use as private sector student accommodation in the form of HMO's at the residential estate adjoining the campus was estimated at 2.4%. While such uses have generated local concern, including that recent changes of use might signal an ongoing trend, the Council does not consider that restriction on further change of use is currently justified in principle. Nonetheless, these concerns point to the need to incorporate within policy an indicative ceiling level of cumulative impact in order to maintain mixed and settled communities. Having assessed the circumstances in the District and approaches applied in other locations, the Council considers 5% represents an appropriate level. Bearing in mind the potential for displacement pressure that such restriction may generate, this headline is considered appropriate across the district. In order to address potential for localised concentration within this headroom, the 5% is applied on the basis of a 50 metre radius.

11.40 A separate Development Plan Policy Document for Cliftonville imposes a restriction on HMO's, and in the area it applies to that DPD takes precedence over the following policy.

Policy H09 - Non self-contained residential accommodation

In considering applications to establish or regularise non self-contained residential accommodation or before instigating enforcement proceedings under planning powers to require cessation of such use, account will be taken of:

1) the likely or experienced effect of the use on the character and amenity of the locality resulting from noise, disturbance and visual impact;

2) whether the proposed or unlawful use would or has resulted in an intensification or concentration of such uses to a level which is detrimental to the amenity and character of the neighbourhood including in relation to the considerations set out in (1) above;

3) the adequacy of provision and suitability of arrangements for car parking on site or the likely or experienced impact of parking needs being met on street; and

4) the suitability of arrangements for dustbin storage and collection.

Applications will be considered contrary to part 2 of this policy where they would result in more than (or further exceed) 5% of properties in such use within a 50m radius of the application property (or exceed or further exceed 1 HMO in any frontage of 20 dwellings). Proposals below this threshold will additionally be considered on their individual merits against all other clauses of this policy.

Operational Note

Noise problems generated by particular individuals in non-self-contained residential accommodation are essentially a management matter. In considering regularisation of non-self-contained accommodation, the Council will have regard only to the extent that noise is generated as a result of the nature of that use i.e. resulting from intensity of occupation and living arrangements.

Gypsy and Travelling Communities

11.41 There is only occasional camping by the gypsy and travelling communities in Thanet. This can probably be attributed to lack of suitable work and the fact that Thanet is not an “en route” stopping place. In 2013 a Gypsy and Traveller Accommodation Assessment was conducted covering Thanet, and neighbouring Dover, Canterbury and Shepway districts. This concludes that there is no pitch requirement for Gypsy, Traveller or Travelling Showpeople in Thanet. On this basis no specific provision is identified in this Local Plan. Should proposals nevertheless come forward to provide sites for such accommodation applications will be considered on the basis of the following policy.

Policy H10 - Accommodation for Gypsy and Travelling Communities

The use of land to provide accommodation for Gypsy and Travelling communities will be permitted provided the proposed use will not impact unreasonably on surrounding uses or local environmental quality, and the site has reasonable access to local facilities and services, particularly schools, employment and healthcare and lies outside areas at risk of flooding.

Making best use of the existing stock

11.42 The National Planning Policy Framework expects empty housing and empty buildings to be identified and brought back into use in line with local housing and empty homes strategies. As indicated in the Council's housing strategy, the Council is committed to bringing empty properties back into use.

11.43 Thanet has a substantial stock of empty property and vacant dwellings; a significant percentage of which have been vacant for more than 6 months. The

Council maintains a vigorous approach to bringing back empty property into use recognising that it can support area regeneration and provide a valuable contribution to the housing stock.

Policy H11 - Residential use of empty property

Within urban and village confines proposals to bring vacant property into residential use will be approved where:

1) compatible with nearby uses, and

2) the proposal would not conflict with any other policy.

11.44 To complement policies aimed at increasing the overall housing stock it is important to retain the existing housing stock in such use.

Policy H12 - Retention of existing housing stock

Proposals which would lead to the loss of existing housing (class C3) will be permitted only where one or more of clauses 1 - 3 apply.

1) The proposal relates to the provision of community facilities which it can be demonstrated need to be so located to benefit the client community and are compatible with the residential amenity of the locality.

2) The proposal is for tourism related uses complying with Policy E07

3) The proposal would facilitate development contributing to the relevant area based housing objectives.

and provided

4) where the property lies within a primary frontage the alternative use would be compatible with Policy E04 and

5) where the proposal relates to a House in Multiple Occupation it would be compatible with Policy H09.

12 - Green Infrastructure

Locally Designated Wildlife Sites

12.1 Thanet has two Local Nature Reserves located at Monkton and Pegwell Bay, and eight Local Wildlife Sites. These sites host locally important habitats.

12.2 There are also four Roadside Nature Reserves which have been identified for their habitats and connections to areas of rich biodiversity, and include important features such as calcareous grassland, lizard orchids and diverse populations of butterflies and dragon flies.

The Council considers it important to protect locally designated wildlife sites. The following planning policy seeks to maintain the biodiversity and wildlife at the locally designated wildlife sites.

Policy GI01 – Locally Designated Wildlife Sites

Development which would have a detrimental impact on locally designated wildlife sites will not be permitted unless suitable mitigation can be provided either on or off site within Thanet. Exceptionally, where a strategic need for a proposed development is identified which outweighs the importance of the locally designated sites and cannot be located elsewhere, an equivalent area of habitat will be created elsewhere at a suitable location well related to other existing habitats.

Wherever possible and appropriate, new developments will include measures to enhance and connect locally designated wildlife sites.

Regionally Important Geological Sites (RIGS)

12.3 Thanet has three Regionally Important Geological Sites (RIGS) that are important for historical, scientific research or educational reasons. These are located at Monkton Nature Reserve, Pegwell Bay and St Peters Quarry.

The importance and significance of these sites are acknowledged through the following policy.

Policy GI02 – Regionally Important Geological Sites (RIGS)

At RIGS sites, development which would result in the loss or obstruction of geological features of importance will not be permitted.

Protected Species and other significant species

12.4 The open countryside within the Thanet is known to support a number of important species of farmland birds. As farmland birds have declined over the last

few decades it is important to ensure that remaining populations are protected and allowed to increase. The green wedges also provide a dispersal route for migratory bird species which are present on the coast, especially during the winter season. Changing farming practices within the Green Wedges would help to increase populations of farmland and migratory birds by enabling more ecologically diverse habitat to be created.

12.5 Species protected under the Wildlife and Countryside Act, the Protection of Badgers Act or the Habitats Directive may be present on sites and would be a material consideration in the assessment of development proposals. Natural England provide Standing Advice for planning applications providing details the likelihood that protected species are present because of the associated habitats, advice on whether survey reports are required, guidance on the survey requirements for protected species and advice on mitigation proposals.

The following policy seeks to protect, maintain and enhance biodiversity and wildlife, by recognising that important species should be protected and requires this to be considered in determining planning applications for development.

Policy GI03 – Protected Species and other significant species

On sites where protected species or farmland birds may be present, the Council will require a Protected Species survey to be carried out alongside any development proposals. Any mitigation necessary should be carried out in line with Natural England's Standing Advice.

Requirements for New Open Space

12.6 An Open Space Audit was carried out in 2005 which assessed Thanets open space provision. The results and recommendations are set out in Table 7. The following policies seek to deliver these recommendations for open space provision in new development.

Table 7 – Requirements for New Open Space

Type	Primary Purpose	Current Provision	Recommended Provision	Provision in ha at time of survey	Amount needed to meet standards with population increase of 16 900 (pop in 2031=152 500)	Accessibility Standard	To be provided by:
Natural and semi-natural green space	Including Nature reserves, woodlands, wildlife conservation, biodiversity and environmental education awareness	0.95ha per 1000 population	2ha per 1000 population.	119.7	34	All dwellings should be within 2.5km of a good quality natural/semi natural greenspace	On-site provision for over 50 dwellings
Urban and Country Parks	High quality parks that offer a wide range of facilities for formal and informal recreation and events	1.06 ha per 1000 population	Minimum 1.06ha per 1000 population.	134.68	18.02	All dwellings should be within 1km of a good quality site	On-site provision for over 50 dwellings
Formal Gardens	High quality laid out gardens including memorial gardens that include formal grass areas, floral and permanent landscaping and seating						
Local Parks	Small parks and						

and Recreation Grounds	recreation grounds that offer a limited range of facilities for informal and formal sport, play and recreation. These sites offer more than just areas for children's play						
Allotments	Opportunities for those people who wish to grow their own produce as part of the long term promotion of sustainability, health and social inclusion	0.19ha per 1000 population	0.19ha per 1000 population	24.46	Opportunities for those people who wish to grow their own produce as part of the long term promotion of sustainability, health and social inclusion	0.19ha per 1000 population	On-site provision for over 50 dwellings
Amenity Green Space	Opportunities for informal activities close to residential areas and improve the visual appearance of residential or other areas	0.51 ha per 1000 population	0.5 ha per 1000 population.	65.29	8.5	All dwellings should be within 0.82km of good quality informal green space	Preference for on-site provision
Equipped Play Areas	Areas designed primarily for play and social interaction involving children and young people, such	0.2ha per 1000 population-	0.7ha per 1000 population.	25.2	11.9	All dwellings should be within 0.87km of good quality equipped play area	Preference for on-site provision **Total**

	as equipped play areas, multi-use games areas, skateboard areas and teenage play zones						**Amount of Open Space Required for Plan Period = 75.65 Hectares**

Amenity Green Space and Equipped Play Areas

12.7 Thanet's three main coastal towns each have a ‘flagship’ playground, as well as other standard playgrounds. There are also three skate parks in Thanet.

12.8 The cumulative impact of smaller housing developments and population increase will put pressure upon existing amenity green spaces and existing play facilities. With the drive to provide more housing on brownfield land in urban areas, whether it is new build or conversion, ‘smaller’ sites are likely to be developed. New family housing should provide gardens to ensure the provision of "doorstep" playspace. High quality areas of amenity space and children’s play areas will contribute to quality of life and help social interaction.

12.9 Children's playspace should be adequately equipped and safely and conveniently available to all new residential developments of a size and type likely to generate demand for it. The location of facilities should, however, take into account the potential impact of noise and other disturbance on neighbouring properties. In addition to play space for younger children, facilities for teenagers should also be considered.

12.10 Where a development is proposed for 10-49 units, the Council will expect a commuted payment to be made for the provision, maintenance and upgrade of play facilities.

12.11 Where a development is proposed for 50 or more units, the Council will require the development to incorporate local play area provision to meet the standards set out in Table 7. Such provision will be expected to include an equipped play area and casual/informal playspace.

12.12 The provision of open spaces should be considered at an early stage in the design process and consider:

- accessibility in terms of highway safety and proximity to dwellings served
- security of children using amenity space and play areas (including whether the site and access to it is overlooked by dwellings) and
- convenience of siting in relation to noise sensitive development (e.g. dwelling units designed for, or particularly suited to, occupation by the elderly).

12.13 The Planning Obligations & Developer Contributions Supplementary Planning Document gives details of how financial contributions can be made towards the upkeep and maintenance of existing play areas if on site provision is not possible. The SPD will be subject to review if the Council implements the Community Infrastructure Levy.

The following policy seeks to ensure the recommended provision of amenity and children’s play space is provided for.

Policy GI04 – Amenity Green Space and Equipped Play Areas

New residential development will make provision for appropriate amenity green space and equipped play areas to meet the standards set in Table 7. The type and amount of open space to be provided will depend on:

1. The size and location of the development

2. Existing open space provision near the development site and

3. The number of people likely to live in the proposed development.

New family dwellings* will be expected to incorporate garden space in order to provide a safe "doorstep" play area for young children.**

In exceptional circumstances where it would be impractical to provide adequate and suitably located playspace as part of the development, then a financial contribution may instead be acceptable to offset the costs resulting from the additional use and need for increased maintenance and play equipment at suitably located existing playspaces and amenity areas.

The developer will be responsible for the funding and arrangement of the ongoing maintenance and management of amenity and play areas which will be secured through a legal agreement.

*Family dwellings are considered to be those having two or more bedrooms.

** Doorstep playspace is defined as playspace for young children which is immediately adjacent to, closely visible and safely accessible from the dwellings served.

Outdoor Sports Facilities

12.14 The National Planning Policy Framework (NPPF) states that planning policies should plan positively for the provision of sports venues, guard against the unnecessary loss of facilities and that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

12.15 Outdoor sports facilities, include pitches, greens, courts, athletics tracks and miscellaneous sites such as croquet lawns and training areas. This includes facilities owned by the local authority, education authorities or facilities within the voluntary, private or commercial sectors that serve the outdoor leisure needs for their members or the public.

12.16 The Infrastructure Delivery Plan will include a more up to date assessment of the current provision of sports facilities and sets out the requirements for future provision.

12.17 It is envisaged, therefore, that for most developments, it will not be practical to provide land for outdoor sports facilities on the site. In such cases the Council will seek financial contributions from developers for the provision of new facilities or the upgrade or renewal of existing facilities. The Planning Obligations & Developer Contributions Supplementary Planning Document gives details of how financial contributions can be made and how they will be calculated. The SPD will be subject to review if the Council implements the Community Infrastructure Levy. The Council is currently undertaking a review of playing fields which will establish a local standard and also keeps an audit of sports facilities in the district. This forms the basis for identifying where improvements or any new facilities are needed.

Protection of Playing Fields and Outdoor Sports Facilities

12.18 The important contribution that sport and recreation, as well as community facilities, can make in improving people's quality of life is now widely accepted. Participation in sport and recreation can improve the health and well-being of an individual, whilst sports clubs and community facilities can improve social interaction and provide a sense of community pride.

12.19 The current provision for outdoor facilities is considered to be just sufficient, therefore any loss of outdoor sports facilities should be resisted.

Policy GI05 – Protection of Playing Fields and Outdoor Sports Facilities

Built development will not be permitted on playing fields or on land last used as a playing field unless one or more of the following applies:

1) It is demonstrated that there is an excess of playing field provision in the area, for current and future uses of both the school and the community;

2) The proposed use is ancillary to the primary use as a playing field and does not affect the quantity or quality of pitches or adversely affect their use;

3) The proposed development is on land incapable of forming a pitch or part of a pitch and does not result in the loss of, or inability to make use of, a pitch;

4) The playing field or fields that would be lost as a consequence of the proposed development would be replaced, prior to the commencement of the development, by a playing field or fields of a similar or better quality in a suitable location and subject to equivalent or better management arrangements;

5) The proposed development is for an indoor or outdoor sports facility, the provision of which would be of sufficient benefit to sport and recreation as to outweigh the detriment caused by the loss of the playing field or playing fields

Landscaping and Green Infrastructure in New Developments

12.20 A positive natural environment can have economic benefits by making the area a place where people want to live. New developments should contribute to and enhance the natural environment.

12.21 Green Infrastructure can be created through landscaping and design by providing wildlife corridors and stepping stones in new developments, creating links between existing habitats. This can contribute to people's health and well-being by keeping people in touch with their natural environment, and providing opportunities for residents to manage their local environment and reinforce a sense of community.

12.22 Landscaping can create a pleasant setting for development, provide shade from the sun and pollution attenuation as trees and shrubs absorb water and dust. It should be an integral part of the design of a development, rather than consisting of 'offcuts' of leftover land or as a way of camouflaging poor design.

12.23 Landscaping designs should, in the first instance, be related to each plot of land so that each future owner would be responsible for its upkeep, reducing the burden on Council resources. If this is not possible or desirable, commuted payments through legal agreements may be negotiated in appropriate circumstances. Accordingly, landscaping matters should be considered at the earliest stages of the design process.

12.24 Thanet has relatively few trees. The Council will therefore seek to retain existing trees as part of any proposed developments through the making of Tree Preservation Orders and through use of planning conditions where appropriate. British Standard BS5837: 2012 (Guide for Trees in Relation to Design, Demolition and Construction) gives guidance regarding the best approach to new site development in relation to existing trees.

The Council seeks to retain hedges and other semi-natural habitat, such as ponds and species-rich grassland, together with new planting, as they lend maturity to a development and can enhance biodiversity and wildlife habitats, through the following policy.

Policy GI06 - Landscaping and Green Infrastructure

When a development proposal requires a design and access statement, it will include a landscape survey. The Landscape Survey should describe the current landscape features on the application site, and demonstrate how the proposed development will provide landscaping and green infrastructure to enhance the setting of the development, where possible and appropriate, to:

- **Create an attractive environment for users and occupiers**
- **Establish a sense of enclosure with hedges and trees**
- **Soften hard building lines and the impact of new buildings**
- **Provide screening from noise and sun**
- **Create new wildlife corridors and stepping stones**
- **Create new wildlife habitats and improve biodiversity**

The Council will require to be satisfied that the developer has made adequate arrangements to ensure continued maintenance of landscaping, and may seek to secure arrangements for this purpose by entering into a planning agreement.

12.25 Jackey Bakers sports ground is Thanet's main area for sports and recreation purposes. The site provides the best opportunity to both enhance existing facilities, and in the longer term, to increase the level of facilities.

12.26 Any new sports development may be supported by a limited development of D2 (leisure facilities) or A3 (restaurants) or D1 (community facilities) uses to subsidise the sporting use and ensure it is viable. Any such proposal will need to be subject to a full justification being made when any application is submitted and will be judged against the amount of land retained for open sporting purposes. There are current proposals for a new astro-turf pitch and pavilion with changing facilities.

Policy GI07 - Jackey Bakers

Jackey Bakers sports ground will be promoted as the long-term primary sports venue for Thanet. Where fully justified, the council will permit ancillary development to subsidise the sports use.

13 - Quality Development

General Design Principles

13.1 There are many areas in Thanet which are considered to possess certain valuable qualities such as their open form of development, the separation between buildings and the positive contribution made by landscaping. The design, scale and grouping of existing buildings, the spaces between them, the texture, type and colour of materials, enclosure, land contours and views all contribute to the character and identity of a place. New development should respect and complement its surroundings, and enhance areas that are less attractive. Materials should normally be of a local type and harmonise with those of adjoining development (where these present a pleasing appearance). Architectural style should respect that of other development in the locality. Innovation in decoration can, if sensitively considered, enhance the identity and character of a building and place.

13.2 Buildings and the spaces around them should be thought about holistically, with the landscape and public realm being as important as the building itself. Successful landscape design will integrate development into its surroundings and enhance the function, character and amenity value of spaces and boundaries. Taking account of existing landscape features, such as trees, is crucial in creating high quality and responsive schemes. Existing trees can provide a sense of maturity to new developments and play an important role in softening and integrating development into the district. Landscape design extends beyond the curtilage of new buildings to include streets, parks and other open spaces and should help to support an attractive and high quality public realm. This policy does not seek to control the design of individual gardens unless these are a key part of a heritage asset.

13.3 Landscape proposals should result in high quality amenity spaces, which receive adequate sunlight (in accordance with best practice guidance) and which work with the buildings to help define thresholds and boundaries and to provide opportunities for private usable amenity space through gardens, roof terraces and balconies.

13.4 Maintenance and management plans must be provided with any proposals and considered early in the design process. Species that support local distinctiveness, enhance biodiversity and cope with climatic changes will also be sought.

13.5 The function of a building is a major determinant of its built form. However, a principal aim in designing new development should be to respect and complement the merits of existing built and natural features including landscape, while still expressing and accommodating the function of the building through design.

13.6 Some buildings (e.g. public buildings) need to be of larger scale than others. However, the scale and proportion of existing development should generally be respected. It may be possible to break down the bulk of a large building (e.g. by insertion of horizontal design features) to achieve a satisfactory appearance in relation to adjoining plot widths and proportions and to break bland expanses down to a scale sympathetic to that of existing buildings.

13.7 Density is a measure of the number of dwellings which can be accommodated on a site or in an area and can affect the appearance and characteristics of development in the following of ways:

- The space between buildings
- Amenity and private access
- Parking
- Provision/retention of trees and shrubs
- Levels of Surface water run off

13.8 Some parts of Thanet are already densely developed. Former holiday areas such as Cliftonville have seen significant numbers of conversions of large buildings (often previously used as hotels) into flatted accommodation which has, in some cases, had a detrimental impact due to small, poor quality developments, absent landlords, and a transient population. Other areas of the district benefit from lower density developments. The density of residential developments is not prescribed in this Plan, as, in all instances, the compatibility with the character of the area and the mix of housing to meet local needs or demand will influence design and layout.

13.9 The National Planning Policy Framework states that local planning authorities should consider policies to resist inappropriate development of residential gardens where development would cause harm to the local area.

13.10 In Thanet, applications have been refused for development on garden land due to the impact the proposal would have on the character and appearance of the area. Some parts of the district enjoy a high quality environment, with spacious surroundings, and development within a garden could have a detrimental effect. Residential gardens also form part of Thanet's green infrastructure providing biodiversity and wildlife habitats. However, there could also be instances where a development within a garden could be in keeping with the pattern of develolpment, forms part of a comprehensive development, enhances the streetscene, or is situated where the property would be a frontage development.

The following policy seeks to ensure all new development respects and enhance local character.

Policy QD01 - General design principles

The primary planning aim in all new development is to promote or reinforce the local character of the area and provide high quality and inclusive design and be sustainable in all other respects. Development must:

1) Relate to the surrounding development, form and layout and strengthen links to the adjacent areas

2) Be well designed, respect and enhance the character, context and identity of its location; particularly in scale, massing, rhythm and use of materials appropriate to the locality

3) Be of a density, layout, scale, mass and design appropriate to the development itself and compatible with neighbouring buildings and spaces

4) Incorporate a high degree of permeability for pedestrians and cyclists, consider access for public transport and provide safe and satisfactory means of pedestrian and vehicle access including provision for disabled access

5) Improve people's quality of life by creating safe and accessible environments, and promoting public safety and security.

Residential development on garden land will be permitted if it will make a positive visual contribution to the area, the intrinsic value of the site as an open space is not considered worthy of retention, and will not conflict with any other requirements of other design policies.

External spaces, landscape, public realm, and boundary treatments must be designed as an integral part of new development proposals and coordinated with adjacent sites and phases. Development will be supported where it is demonstrated that:

6) existing features including trees, natural habitats, boundary treatments and historic street furniture and/or surfaces that positively contribute to the quality and character of an area are should be retained and protected where appropriate

7) an integrated approach is taken to surface water management as part of the overall design,

8) a coordinated approach is taken to the design and siting of street furniture, boundary treatments, lighting, signage and public art,

9) trees and other planting is incorporated, appropriate to both the scale of buildings and the space available

Living conditions

13.11 The increasing dominance of private housing and policies to maximise use of land have caused concern about homes having levels of "liveable" space. The Council intends to prepare supplementary guidance to promote high quality inclusive design covering internal space standards and additional relevant considerations such as garden space, refuse and cycle storage. It will also maintain a supplementary planning document setting out guidelines and standards for conversion of buildings to quality flats where such accommodation is acceptable.

13.12 It is important that sufficient homes are built or adapted to provide the flexibility to accommodate a range of life stages including for occupants with limited mobility and energy. Lifetime Homes Standards provide a set of simple features to make homes more flexible and functional for all.

13.13 There are opportunities to facilitate meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity. Safe and accessible developments with clear and legible pedestrian routes and high quality open space will also help achieve this by encouraging the active and continual use of public areas.

13.14 Thanet suffers higher crime rates than the average for Kent. Section 17 of the Crime and Disorder Act 1998 places a duty on councils to do all they reasonably can to reduce crime and disorder locally and improve people's quality of life as a result.

13.15 Design can help achieve a safer environment including in the following ways:

- Well defined routes, spaces and entrances
- Ensuring different uses do not conflict
- Ensuring publicly accessible spaces are over-looked
- Places that promote a sense of ownership
- Physical protection (i.e. security features)
- Places where human activity creates a sense of safety
- Future management and maintenance

Policy QD02 - Living Conditions

All new development should:

1) Be compatible with neighbouring buildings and spaces and not lead to the unacceptable living conditions through overlooking, noise or vibration, light pollution, overshadowing, loss of natural light or sense of enclosure.

2) Be of appropriate size and layout with sufficient usable space to facilitate comfortable living conditions.

3) Residential development should include the provision of private or shared external amenity space/play space.

4) Provide for clothes drying facilities and waste disposal or dustbin storage, with a collection point for storage containers no further than 15 metres from where the collection vehicle will pass.

Advertisements

13.16 Some advertisements need advertisement consent, and it is important that they are controlled through planning policy as they can form an integral part of the streetscene providing gaiety and colour, or they can be alien, intrusive and discordant. It is also important to make sure that they are not a danger to the public or highway safety. It is particularly important to consider their impact when they are located in conservation areas.

Policy QD03 - Advertisements

Applications for advertisements will be considered in relation to their effects upon amenity and public safety. Regard will be paid to the surrounding location, manner of illumination (if proposed), material composition, design and relationship to the land, building or structure to which they are to be affixed. Advertisements should not dominate but should be in balance with the character, townscape and architecture of the buildings on which they are situated. Regard should be paid to the proximity of any listed buildings or structures, and any impact to their setting.

In and adjoining conservation areas the Council will require that the design and siting of advertisements does not detract from, and preferably makes a positive contribution to, the character and/or appearance of the area.

Telecommunications

13.17 The National Planning Policy Framework (NPPF) states that when preparing local plans, local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband.

13.18 Mobile communications are now considered an integral part of the success of most business operations and individual lifestyles. With the growth of services such as mobile internet access, demand for new telecommunications is continuing to grow. The council is keen to facilitate this expansion whilst at the same time minimising any environmental impacts. It is the Council's aim to reduce the proliferation of new masts by encouraging mast sharing and siting equipment on existing tall structures and buildings.

Policy QD04 – Telecommunications

Proposals for telecommunications development will be permitted provided that the following criteria are met.

1) The siting and appearance of the proposed apparatus and associated structures should seek to minimise impact on the visual amenity, character and appearance of the surrounding area.

2) If on a building, apparatus and associated structures should be sited and designed to minimise impact to the external appearance of the host building.

3) If proposing a new mast, it should be demonstrated that the applicant has explored the possibility of erecting apparatus on existing buildings, masts or other structures. Such evidence should accompany any application made to the Council.

4) If proposing development in a sensitive area, the development should not have an unacceptable effect on areas of ecological interest, areas of landscape importance, archaeological sites, conservation areas or buildings of architectural or historic interest.

When considering applications for telecommunications development, the Council will have regard to the operational requirements of telecommunications networks and the technical limitations of the technology.

14 - Heritage

Archaeology

14.1 Thanet, the former island located at the north eastern point of Kent and in close proximity to continental Europe, has long been a gateway to new settlers, ideas, trade and custom into Britain and on the frontline of invasion and defence. Some of the great events in the nation's early history have taken place in or close to Thanet including the arrival of the Romans, Anglo-Saxons and Christianity. The result is an incredible wealth of archaeological remains throughout the Island dating from earliest prehistoric times to the present day. Across Thanet's towns, villages and countryside, archaeological investigation is regularly making new discoveries of remains that are of regional and national importance and that in many cases exhibit a character that is unique to the former island. The archaeology of Thanet stands comparison with any area of the country.

14.2 Much of Thanet's archaeology lies shallowly buried beneath the plough soils of the island's agricultural lands. Here aerial photography and top soil stripping ahead of major infrastructure and other development works has in recent years revealed extensive buried archaeological landscapes, particularly of prehistoric, Roman and Anglo-Saxon date, that are changing our understanding of settlement and other activities at those times. Within the towns and villages, as well as remains of these earlier periods are often found remains, sometimes more deeply buried, associated with the medieval development of the settlements and extending through their periods of growth and industrial development to their 19th and 20th century prominence. Elsewhere across Thanet can be found buried and standing remains associated with the defence of the coast and the airfield at Manston, the industrial heritage of the area and the development of the historic landscape. Much of this rich archaeological resource is particularly vulnerable to new development both in undeveloped and brownfield sites.

14.3 It is not possible for this summary for the Local Plan to provide a comprehensive overview of the archaeology of Thanet however particular themes particularly relevant for land-use planning are:

- Deposits and features associated with the formation of the island and the creation of the Wantsum Channel and its later reclamation for agricultural land;
- The evidence of early hunter gatherer peoples on Thanet which can be seen in the Pleistocene deposits of the island particularly at Pegwell Bay and Manston;
- The rich and extensive ritual and funerary buried landscapes of the Neolithic and Early Bronze Age periods. Particular highlights are the major monuments of the causewayed enclosures at Chalk Hill, Pegwell and the remains of hundreds of late Neolithic and Bronze Age barrows;
- Extensive buried landscapes of the settlements, farmsteads, trackways and agricultural lands of the later prehistoric peoples of Thanet. Recent investigations on major development schemes such as East Kent Access 2 and Thanet Earth have illustrated the layout and development of large tracts

of the later prehistoric landscape. Evidence of major enclosed sites has been found in several places for example North Foreland, Dumpton, Pegwell Bay and Fort Hill, Margate;

- A rich Romano-British landscape that saw the development of villa estates (for example at Tivoli and Minster), a pattern of coastal and inland settlement that saw the construction of sunken-featured buildings of a type rarely found outside Thanet, linked by a network of roads and trackways, and the establishment of small cemeteries of both inhumation and cremation burial rites. The inhabitants of Thanet at this time would have borne witness to the arrival and departure of the Romans at nearby Richborough and lived under the influence of that major port of entry;
- The arrival of the Anglo-Saxons is celebrated in Thanet through the tradition of the arrival of Hengist and Horsa (AD449) at Ebbsfleet near Cliffsend. Remains of the new settlers can be seen in the rich cemeteries that can be found throughout the island and the occasional evidence of dispersed settlement that has been found on a number of sites and is difficult to locate other than through stripping of large areas;
- AD 597 saw the arrival in Thanet of a mission from Pope Gregory in Rome led by the monk Augustine. The growth of the church and its influence on Thanet can be seen in the establishment of the convent at Minster, the presence of a number of monastic granges and parish churches. Evidence for the early development of the villages can also be traced in the fabric of surviving historic buildings and buried deposits in the core of the settlements.
- Archaeological deposits connected with the origins and development of Thanet's main towns of Margate, Broadstairs and Ramsgate, their ports and development as 19th and 20th leisure resorts survive both in the ground and the fabric of the standing remains. Large numbers of wrecks are present around the coast e.g. Goodwin Sands.
- Remains of coastal anti-invasion defences and the important military and civilian airfield at Manston which had its origins in the First World War and continued as an important military airfield into the Cold War.

14.4 In response to their likely potential impact on important archaeological remains, the Council considers it essential for new development proposals to assess and understand the effect that they may have on the significance of archaeological remains whether known or as yet undiscovered. The following policy therefore applies:

Policy HE01 – Archaeology

Thanet's heritage is a valuable and irreplaceable resource. The Council will promote the identification, recording, protection and enhancement of archaeological sites, monuments and historic landscape features, and will seek to encourage and develop their educational, recreational and tourist potential through management and interpretation

Developers should submit information with the planning application that allows an assessment of the impact of the proposal on the significance of the heritage asset. Where appropriate the Council may require the developer to provide additional information in the form of a desk-based or field assessment.

Planning permission will be refused without adequate assessment of the archaeological implications of the proposal.

Development proposals adversely affecting the integrity or setting of Scheduled Monuments or other heritage assets of comparable significance will normally be refused.

Where the case for development which would affect an archaeological site is accepted by the Council, preservation in situ of archaeological remains will normally be sought. Where this is not possible or not justified, appropriate provision for investigation and recording will be required. The fieldwork should define:

(a) The character, significance, extent and condition of any archaeological deposits or structures within the application site;

(b) The likely impact of the proposed development on these features;

(c) The means of mitigating the effect of the proposed development

Recording should be carried out by an appropriately qualified archaeologist or archaeological contractor and may take place in advance of and during development. No work shall take place until a specification for the archaeological work has been submitted and approved by the Council. Arrangements must also be in place for any necessary post-excavation assessment, analysis and publication of the results, and deposition of the archive in a suitable, accessible repository.

Development in Conservation Areas

14.5 Conservation areas are designated by the Council where there is a valued distinctive character which the Council considers deserve special protection. Key elements of a conservation area include the architectural design or historic interest of buildings; the materials, colour and texture; the contribution of green and open spaces; street patterns and spaces between buildings; and views in and out of the area. The Council will review the boundaries of existing conservation areas and will consider the designation of new conservation areas as necessary and as resources allow.

14.6 The Council will not permit development which fails to retain those essential features upon which the character of a Conservation Area depends. These features may include natural features, trees, hedges, walls, fences, open areas and ground surfaces, as well as buildings and groups of buildings.

14.7 The character of Conservation Areas depends on the relationship of buildings to each other and their settings, in the local and wider context. The first step in the design process must, therefore, be an appraisal of the qualities of the area and the

opportunity to reflect and improve on them. Such an appraisal should be submitted as part of a planning application.

14.8 Particular attention should be paid to conserving attractive views out of and into the area, including those from more distant or higher vantage points. Opportunities should be taken to improve views that detract from the appearance of the area.

Policy HE02 - Development in Conservation Areas

Within Conservation Areas, development proposals which preserve or enhance the character or appearance of the area, and accord with other relevant Policies of this Plan, will be permitted, provided that:

Proposals for New Buildings

1) they respond sympathetically to the historic settlement pattern, plot sizes and plot widths, open spaces, , streetscape, trees and landscape features,

2)they respond sympathetically to their setting, context and the wider townscape, including views into and out of conservation areas

3) the proportions of features and design details should relate well to each other and to adjoining buildings,

4) walls, gates and fences are, as far as possible, of a kind traditionally used in the locality,

5) conserve or enhance the significance of all heritage assets, their setting and the wider townscape, including views into and out of conservation areas

6) demonstrate a clear understanding of the significance of heritage assets and of their wider context,

Proposals for Extensions

7) the character, scale and plan form of the original building are respected and the extension is subordinate to it and does not dominate principal elevations,

8) appropriate materials and detailing are proposed and the extension would not result in the loss of features that contribute to the character or appearance of the Conservation Area.

New development which would detract from the immediate or wider landscape setting of any part of a Conservation Area will not be permitted.

Local Heritage Assets

14.9 Local heritage assets, including buildings, structures, features and gardens of local interest, are an important element of the rich history of the city and reinforce local distinctiveness and sense of place. The National Planning Policy Framework

(NPPF) requires local planning authorities to have an up-to- date understanding of the local historic environment and its significance. Although not likely to meet the current criteria for statutory listing, local heritage assets are important to their locality by reason of their cultural, architectural and historical contribution.

14.10The retention of local heritage assets may be achieved through appropriate adaptive re-use or change of use.

14.11 Building Regulations will allow a more flexible approach to meeting the required standards when altering buildings of local interest.

14.12 Unlike statutory Listed Buildings or Registered Parks and Gardens, Local Designated Asset status does not put any extra planning constraints on a property; rather it would be a material consideration if a development was proposed (i.e. the historical and architectural quality of the building would be taken into consideration). In addition, is it intended that the Locally Designated Asset Register will raise the profile of and give recognition to the buildings, parks, etc. that are of special importance to Thanet.

14.13 The NPPF supports the introduction of Locally Designated Heritage Assets and heritage best practice encourages further support to this important Local designation by the introduction of Article 4 (2)'s to all Locally Designated single dwellings within a conservation area.

14.14 Authorised works to single dwellings are permitted under article 3 of the Town and County (General Permitted Development) Order 1995 as amended by the Town and County Planning General Permitted Development (Amendment) Order 2008 which came into force from 1st October 2008.

14.15 Many of these small scale permitted development works such as the replacement of as built timber windows and doors with plastic in modern styles can significantly harm the character and appearance of historic buildings and areas.

14.16 When a building is Statutory Listed this problem is avoided by the requirement for listed building consent. In the case of unlisted buildings (even those locally listed) article 3 of the General Permitted Development Order allows a vast range of works to be carried out without the need to apply for planning permission.

14.17 Within conservation areas permitted development rights are more limited than elsewhere but even so those works can still degrade the character of individual buildings as a result of inappropriate changes.

14.18 A local planning authority can restrict the permitted development rights of property owners to carry out certain categories of development that would otherwise be automatically allowed through the making of an article 4 direction. These directions can be made to cover one or more properties and they can restrict one or more classes of development.

14.19 The effect of an Article 4(2) Direction is not that development within the particular class in Schedule 2 of the General Permitted Development Orders can not

be carried out but simply that it is no longer automatically permitted, but instead must be subject to a specific planning application (of which there is no fee). This does not necessarily mean that the local planning authority will refuse permission for the works but it does enable the authority to retain some control over the design and detailing of the proposed development and to grant permission subject to appropriate conditions. The introduction of these directions is not intended to prevent all change, but rather to manage the way building and landscape alterations are carried out.

14.20 Before undertaking any works to a designated heritage asset, the significance of that asset must be clearly understood, as well as the potential impact of the development. Where listed buildings are concerned, it is important to address the full impact of modern building standards concerning aspects such as fire prevention, sound and thermal insulation, energy-efficiency savings and disabled access. Pre-application meetings are strongly recommended to ensure that standards can be accommodated without jeopardising the special interest of the building. Applicants considering works to a listed building are also advised to consult best practice guidance.

Policy HE03 - Local Heritage Assets

The Council supports the retention of local heritage assets, including buildings, structures, features and gardens of local interest. Local Heritage assets will be identified in a Local List as part of the Heritage Strategy.

Once adopted where permission is required, proposals will be permitted where they retain the significance, appearance, local distinctiveness, character or setting of a local heritage asset.

Historic Parks and Gardens

14.21 Thanet has a number of important parks; gardens, planned squares, cemeteries and churchyards. These areas provide significant amenity areas for the immediate environs and support and enhance the setting of significant designated and non-designated heritage assests. Parks and gardens of particular historical importance are listed by English Heritage in a Register of Historic Parks and Gardens - Albion Place Gardens in Ramsgate is included in this register. Kent County Councils Historic Environment Record also includes a number of important gardens and urban spaces locally.

14.22 Planned parks such as Ellington Park and Dane Park were opened to the public in 1898 and include features such as ornate bandstands and fountains. Less formal areas include grounds to substantial historic houses such as George V in Ramsgate (former residence of Sir Moses Montefiore), Pierremont Park and Northdown Park. The cemetries at Margate and Ramsgate include a selection of fine memorials, cemetery buildings and mature trees.

14.23 Planned squares are evident within the towns and are typically set pieces subordinate to buildings. Examples include Hawley Square in Margate and Vale Square in Ramsgate where high quality amenity space is closely related to the setting of listed buildings with a high degree of openness and permeability.

14.24 Both registered and non-registered parks and gardens are important because of their design or design history, the plants they contain; their historic significance; or their relationship with adjacent buildings and structures. In many cases, the designed open space is an important element of the design of the surrounding built environment. The Council will resist changes that would harm the character or setting of important parks and gardens, important plant material (particularly trees), views and other features.

In recognising the importance of these heritage assets the following policy applies.

Policy HE04 - Historic Parks and Gardens

Planning permission will not be granted for any development that will adversely affect the visual, historical or horticultural character of an historic park or garden or its setting, whether or not it is included on the statutory register

Works to a heritage asset to address climate change

14.25 The Council is committed to tackling climate change and reducing the carbon emissions of Thanet. At the same time, the Council is committed to conserving the Thanet's historic environment, particularly preserving and enhancing the character and appearance of its heritage assets. The Council's aim, therefore, is to ensure a balanced approach between protecting the heritage assets of Thanet and ensuring that they contribute to tackling climate change and reducing the carbon emissions of the district.

14.26 Due to the nature of construction of historic buildings, it would be difficult to match the performance of modern structures. However, vernacular design and traditional construction have evolved over time and deal with local conditions. Adaptive re-use of a building gives significant carbon savings in terms of embodied energy in the fabric of the building, so the focus will be on enhancing the performance of traditional buildings as much as practicable without damaging their significance. Minimal intervention will be required, along with assurance that the works do not harm the building's integrity or significance.

14.27 Planning applications will need to demonstrate a thorough understanding of the building in question via the submission of the following information:

- surveys of existing construction, to include walls, floors, ceilings and roofs;
- submission of baseline energy consumption data before and after improvements have taken place;
- measured data of existing environmental performance of the building's fabric;
- an indication of any national performance standards being targeted as a result of works; and
- recommendations on the environmental performance measures to be implemented in order to achieve the standard.

14.28 Prior to looking at alternative means of generating energy, it is important to investigate and put into practice all possible means of conserving energy

(hierarchical approach). The Chartered Institution of Building Services Engineers' guidance on building services in historic buildings sets out four principal aims when seeking to enhance the sustainability of heritage assets:

- Aim 1 – preserve historic fabric;
- Aim 2 – extend the beneficial use of older buildings;
- Aim 3 – reduce carbon emissions, using the hierarchical approach; and
- Aim 4 – specify environmentally conscious materials.

Policy HE05 - Works to a heritage asset to address climate change

Proposals to enhance the environmental performance of heritage assets will be supported where a sensitive and hierarchical approach to design and specification ensures that the significance of the asset is not compromised by inappropriate interventions.

Any works should be undertaken based on a thorough understanding of the building's performance.

15 - Climate Change

15.1 Adaptation is an essential part of addressing the impacts and opportunities created by our changing climate. The Intergovernmental Panel on Climate Change (IPCC) defines adaptation as:

“adjustments in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderate harm or exploit beneficial opportunities”.

Fluvial and Tidal Flooding

15.2 Flooding has become a significant issue and the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but without increasing the risk of flooding elsewhere. This is known as the ‘Sequential Test’ and is accompanied by an ‘Exception Test’ to be applied where necessary.

15.3 Thanet has few areas of low lying land that are at risk of flooding from the sea. The two primary sources of flooding in the district are fluvial and tidal; fluvial flooding from the Wantsum Channel, and tidal flooding from extreme tide levels. The majority of development proposed in this Plan has been directed away from the identified Flood Risk Areas.

15.4 The densely populated Old Town area of Margate falls within an area of low lying land. The financial cost of damage to property in the Old Town area resulting from a major flooding event could be as much as £70m. Such a flooding event could also put the safety of residents and the public at risk. Recent flood defense works have significantly reduced this risk.

15.5 Areas at risk of flooding are shown on the flood maps on the Environment Agency’s website and are updated regularly – www.environment-agency.gov.uk.

The following policy seeks to ensure that development is not put at risk by flooding.

Policy CC01 – Fluvial and Tidal Flooding

The sequential test and exception test as set out in the NPPF will be applied to applications for development within identified flood risk areas. Development proposals in these areas will need a Flood Risk Assessment to be carried out by the developer.

Surface Water Management

15.6 Management of surface water is important in terms of reducing the risk of pollutants draining into the groundwater and bathing waters, and reducing the risk of surface water flooding.

15.7 The Thanet Surface Water Management Plan 2013 assessed historic flooding incidents, and identifies the causes of this flooding as surface water, sewer, tidal or

blocked drains or gullys. SWMPs identify areas which may be vulnerable to surface water flooding as a result of flooding occurring elsewhere (eg excessive drainage into a site from flooding occurring further along a watercourse). An Action Plan has been developed which highlights tidally sensitive areas where action is needed, and the type of action that is considered necessary.

15.8 The following actions are identified for Thanet District Council, which could be achieved through the planning process:

- Ensure all new developments, where possible, consider the use of Sustainable Urban Drainage Systems (SUDS)
- Ensure new developments do not increase the risk of surcharge of sewer network within their catchment
- Promote benefits of rainwater reuse and recycling
- Support KCC in the use of SUDS in identified areas

15.9 SUDS are designed to efficiently and sustainably drain surface water, while minimising pollution. Surface water runoff in built up areas tends to flow rapidly into the sewer system, which places a burden on the sewerage network and increases flood risk downstream as piped systems have limited capacity. SUDS can slow the rate at which water disperses, thus reducing the risk of flooding.

SUDS are more sustainable than traditional drainage methods because they:

- Manage run-off volumes and flow rates from hard surfaces, reducing the impact of urbanisation on flooding

- Protect or enhance water quality by reducing pollution from run-off

- Are sympathetic to the environment and the needs of the local community

- Provide wildlife habitats

15.10 Applications to incorporate SUDS must be made to Kent County Council as the SUDS Approving Body (SAB). This includes the design, construction, operation and maintenance details of a drainage system to manage surface water which demonstrates compliance with the SuDS national standards. Developers are encouraged to agree all details with the SAB before submitting an application to the SAB. Kent County Council is preparing guidance on the process from the application to adoption of SUDS.

Methods of providing SUDS are described in the Climate Change Topic Paper.

15.11 Infiltration methods are unlikely to be appropriate in some parts of Thanet due to the quality of the groundwater. Groundwater from the chalk rock beneath Thanet is used to supply water for drinking water, agriculture, horticulture and industry. It also feeds the springs that emerge along the coast and near the marshes. The groundwater is extremely vulnerable to contamination as substances (natural substances and man-made chemicals) are able to pass rapidly through the thin soils and the natural fissures (cracks) in the chalk rock to the groundwater below the

ground surface. The acceptability and construction details of infiltration devices is not only based on whether the site is in a Source Protection Zone, it also depends on whether the ground conditions are suitable (i.e. free from contamination) and if there are adequate unsaturated area to help reduce any discharge. Proposals for infiltration methods within the Groundwater Protection Zone should be discussed with the Environment Agency as it may be possible for SUDS to be lined, or for water to be treated prior to infiltration.

15.12 Under the Water Framework Directive (WFD), the Kent Isle of Thanet Groundwater Body has been classified as poor status for the groundwater quality and quantity.The groundwater is impacted by nitrates, pesticides, solvents and hydrocarbons at levels that are of concern.

15.13 The quality of the groundwater also has an impact on Thanets bathing waters. Thanet has 13 beaches which have been designated as 'Bathing Waters' under the Bathing Water Directive which aims to protect public health and the environment from pollution. Thanet has received eight blue flag awards for its beaches in 2013 for reaching the 'Excellent' standard required under the new EU Bathing Water Directive. In addition to this Thanet has been awarded two Seaside Awards for Ramsgate Main Sands and Viking Bay, Broadstairs, which recognises and rewards beaches in England that achieve the highest standards of beach management and, in the case of bathing beaches, meet guideline water quality. There are also 2 shellfish waters designated under the EU Shellfish Waters Directive.

15.14 Bathing waters can be nominated for designation or delisting from the designations list in the annual DEFRA review.

15.15 Walpole Bay has previously failed to meet current EC mandatory bathing water standards and is therefore considered to be at significant risk of not meeting the revised Bathing Water Regulations.

The following factors could contribute to poor bathing water quality in Thanet:

- Pollution from sewerage – bacteria from sewage can enter our waters as a result of system failures or overflows or directly from sewage works.
- Water draining from farms and farmland – manure from livestock or poorly stored slurry can wash into rivers and streams resulting in faecal material entering the sea.
- Animals and birds on or near beaches - dog, bird and other animal faeces can affect bathing water as they often contain high levels of bacteria (much higher than treated human waste).
- Water draining from populated areas - water draining from urban areas following heavy rain can contain pollution from a variety of sources, including animal and bird faeces
- Domestic sewage – misconnected drains and poorly located and maintained septic tanks can pollute surface water systems.

15.16 As well as pollution by the water industry from sewer system overflows or failures,the quality of bathing water quality can be affected by pollution that arises from a very varied number of sources. Diffuse pollution, from agricultural or other

sources, can run off land or percolate through it in to rivers which drain into the sea. The amount of pollution from individual sources may be small but the combined effect can be significant. Water draining from farms and farmland into rivers can contain faecal material coming directly from livestock or indirectly from either the poor storage of manure or poor practices in the application of manure on to land. Non-agricultural diffuse pollution arises from a variety of sources including: wrong connections of waste water from houses and businesses into surface water drainage; road runoff containing animal faeces reaching water courses and septic tanks polluting rivers.

15.17 The loss of blue flags or the failure of any of Thanet's beaches to meet the requirements of the revised Bathing Water regulations or for Shellfish water failure could have knock-on implications on perception of water quality at neighbouring beaches as well as the local economy and tourist and fishing industry. To ensure development does not negatively impact bathing and shellfish water quality it is important to ensure drainage infrastructure is adequate i.e. sewer capacity is available (or financially viable to increase) and surface water drainage is managed.

The following policy seeks to ensure surface water run-off is management appropriately.

Policy CC02 – Surface Water Management

New development will be expected to manage surface water resulting from the development using sustainable drainage systems wherever possible. SUDS design should be considered as an integral part of the masterplanning and design process for new development.

Proposals for SUDS at sites within the Groundwater Protection Zone as shown on Map 19, or sites near the Groundwater Protection Zone, must demonstrate that the methods used will not cause detriment to the quality of the groundwater.

Sites identified as a Tidally Sensitive Area (as identified in surface water management plans) will need to incorporate Sustainable Drainage Methods and a maintenance schedule where appropriate, at the design stage of a planning application, and a Flood Risk Assessment will be required before planning permission can be granted.

Coastal Development

15.18 There are a number of other discreet areas of flood risk around the coastline; however, the majority of coastline is at risk of erosion and not flooding. Coastal defences have an approximate lifeline of 50 years. If there appears to be an economic justification for maintaining them then they will be; however, feasibility work does not always indicate that the project will be successful in achieving funding, and in such cases defences may cease to be maintained.

15.19 The Isle of Grain to South Foreland Shoreline Management Plan (SMP) provides a large-scale assessment of the risks associated with coastal evolution and

presents a policy framework to address these risks to people and the developed, historic and natural environment in a sustainable manner. It also includes an action plan to facilitate implementation of the SMP policies and monitor progress.

The following seeks to ensure that new development is not put at risk from coastal erosion,

Policy CC03 – Coastal Development

Proposals for new development within 40 metres of the coastline or clifftop must demonstrate to the satisfaction of the Council that it will not:

1) expose people and property to the risks of coastal erosion and flooding, or

2) accelerate coastal erosion due to increased surface water run off before planning permission can be granted.

Sustainable Design

15.20 The design of a building or development can help adapt to climate change by increasing solar gain and reducing winter heat loss.

15.21 The Code for Sustainable Homes is the current national standard for the sustainable design and construction of new homes. The Code aims to reduce carbon emissions and create homes that are more sustainable. There are 6 Code levels which new developments can aim to achieve. This relates to the minimum percentage reduction in emissions; Level 1 is a 10% reduction and Level 6 would be a Zero Carbon home.

The Code for Sustainable Homes levels are set out in Table 8 below.

Table 8 – Code for Sustainable Homes

Level	% energy efficiency higher than Part L1A of the Building Regulations	Daily water usage (litres)per person
1	10	120
2	18	120
3	25	105
4	44	105
5	100	80
6	Zero carbon	80

Source: www.gov.uk

15.22 The requirements to provide these could have an impact on the viability of development in Thanet. The council commissioned a Whole Plan Viability Study to ensure that policies in the local plan and development in Thanet remain viable. The

study assumes build costs to current building regulations and an additional uplift of £2,550 per unit to accommodate CSH Level 5 on water resources management.

15.23 Government has consulted on a review of Housing Standards to rationalise the large number of codes, standards, rules, regulations and guidance currently used by different authorities and provide new national standards. This included a review of the Code for Sustainable Homes. The national standards, when published, will replace the Code for Sustainable Homes.

15.24 Government has also consulted on new building regulations as part of their Zero Carbon Homes Policy which will increase the energy efficiency of buildings and is expected to come into force this year. The new regulations aim to introduce zero carbon standards from 2016 for homes, and by 2019 for non domestic buildings by:

- Developing and driving a prioritised programme for the energy efficiency aspects of low carbon homes leading to the delivery of mainstream zero carbon homes from 2016
- Developing and driving a prioritised programme that deals with the energy supply aspects of delivering low and zero carbon homes

15.25 There are measures that can be taken in the design of new development that will help reduce energy consumption and provide resilience to increased temperatures, such as:

- the use of landform
- layout
- provision of adequate space for recycling and composting
- building orientation
- tree planting
- landscaping

15.26 Landscaping can be particularly beneficial as it can provide stepping stones, wildlife corridors or new habitats, and contribute to Thanet's Green Infrastructure network. In terms of adapting to climate change, integrating vegetation (i.e. planting on building walls and roofs) can help to reduce solar gain as vegetation has a much higher reflective capacity than masonry, as well as providing a cooling effect through evapo-transpiration. Planting can also help mitigate against poor air quality by presenting a large surface area for filtering air. A large tree can deliver the same cooling capacity as five large air conditioning units running for 20 hours a day during hot weather. New planting can help provide more comfortable, cooler spaces via summer shading.

15.27 Within the context of an established development pattern, the most significant change likely to generate demand for travel will result from new housing development. It is necessary, therefore, to consider the location of development in areas accessible to a range of services on foot and by public transport, preventing urban sprawl and improving local high streets and town centres. Methods such as providing showers and changing facilities in employment related development and locating cycle parking close to town centres/entrances will also help reduce the need to travel by car.

The following policy seeks to ensure that new development achieves the necessary levels of sustainable design and construction.

Policy CC04 – Sustainable Design

All new buildings and conversions of existing buildings must be designed to reduce emissions of greenhouse gases and function in a changing climate. All developments will be required to:

1) achieve a high standard of energy efficiency in line with most recent government guidance;

2) make the best use of solar energy passive heating and cooling, natural light, natural ventilation and landscaping

All new buildings and conversions of existing buildings must be designed to use resources sustainably. This includes, but is not limited to:

3) re-using existing buildings and vacant floors wherever possible;

4) designing buildings flexibly from the outset to allow a wide variety of possible uses;

5) using sustainable materials wherever possible and making the most sustainable use of other materials;

6) minimising waste and promoting recycling, during both construction and occupation

New developments must provide safe and attractive cycling and walking opportunities to reduce the need to travel by car.

Renewable energy installations

15.28 There is a number of options for obtaining energy from renewable sources in new or existing developments. These include:

- Solar photo-voltaic panels
- Wind turbines
- Solar water heating
- Ground source heat pumps
- Biomass and biofuel

The following policy seeks to encourage the use of renewable energy installations in new and existing development whilst mitigating against any detrimental effects.

Policy CC05 – Renewable energy installations

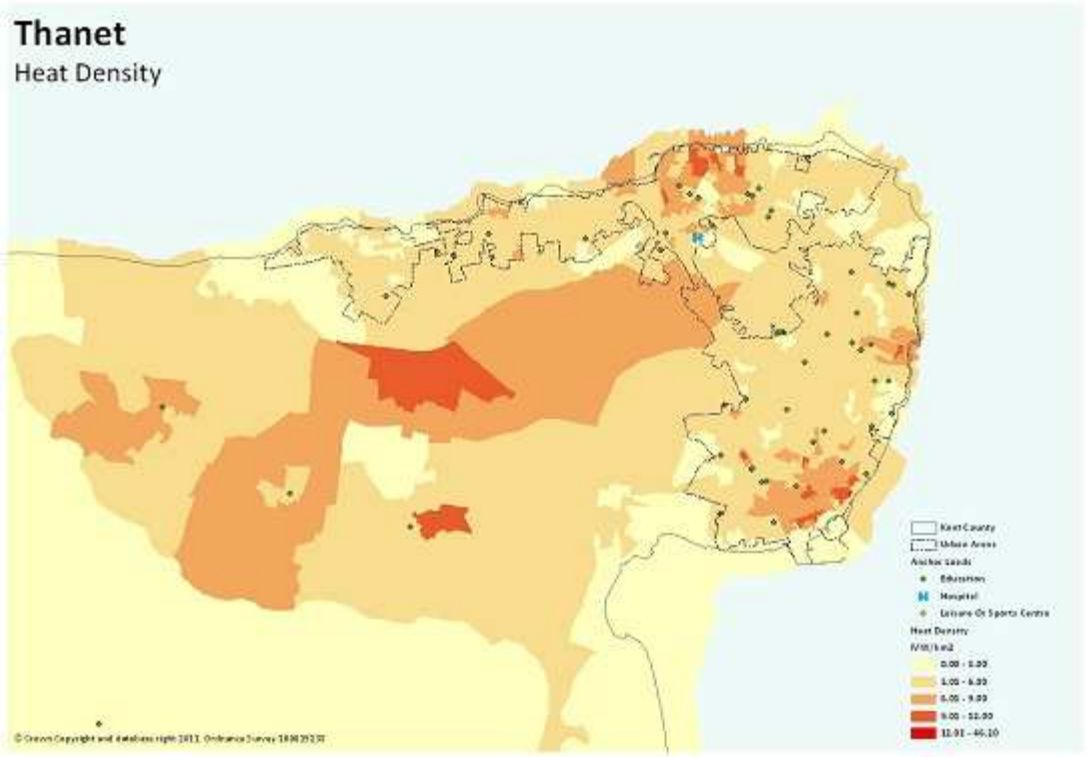
Proposals for renewable energy installations incorporated in new developments or existing buildings will be permitted, subject to there being no unacceptable detrimental visual or environmental impact.

District Heating

15.29 District heating schemes supply heat from a central source directly to homes and businesses through a network of pipes carrying hot water. This means that individual homes and business do not need to generate their own heat on site.

15.30 Large energy users, or 'anchor loads' are an essential part of a district heating network to provide a base heat demand that will allow a system to run efficiently. Anchor loads could be large energy users such as industry, schools, hospitals or leisure centres with heated swimming pools. Map 17 is a heat map for Thanet showing potential areas suitable for District Heating.

Map 17 – Thanet's Heat Density



15.31 District heating is most suitable where there is a high density of built development, and especially where there is a mix of building types. (The high heat density shown outside the urban boundary is the airport.)This diversity of energy demand helps to keep combined heat and power (CHP) or boiler plant running in a more steady state for longer – which is more efficient.

15.32 The Renewable Energy for Kent report identifies the following scale and types of district heating networks which may come forward:

Small local networks: Typically between 10 and 50 homes in a street or a block. Gas fired boilers or biomass boilers supplying heat only

Medium size networks: Typically over 200 homes and normally with an 'anchor building' (i.e. a school, hospital or leisure centre)

Large networks – A number of small and medium sized networks linked up and perhaps taking heat from a large biomass or energy from waste power station

The following policy seeks to encourage District Heating schemes where appropriate and feasible.

Policy CC06 – District Heating

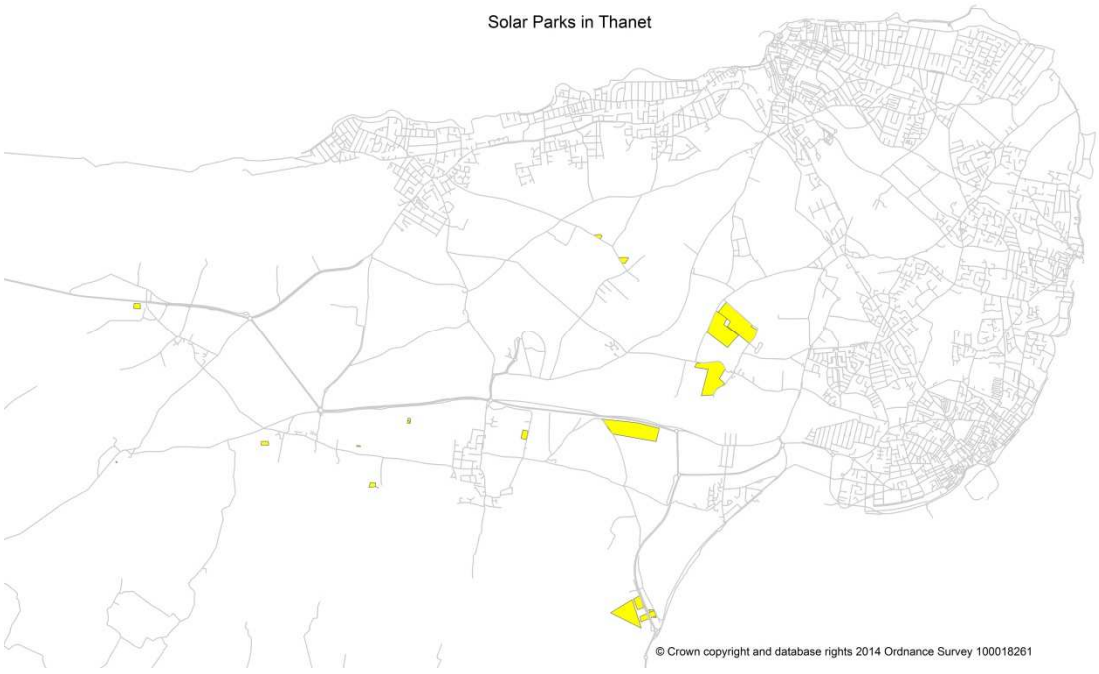
Support will be given to the inclusion of district heating schemes in new development. Major development proposals should be supported by an Energy Statement to demonstrate why district heating can or cannot be delivered.

Solar Parks

15.33 There have been a number of developments for renewable energy applications in the district to help reduce emissions.

15.34 A number of Solar Parks have been granted permission – these are mainly located in fields, or parts of fields, are temporary (most have a 25 year lifespan), and the land can revert to its original use when the panels are removed.

Map 18 – Solar Parks



15.35 The siting for a solar farm will usually be near to a connection to the national grid due to cost implications for connection, and will require the erection of a fence surrounding the site for security reasons.

15.36 Map 18 shows sites where permission has been granted for solar parks. It may be possible that other sites could be considered for further development of solar parks. Further sites should be located on previously developed land or non-agricultural land wherever possible.There are potential negative impacts to the countryside, landscapes, and to best and most versatile agricultural land. For proposals on agricultural land, the developer will be expected to demonstrate how the land can still be used for agricultural purposes. The developer will be required to outline a management programme to demonstrate that the areas beneath and around the panels will not become overgrown, and to assist with the eventual restoration of the site, normally to its former use.

15.37 The developer will be required to outline a management programme to demonstrate that the areas beneath and around the panels will not become overgrown, and to assist with the eventual restoration of the site, normally to its former use.

Policy CC07 – Solar Parks

Applications for solar parks will only be permitted if there is no significantly detrimental impact on any of the following:

1) Thanet's historic landscapes

2) Visual and local amenity, including cumulative effects

3) Heritage assets and views important to their setting

Proposals on agricultural land must demonstrate that the proposal will comply with all of the following:

5) Cause minimal disturbance to the agricultural land and

6) Be temporary, capable of removal and reversible, and allow for continued use as such on the remaining undeveloped area of the site.

8) Provide biodiversity enhancements.

The need for renewable energy does not automatically override environmental considerations.

15.38 The Richborough area, which straddles the District boundary with Dover, has become a focus for waste treatment, renewable and low carbon energy industries. The former Richborough Power Station provides a potential location for such facilities, as well as a connection to the national grid. Thanet and Dover Councils have approved applications for solar farms and anaerobic digesters in the surrounding area, and a peaking plant facility and site-wide infrastructure to facilitate

the creation of energy from waste site, on the former Richborough Power Station site.

15.39 The Council recognises the potential of the site to help to mitigate against climate change. Therefore in liaison with Dover District Council and Kent County Council (as the Minerals and Waste Authority), the Council will continue to explore, with the promoters of any schemes, how this potential can be realised. Particular regard would need to be had to environmental, transport and wildlife impacts together with visual impact on landscape and on the gateway location to and from Thanet.

15.40 The emerging Kent Minerals and Waste Local Plan 2013-2030 and Waste Sites Plan look to this area as a potential location for energy from waste, green waste treatment and for the treatment/material recycling facilities. Development proposals in this area should also refer to these plans and the relevant National Planning Statements.

15.41 The Secretary Of State for Transport has issued directions under the Town and Country Planning (General Development Procedure) Order 1995 to safeguard the route corridor of the Channel Tunnel Rail Link Project. This includes additional land that may be required for associated works/development. (Such direction and works are not proposals of the District Council, and the routes in question will not be determined through the development plan process but through other statutory procedures which will provide appropriate opportunities for any objections by those directly affected by the project).

15.42 Safeguarding directions for development affecting the route corridor for the channel tunnel rail link project apply to land at Richborough. In accordance with the direction, the Council will consult HS1 (south) limited before granting planning permission or resolving to carry out/authorise development within the limit of land subject to consultation, featured on the Policies Map.

Policy CC08 – Richborough

Proposals for the development of renewable energy facilities at Richborough will be permitted if it can be demonstrated that the development will not be detrimental to nearby sites of nature conservation value, or that any potential effects will be fully mitigated.

16 - Safe and Healthy Environment

16.1 The National Planning Policy Framework (NPPF) states that the planning system should contribute to and enhance the natural and local environment. It should prevent both new and existing development from contributing to or being put at unacceptable risk of pollution by soil, air water or noise or land instability, and remediate and mitigate despoiled, degraded, derelict contaminated and unstable land where appropriate. Consideration must be given to the impacts of noise on health and quality of life from new developments, and the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas.

16.2 Environmental pollution and impacts on human health are important issues, and the council is keen to ensure that the environmental quality of the area is maintained and enhanced. The following policies aim to address a number of environmental issues to help achieve this.

Potentially Polluting Development

16.3 Activities with the potential to pollute are controlled by wide ranging powers under pollution control legislation. However, the effects of development that might cause the release of pollutants to water, land or air, or from noise, dust, vibration, light odour or heat, are material considerations when deciding whether or not to grant planning permission. The Council will require any application to contain sufficient information to enable the risk of pollution to be assessed.

Policy SE01 - Potentially Polluting Development

Development with potential to pollute will be permitted only where:

1) Applicable statutory pollution controls and siting will effectively and adequately minimise impact upon land use and the environment including the effects on health, the natural environment or general amenity resulting from the release of pollutants to water, land or air or from noise, dust, vibration, light odour or heat; and

In determining individual proposals, regard will be paid to:

2) The economic and wider social need for the development; and

3) The visual impact of measure needed to comply with any statutory environmental quality standards or objectives

Permission for development which is sensitive to pollution will be permitted only if it is sufficiently well separated from any existing or potential source of pollution as to reduce pollution impact upon health, the natural environment or general amenity to an acceptable level, and adequate safeguarding and mitigation on residential amenity.

Landfill Sites and Unstable Land

16.4 Sites that have been used for the deposit of refuse or waste may generate explosive or otherwise harmful gasses. Thanet has approximately 26 such sites which are all listed in the National Landfill Atlas held by the Environment Agency.

16.5 A former landfill site will be unlikely to be actively gassing after 40-50 years of its closure. The Council is required to consult the Environment Agency, as Waste Regulation Authority, before granting consent for development within 250m of land which is, or has within 30 years of the relevant application, been used for the deposit of refuse or waste.

16.6 If an application for a new development/redevelopment or major change of use on or adjacent to a site included on the landfill register (also known as the landfill atlas) is received, then a full site-investigation report including gas monitoring will be required.

16.7 Where the presence of gas is discovered or it is suspected that it may be present during site development, the Council will require the applicant to arrange for an investigation to be carried out to determine its source and for satisfactory and effective remedial measures to prevent hazards from migrating gas (including accumulation into property or other confined spaces) during the course of development and during subsequent use of the site. Specialist design and construction advice will usually have to be sought by the developer in this regard.

16.8 For development on unstable land, it may be necessary for the developer to carry out specialist investigations and assessments to determine the stability of the site proposed for development and identify any remedial measures that will be needed to deal with instability. Areas known to the Council where land instability is likely to be an issue include:

- Minster marshes
- Monkton marshes
- Sarre marshes
- Wade marshes
- Land overlying Ramsgate and Margate caves
- Land overlying disused railway tunnel between Ramsgate main sands and the railway line at Broadstairs

Policy SE02 - Landfill Sites and Unstable Land

In considering planning applications on or near landfill sites, or where there is otherwise reason to suspect that potential danger from evolving or migrating gas may be present, or on land for which known or suspected instability might render it unsuitable for development, the local planning authority may require a specialist site investigation and assessment by the developer to identify any remedial measures required to deal with it before determining such planning applications.

Development or redevelopment, including change of use, will only be permitted where:

1) the applicant/developer has demonstrated either that there is no unacceptable risk caused by the development or that appropriate remedial measures can overcome such risk;

2) the development would not adversely affect neighbouring land; and

3) any necessary remedial measures can be achieved without unacceptable environmental impact.

Where the local planning authority is satisfied that the risks from landfill or ground instability can be overcome, planning consent may be granted subject to conditions or a legal agreement specifying the necessary measures to be carried out.

Contaminated Land

16.9 Some sites in Thanet are known to be contaminated. The allocation of sites should not be taken as an indication that they are free from any hazardous/physical constraints, or that they are not in the vicinity of other instillations handling hazardous substances.

16.10 Development on contaminated land will require a site investigation and assessment to establish the levels of contamination present and identify any remedial measures to clean the site to make it suitable for its proposed end use.

16.11 A County-wide Contaminated Land Strategy is being prepared by the Kent & Medway Contaminated Land Forum and will form part of the evidence base for this local plan once it has been finalised. The strategy provides information across the county in place of former PPS23. The Council has a Contaminated Land Strategy for the district - this is currently being reviewed.

Policy SE03 - Contaminated Land

Development proposals that would enable contaminated sites to be brought into beneficial use will normally be permitted, so long as the sites can be rendered suitable for the proposed end use in terms of the impact on human health, public safety and the environment, including underlying groundwater resources.

Development on land known or suspected to be contaminated or likely to be adversely affected by such contamination will only be permitted where:

1) An appropriate site investigation and assessment (agreed by the local planning authority) has been carried out as part of the application to establish whether contamination is present and to identify any remedial measures necessary to ensure that the site is suitable for the proposed end use;

2) The proposed remedial measures would be acceptable in planning terms and would provide effective safeguards against contamination hazards during the development and subsequent occupation of the site.

Planning conditions will be attached to any consent to ensure that remedial measures are fully implemented.

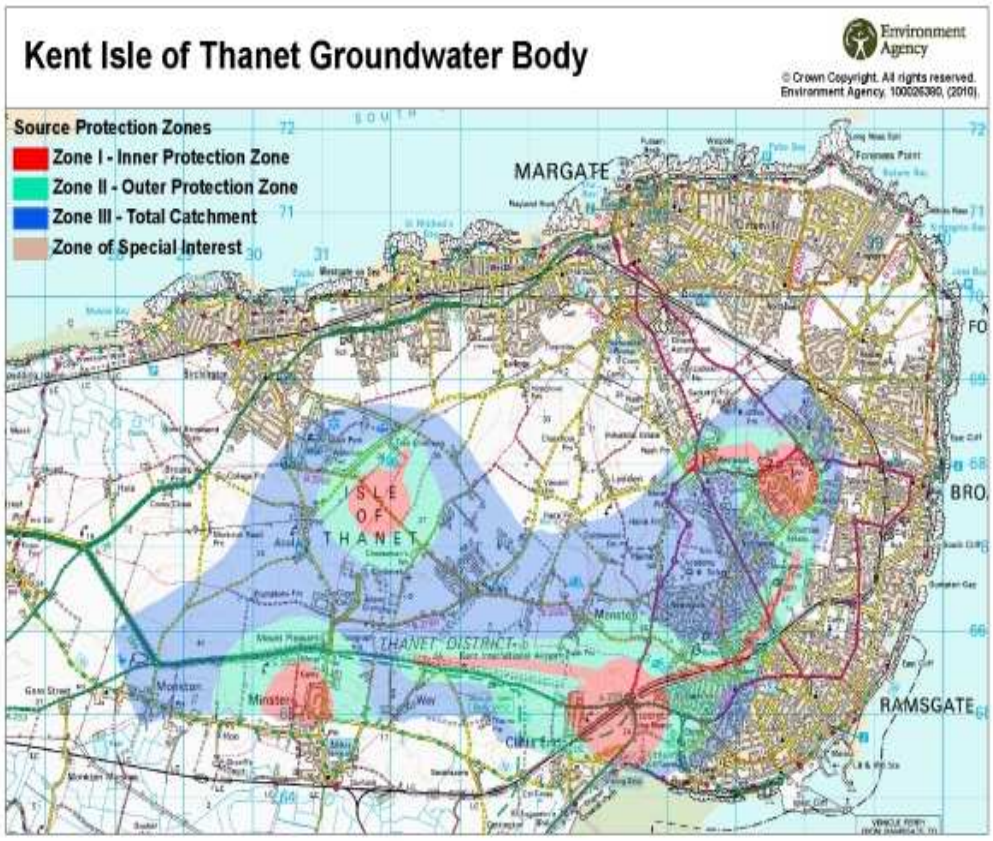
In the case of sites where contamination is only considered to be a possible risk, a site investigation will be required by condition. Sites where contamination is believed to have been removed or where the full site history is unknown should not be able to be considered as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the untended use of the land.

Groundwater Protection

16.12 Thanet's groundwater is of poor quality and is vulnerable to contamination due to Thanet's thin soils and cracks in the chalk rock, which means pollution would soak through quickly to the groundwater. However the groundwater is used to supply water for drinking water, agriculture, horticulture and industry and also feeds the springs that emerge along the coast near the marshes, so it is important that there is no further contamination to the groundwater.

Thanet's groundwater zones are shown on map 19 below.

Map 19 – Thanet's Groundwater Zones



16.13 Thanet's groundwater is extremely vulnerable to contamination as substances (natural substances and man-made chemicals) are able to pass rapidly through the thin soils and the natural fissures (cracks) in the chalk rock to the groundwater below the ground surface.

16.14 Once the chalk and groundwater is contaminated at a site by a substance it can take decades to clean-up. The Council and the Environment Agency have worked hard to prevent contamination by consistently applying Groundwater Protection policies to any proposed land-use changes in Thanet to reduce potential future impact.

16.15 Under the Water Framework Directive (WFD), the 'Kent Isle of Thanet Groundwater Body' has been classified as poor status for the groundwater quality and quantity. The groundwater is impacted by nitrates, pesticides, solvents and hydrocarbons at levels that are of concern. Thanet's groundwater is currently a candidate Water Protection Zone (WPZ). These zones are used in areas identified as being at high risk as a 'last resort' when other mechanisms have failed or are unlikely to prevent failure of WFD objectives. WPZs are a new regulatory tool to address diffuse water pollution. They are designed to help enforce measures to prevent pollution and improve water quality where standards set out in the Water Framework Directive (WFD) are not being met. It is hoped that sufficient measures can be taken, by various organisations and individuals, that will help remediate the problems with Thanet's groundwater and avoid a WPZ designation.

16.16 The poor groundwater quality cannot be attributed to just one source. In Thanet there are considerable risks to the groundwater from both urban and rural activities. These risks are intensified by the compact nature of the District. Hazards to Thanet's groundwater include petrol stations, gas works, drainage from roads, drainage from the airport, leakage from sewers, pesticide storage, septic tanks, sheep dips, and farm buildings. Uses that can cause pollution to the groundwater include dry cleaners, mechanics, scrap metal, photo processing, and some sustainable drainage systems.

16.17 Some methods of Sustainable Drainage can cause detriment to the groundwater. Methods that include infiltration, where trenches are created underground so that water filtrates into the surrounding soil and is then transferred to a disposal unit, would not be appropriate in many parts of Thanet due to its thin soils and vulnerability of the groundwater. Proposals for infiltration methods within the Groundwater Protection Zone should be discussed with the Environment Agency as it may be possible for SUDS to be lined, or for water to be treated prior to infiltration. Some methods of sustainable drainage can help improve water quality by controlling the flow of water into the aquifer and enabling the groundwater to recharge.

Policy SE04 - Groundwater Protection

Proposals for development within the Groundwater Protection Zones identified on the proposals map will only be permitted if there is no risk of contamination to groundwater sources. If a risk is identified, development will only be permitted if adequate mitigation measures can be implemented.

Proposals for Sustainable Drainage systems involving infiltration must be assessed and discussed with the Environment Agency to determine their suitability in terms of the impact of any drainage into the groundwater aquifer.

Air Quality

16.18 Thanet generally has very good Air Quality; however there are areas at The Square in Birchington, the junction of Hereson Road/Boundary Road and High Street St Lawrence, Ramsgate where Air Quality is poor due to pollution from road transport.

16.19 An urban wide Air Quality Management Area has been declared to enable effective management of Air Quality.

16.20 The Council has an Air Quality Action Plan to address the Urban Air Quality Management Area (AQMA) that was declared in 2011 where Air Quality fails to meet required standards. The Action Plan considers a broad approach to strategic planning, transport planning, sustainability and climate change.

16.21 Planning is an effective tool to improve Air Quality. It can be used to locate development to reduce emissions overall, and reduce the direct impacts of new development, through policy requirements.

16.22 An AQMA makes consideration of the Air Quality impacts of a proposed development important. However, there is still a need to regard Air Quality as a material factor in determining planning applications in any location. This is particularly important where the proposed development is not physically within the AQMA, but could have adverse impacts on Air Quality within it, or where Air Quality in that given area is close to exceeding guideline objectives itself.

16.23 Developments that may require the submission of an Air Quality Assessment include the following:

1) If the development is likely to have a significant impact upon an AQMA

2) If the development has the potential to cause a deterioration in local air quality (i.e.once completed it will increase pollutant concentrations)

3) If the development is located in an area of poor air quality (i.e. it will expose future occupiers to unacceptable pollutant concentrations) whether the site lies within a Designated AQMA or, if so advised by the Local Authority, or a "candidate" AQMA

4)If the demolition/construction phase will have a significant impact on the local environment (e.g. through fugitive dust and exhaust emissions)

16.24 The types of development that are likely to require an air quality assessment are identified in the Kent and Medway Air Quality Partnerships Technical Planning Guide. These are listed in Appendix D Table 01.

Proposals for new residential development should, wherever possible and appropriate, include an electric car charging point.

Policy SE05 - Air Quality

All major development schemes should promote a shift to the use of sustainable low emission transport to minimise the impact of vehicle emissions on Air Quality, particularly within the designated Urban Air Quality Management Area. Development will be located where it is accessible to support the use of public transport, walking and cycling.

Development proposals that might lead to a significant deterioration in Air Quality or an exceedence of Air Quality national objectives or to a worsening of Air Quality within the urban Air Quality management area will require the submission of an Air Quality assessment, which should address:

1) The cumulative effect of further emissions;

2) The proposed measures of mitigation through good design and offsetting measures that would prevent the National Air Quality Objectives being exceeded or reduce the extent of the Air Quality deterioration. These will be of particular importance within the urban AQMA, associated areas and areas of lower Air Quality.

Proposals that fail to demonstrate these will not be permitted

Noise Pollution

16.25 The Governments Noise Policy Statement will be reflected in planning policy to ensure that noisy and noise-sensitive developments are located away from each other, and from residential or built up areas

16.26 Noise can constitute a statutory nuisance and is subject to the provisions of the Environmental Protection Act 1990.

16.27 The Government's Noise Policy Statement for England stated priority is to:

'*Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development'.*

16.28 The second aim is to mitigate and minimise adverse impacts, and the third is to contribute to the improvement of health and quality of life through effective management control of noise.

16.29 Noise is a material consideration when determining planning applications. The Governments National Planning Practice Guidance[i] states that consideration should be given to:

- Whether or not a significant adverse effect is occurring or likely to occur;
- Whether or not an adverse effect is occurring or likely to occur; and
- Whether or not a good standard of amenity can be achieved

16.30 The guidance provides the following noise hierarchy to determine when noise could be a concern:

Table 9 – Noise Hierarchy

Perception	**Examples of outcomes**	**Increasing effect level**	**Action**
Not noticeable	No effect	No observed effect	No specific measures required
Noticeable and not intrusive	Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life.	No observed adverse effect	No specific measures required
		Lowest Observed Adverse Effect Level	

Noticeable and intrusive	Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; closing windows for some of the time because of the noise. Potential for non-awakening sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
		Significant Observed Adverse Effect Level	
Noticeable and disruptive	The noise causes a material change in behaviour and/or attitude, e.g. having to keep windows closed most of the time, avoiding certain activities during periods of intrusion. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
Noticeable and very disruptive	Extensive and regular changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory	Unacceptable Adverse Effect	Prevent

16.31 The guidance suggests four broad types of mitigation against noise:

- **engineering:** reducing the noise generated at source and/or containing the noise generated;
- **layout:** where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;
- **using planning conditions/obligations** to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- **mitigating** the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

Policy SE06 - Noise Pollution

In areas where noise levels are relatively high, permission will be granted for noise-sensitive development only where adequate mitigation is provided, and the impact of the noise can be reduced to acceptable levels.

Development proposals that generate significant levels of noise must be accompanied by a scheme to mitigate such effects, bearing in mind the nature of surrounding uses. Proposals that would have an unacceptable impact on noise-sensitive areas or uses will not be permitted.

Noise Action Plan Important Areas

16.32 Noise Action Plans have been prepared in line with the terms of the Environmental Noise Directive and cover noise from roads, railways and agglomerations. There are 26 road related 'Important Areas' and 2 rail Important Areas in Thanet. (These correspond with hotspots identified in the AQMA).

16.33 Within the identified areas, residential development will need to include mitigation measures to reduce the impact of noise on residential amenity. Such measures may include screening/barriers, double glazing, locating windows so they are not opposite the noise source. Developers should liaise with Kent County Council as the Highway Authority to agree appropriate mitigation.

Policy SE07 – Noise Action Plan Important Areas

Proposals for residential development within identified Important Areas in the Noise Action Plan must incorporate mitigation measures against the impact of noise on residential amenity.

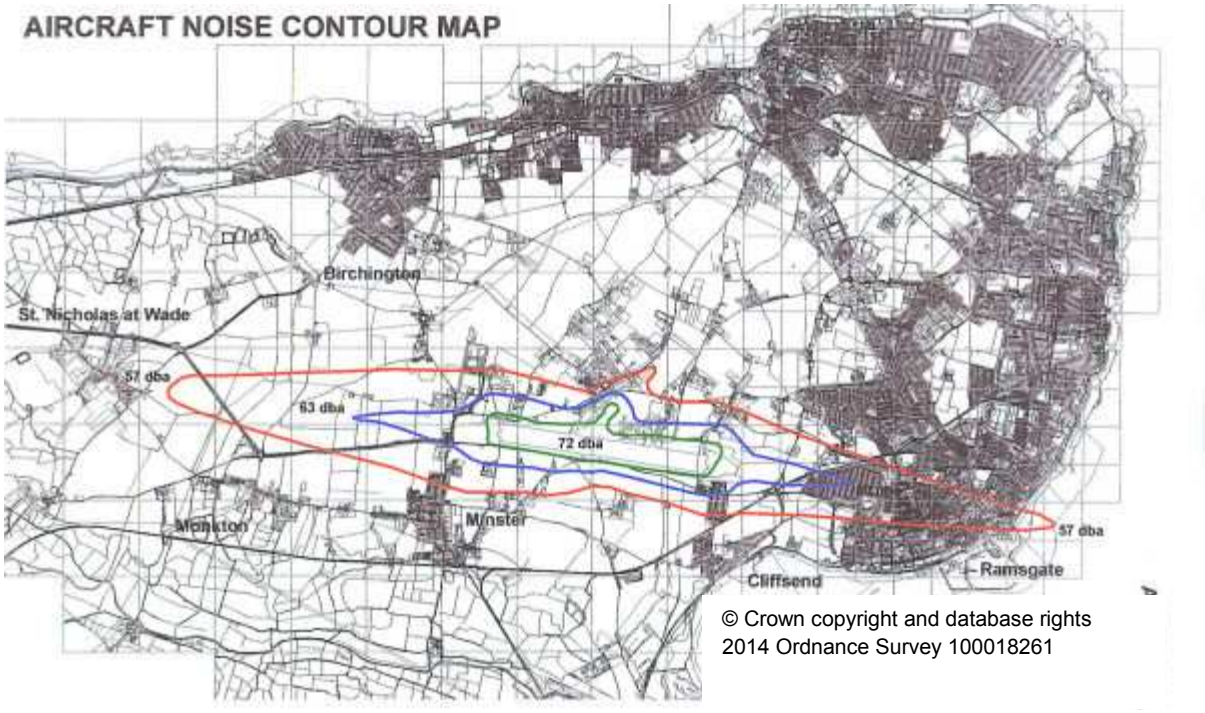
Aircraft Noise and Noise Sensitive Development

16.34 The Council seeks to limit the effect of aircraft noise on sensitive development such as housing, schools and hospitals, by restricting locations where such development may be sited.

16.35 The 2006 Local Plan uses aircraft noise contours which were commissioned during the production of the plan, and consider a range of high, medium and low traffic scenarios, including the possibility of increased aviation associated with the potential expansion of the airport.

16.36 There is currently a degree of uncertainty regarding future aircraft noise levels at the airport, therefore the Council will adopt a precautionary approach in relation to aircraft noise and will continue to apply the contour predictions which formed the basis for the previous Local Plan.

Map 20 – Aircraft Noise Contour Map



16.37 The Council will review this part of the plan if new information regarding airport activity becomes available or revised contours are received.

16.38 For the purposes of the following policy, noise sensitive development/redevelopment includes, schools, hospitals, and any other use the function or enjoyment of which could, in the Council's opinion, be materially and adversely affected by noise

Policy SE08 – Aircraft Noise

Applications for noise sensitive development or redevelopment on sites likely to be affected by aircraft noise will be determined in relation to the latest accepted prediction of existing and foreseeable ground noise measurement of aircraft noise.

Applications for residential development will be determined in accordance with the following noise exposure categories.

Nec	Predicted aircraft noise levels (dbl aeq.0700-23.00)	
A	<57	Noise will not be a determining factor
B	57-63	Noise will be taken into account in determining applications, and where appropriate, conditions will be imposed to ensure an adequate level of protection against noise (policy ep8 refers).

C	**63-72**	**Planning permission will not be granted except where the site lies within the confines of existing substantially built-up area. Where residential development is exceptionally granted, conditions will be imposed to ensure an adequate level of protection against noise (policy ep8 refers).**
D	**>72**	**Residential development will not be permitted.**

Applications for non-residential development including schools, hospitals and other uses considered sensitive to noise will not be permitted in areas expected to be subject to aircraft noise levels exceeding 60 db(a) unless the applicant is able to demonstrate that no alternative site is available. Proposals will be expected to demonstrate adequate levels of sound insulation where appropriate in relation to the particular use.

16.39 The provisions of the following policy will not apply to permissions relating to small extensions to existing houses provided:

1. Permission for the construction of the house itself was not granted subject to the provisions of this Policy; or
2. The extension is not intended to form a separate unit of living accommodation.

In such instances the sound insulation standards referred to in this Policy are brought to the attention of all applicants, but it is left to them whether they implement the standards within the new extension or not.

Policy SE09 – Aircraft Noise and Residential Development

When planning consent is granted for residential development on any land expected to be subject to a level of aircraft noise of above 57db(a), such consent will be subject to provision of a specified level of insulation to achieve a minimum level of sound attenuation in accordance with the following criteria:**

NEC	Predicted Aircraft Minimum Noise Levels Attenuation required (dB(A) (frequency range 100-3150 Hz)	
A	**<57**	**No attenuation measures required**
B	**57-63**	**20dB**
C	**63-72**	**30dB**

**** LAeq 57dB 07.00-23.00**

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[i][i] http://planningguidance.planningportal.gov.uk/blog/guidance/noise/when-is-noise-relevant-to-planning/

Light Pollution

16.40 Light Pollution is identified as a statutory nuisance under the Clean Neighbourhoods and Environment Act 2005. Poorly designed or installed lighting can be obtrusive by introducing a suburban character into rural areas, and also wastes electricity. Different forms of Light Pollution are identified as:

- Light Spillage – artificial illumination that results in the spillage of light that is likely to cause irritation, annoyance or distress to others
- Light Trespass – the spilling of light beyond the boundary of the property on which the light source is located
- Light Glare – the uncomfortable brightness of a light source when viewed against a dark background
- Sky Glow – the brightening of the night sky above our towns and cities

16.41 Due to Thanet's open landscapes and vast skies, poor outdoor lighting could have a substantial adverse effect on the character of the area well beyond the site on which the lighting is located.

16.42 Light Pollution should be included as a policy as inappropriate lighting has been shown to have major impacts on wildlife. The impacts of Light Pollution on bat species and potential mitigation measures are particularly well documented.

16.43 The Council refers to the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light[i]. The guidance identifies environmental zones and corresponding lighting environments as shown in table 10:

Table 10 - Environmental Zones

Zone	Surrounding	Lighting Environment	ILP examples	Corresponding areas in Thanet
E0	Protected	Dark	UNESCO starlight reserves, IDA dark sky parks	None
E1	Natural	Intrinsically dark	National Parks, Areas of Outstanding Natural Beauty etc	Landscape Character Areas at Pegwell Bay and former Wantsum Channel, the European Marine Sites
E2	Rural	Low district brightness	Village or relatively dark outer suburban locations	Rural areas outside of the built confines (excluding Manston airport)
E3	Suburban	Medium district	Small town centres or	Urban areas and villages

		brightness	suburban locations	
E4	Urban	High district brightness	Town/city centres with high levels of night time activity	Amusement area at Margate Seafront

The Institute of Lighting Professionals recommends the following standards within these areas:

Obtrusive Light Limitations for Exterior Lighting Installations - General Observers

Table 11 – Obtrusive Light Limitations for Exterior Lighting installations – General Observations

Environmental Zone	**Sky Glow ULR [Max %](1)**	**Light Intrusion (into Windows) Ev [lux] (2)**		**Luminaire Intensity I [candelas] (3)**		**Building Luminance Pre-curfew (4)**
		Pre-curfew	**Post-curfew**	**Pre-curfew**	**Post-curfew**	**Average, L**
E0	0	0	0	0	0	0
E1	0	2	0 (1*)	2,500	0	0
E2	2.5	5	1	7,500	500	5
E3	5.0	10	2	10,000	1,000	10
E4	15	25	5	25,000	2,500	25

ULR = Upward Light Ratio of the Installation is the maximum permitted percentage of luminaire flux that goes directly into the sky.

Ev = Vertical Illuminance in Lux - measured flat on the glazing at the centre of the window.

I = Light Intensity in Candelas (cd)

L = Luminance in Candelas per Square Metre (cd/m2)

Curfew = the time after which stricter requirements (for the control of obtrusive light) will apply; often a condition of use of lighting applied by the local planning authority. If not otherwise stated - 23.00hrs is suggested.

*** = Permitted only from** Public road lighting installations

1) Upward Light Ratio – Some lighting schemes will require the deliberate and careful use of upward light, e.g. ground recessed luminaires, ground mounted floodlights, festive lighting, to which these limits cannot apply. However, care should always be taken to minimise any upward waste light by the proper application of suitably directional luminaires and light controlling attachments.

2) Light Intrusion (into Windows) – These values are suggested maxima and need to take account of existing light intrusion at the point of measurement. In the case of road lighting on public highways where building facades are adjacent to the lit highway, these levels may not be obtainable. In such cases where a specific complaint has been received, the Highway Authority should endeavour to reduce the light intrusion into the window down to the post curfew value by fitting a shield, replacing the luminaire, or by varying the lighting level.

3) Luminaire Intensity – This applies to each luminaire in the potentially obtrusive direction, outside of the area being lit. The figures given are for general guidance only and for some sports lighting applications with limited mounting heights, may be difficult to achieve.

4) Building Luminance – This should be limited to avoid over lighting, and related to the general district brightness. In this reference building luminance is applicable to buildings directly illuminated as a night-time feature as against the illumination of a building caused by spill light from adjacent luminaires or luminaires fixed to the building but used to light an adjacent area.

Policy SE10 - Light Pollution

Development proposals that include the provision of new outdoor lighting should be designed to minimise light glare, light trespass, spillage and sky glow in order to preserve residential amenity, the character of the surroundings and prevent disturbance to wildlife.

A Landscape and Visual Impact Assessment will be required for proposed developments that fall in to the E1 category.

Proposals that exceed the Institute of Lighting Professionals standards will not be permitted.

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[i] https://www.theilp.org.uk/documents/obtrusive-light/

17 - Communities

17.1 Social, cultural and community facilities are an integral part of developing inclusive and cohesive communities.

17.2 One of the core principles of the National Planning Policy Framework (NPPF) is to take account of and support local strategies to support health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities to meet local needs.

17.3 The NPPF also states that planning policies and decisions should plan positively for the provision and use of shared space, community facilities and other local services, and to guard against the unnecessary loss of such facilities. It states that planning policy should promote the retention and development of local services and community facilities in villages

17.4 The NPPF affords protection to existing open space, sports and recreational buildings and land, including playing fields should not be built on unless the land is surplus to requirements, or the development will result in better provision of open space or sports and recreational provision.

17.5 Community facilities are defined in this plan as local and village shops, meeting places, sports venues, nurseries, cultural buildings, public houses, places of worship, public rights of way, other local services which enhance the sustainability of communities and residential environments and vacant land last lawfully used as a community facility or previously occupied by a building whose last lawful use was for a community facilities.

17.6 The provision of new facilities can be important in promoting sustainable development by reducing the need to travel and providing a service for those who do not have access to transport.

Policy CM01 – Provision of New Community Facilities

Proposals for new, or extensions or improvements to existing community facilities will be permitted provided they are:

1) Of a scale to meet the needs of the local community and in keeping with the character of the area;

2) Provided with adequate parking and operational space; and

3) Accessible by walking or cycling to the local community.

Protection of Existing Community Facilities

17.7 Community facilities including local shops, services and public houses play a vital economic and social role in both urban and rural areas and their retention can assist in meeting the needs of the local community and reducing the need to travel. The Council recognises that there is a risk that such facilities may be lost to more financially profitable uses, and that such facilities are often difficult to replace. It is therefore considered that the loss of existing facilities should be resisted where they provide for a current or future local need.

17.8 Such facilities that are important to the community should be retained unless genuine but unsuccessful attempts have been made to retain the premises in a community use. To assess applications for the change of use or redevelopment of existing community facilities, the Council will require a thorough analysis of the existing operation and attempts made to secure the future viability of the community use. In all cases, the applicant must demonstrate that:

- the need for the existing and other alternative community facilities has been researched and that there is insufficient viable demand,
- opportunities to support the facility by the introduction of other services have been explored, where the dual use of premises for a number of community functions may help support the viability of facilities,
- efforts have been undertaken to secure the viability of the facility through applications for grant aid, business advice and discussions with community groups, parish councils, Thanet District Council, Kent County Council and other national or local bodies with a direct interest in service provision, and
- the site has been actively marketed for its existing use and alternative community uses, at a realistic price and for a reasonable period of time proportionate to the type and scale of the facility.

The following policy seeks to ensure that existing community facilities are protected where there is a need for them.

Policy CM02 – Protection of Existing Community Facilities

Proposals which would result in the loss of a community facility as defined in this plan will not be permitted unless:

Proposals which would result in the loss of a community facility as defined in this plan will not be permitted unless:

1) it can be demonstrated that there is insufficient viable need for the community use or there is alternative local provision which is accessible to the local community, and

2) it is demonstrated that every reasonable attempt has been made to secure an alternative community use before non-community uses will be permitted.

New Primary School, Margate

17.9 Kent County Council, as education authority, has identified a need for a new primary school in Margate. Margate's urban area is extensively developed and opportunities to provide a suitable site are extremely limited.

17.10 Evidence identifies that a surplus of employment land was allocated in the 2006 Local Plan and this sets allocates employment sites considered necessary to meet the need for employment development. This does not include the All Saints site, making it available for the development of a new primary school.

17.11 Land is allocated at the All Saints Industrial Estate to accommodate a new primary school. The site is conveniently located in close proximity to Margate train station and is close to main bus routes. The Council will continue to work with Kent County Council in developing this proposal.

Map 21 – New primary School, Margate

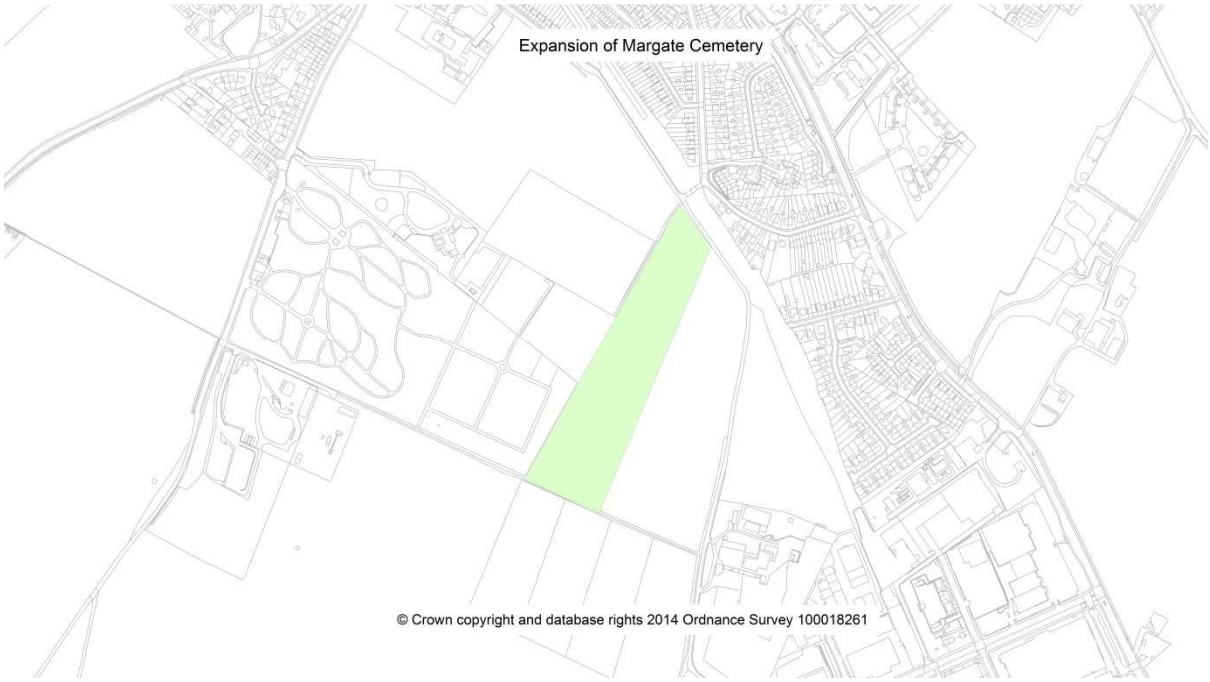
Policy CM03 – New Primary School, Margate

Land is allocated at the All Saints Avenue, Margate, as shown on Map 21, for the development of a new Primary School.

Margate Cemetery Expansion

17.12 Margate Cemetery is nearing capacity and a need has been identified for its expansion. A site of approximately 4.2 hectares has been identified to the east of the existing cemetery to accommodate the additional land requirement.

Map 22 – Expansion of Margate Cemetery



Policy CM04 - Expansion of Margate Cemetery

Land is allocated and safeguarded for the expansion of Margate Cemetery and ancillary uses.

Extension of Minster Cemetery

17.13 Minster Cemetery is nearing capacity and a need has been identified for its expansion. The precise location of the extension to the existing Cemetery has yet to be established. On this basis no specific site is identified however the following policy seeks to address this issue.

Policy CM05 - Expansion of Minster Cemetery

Land should be provided for the expansion of Minster Cemetery and ancillary uses in reconciliation with the allocated housing site adjoining the existing Cemetery.

18 - Transport

Transport Assessments and Travel Plans

18.1 Development proposals may need to be accompanied by and judged against transport assessments or statements to assess the impact of development on the highway network and what improvements to transport infrastructure may be needed to accommodate them. Proposals likely to have significant transport implications will also require submission of a travel plan indicating measures to improve accessibility and promote sustainable and low carbon emission travel, such as electric vehicle charging infrastructure. Where feasible, development schemes should incorporate links to walking and cycling networks and/or contribute proportionately to their extension, rationalisation and improvement. Proposals should have regard to the route networks promoted in the walking and cycling strategies and integrate with them and with public transport routes and services. Many people will still choose to travel by car, and development may also need to provide or contribute to improvements to the road network to reduce congestion and improve pedestrian movement safety.

Policy TP01 - Transport assessments and Travel Plans

Development proposals which the Council considers would have significant transport implications shall be supported by a Transport Assessment and where applicable a Travel Plan. These should show how multi-modal access travel options will be achieved, and how transport infrastructure needs arising from the expected demand will be provided.

Walking

18.2 Walking and cycling generally improve overall health and fitness levels, can reduce the number of cars on the network, reducing congestion, improving air quality and saving money for the individual. Creating active street frontages, with more people walking and cycling, also reduces crime levels and can act as a catalyst for more people to become active. The quality, safety and convenience of access by foot, bicycle and public transport are all key factors in encouraging people to select alternative modes to the private car.

18.3 Thanet has a road network which largely accommodates footways on both sides, not only in the main towns and seaside settlements but also along the distributor routes connecting them. In the rural areas the Public Rights of Way network offers walkers (and sometimes horse riders and cyclists) a good connection across open countryside to the coast, rural settlements and end destinations, with some circular walks offering superb views of both coast and countryside combined. The Thanet Coastal Path follows the longest stretch of chalk coastline in the country, the route having been set up in the 1990s. The Viking Coastal Trail is good for beginner walkers, offering good views out to sea. There are other signposted walks in Thanet, including the Turner and Dickens Walk linking Margate and Broadstairs.

18.4 In 2005 “Feet First,” a local walking strategy for Thanet was published. This identifies barriers to walking in the District and aims to promote and enable walking, for example by specifying a network of routes for improvements.

Policy TP02 - Walking

New development will be expected to be designed so as to facilitate safe and convenient movement by pedestrians including people with limited mobility, elderly people and people with young children.

The Council will seek to approve proposals to provide and enhance safe and convenient walking routes including specifically connection to and between public transport stops, railway stations, town centres, residential areas, schools and other public buildings.

Cycling

18.5 Cycling can provide an alternative to the private car for short trips and form part of longer journeys by public transport. Popularity of cycling as a healthy, enjoyable, efficient, pollution-free and cheap means of transport is dependent on safe, continuous, direct and attractive cycleways, together with facilities for secure cycle storage at interchange points and destinations.

18.6 The Viking Coastal Trail roughly encircles the former island Isle of Thanet providing connections between the towns, leisure and heritage attractions. It forms part of the National Cycle Network and connects to the Oyster Bay Trail to Whitstable. Other routes have designated facilities to make cycling more attractive, such as the shared use footway/cycleways adjacent to New Haine Road. Provision of toucan crossings and facilities (such as cycle parking at stations shopping centres and other key locations) also help to improve the attractiveness popularity of cycling in the district.

18.7 The Council has published a Thanet Cycling Plan, (developed in association with local cycling groups), and, in conjunction with the County Council, will seek provision of a network of cycle routes using existing routes and where appropriate extensions to the primary route network. This includes part of the “Sustrans” national cycle network, which runs through Thanet, together with priority links between residential areas, places of work, schools, stations and town centres. The Council will seek every opportunity to introduce cycle routes in accordance with Thanet Cycling Plan

18.8 Thanet Cycling Plan aims to establish a comprehensive safe network of cycle routes catering for all journey purposes, and features existing and proposed routes. The Cycling Plan may be updated periodically to reflect the evolving network, and its proposed cycle routes are not therefore featured on the Policies Map.

18.9 New development generating travel demand will be expected to promote cycling by demonstrating that the access needs of cyclists have been taken into account, and through provision of cycle parking and changing facilities. (Secure parking facilities and changing/shower facilities will encourage use of cycling). Cycle parking provision will be judged against the standards set out in the cycle parking standards appendix.

Policy TP03 - Cycling

The Council will seek the provision at the earliest opportunity of a network of cycle routes. Development that would prejudice the safety of existing or implementation of proposed cycle routes will not be permitted.

New development will be expected to consider the need for the safety of cyclists and incorporate facilities for cyclists into the design of new and improved roads, junction improvements and traffic management proposals.

Substantial development generating travel demand will be expected to provide convenient cycle parking and changing facilities.

New residential development will be expected to provide secure facilities for the parking and storage of cycles.

Bus and rail

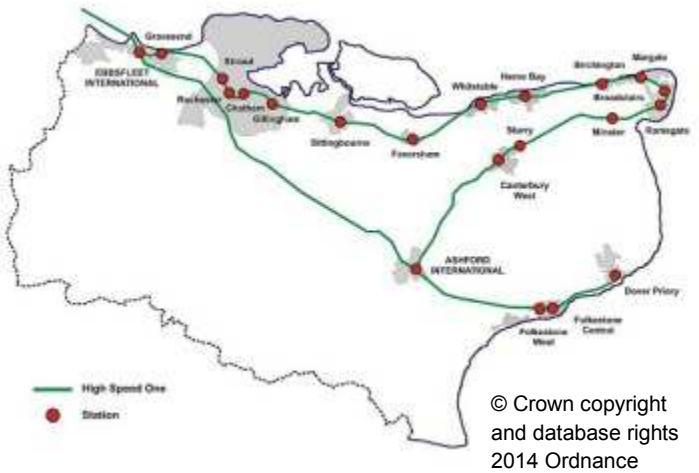
18.10 Public transport has a major part to play in the realisation of a sustainable lifestyle by reducing car usage and pollution. Thanet has the lowest level of car ownership in Kent, which means that public transport is vital for personal mobility. A good public transport network is therefore important so that both these issues are addressed.

18.11 The Council has no direct control over the provision of bus and rail services. However, in its planning and other functions the Council will support the continuation and improvement of an effective public transport service for both bus and rail. Developer contributions will be used to facilitate implementation of such improvements. In addition the Council will expect new developments to take into account the needs of public transport. This could include various measures such as designing in waiting areas or the provision of sign posting and bus shelters.

18.12 Thanet is served by seven railway stations and has direct services to London, Canterbury, Ashford and Dover. The Integrated Kent franchise is currently held by Southeastern but a new South Eastern franchise is due to begin in April 2014.

18.13 In December 2009 High Speed One services commenced from Ramsgate to London St. Pancras reducing rail journey times to 1 hour and 16 minutes. For purposes of comparison, the mainline journey time to London Victoria is around 2 hours and to London Charing Cross up to 2 hours and 30 minutes.

Map 23 – The High Speed One Network



The High Speed One network

The three principal stations are Ramsgate, Broadstairs and Margate with routes in three directions:

- London via Faversham and Chatham
- London via Canterbury and Ashford
- Dover and Folkestone via Sandwich

Buses

18.14 Buses have an important role to play in providing a flexible alternative to the private car. This Local Plan supports development that will facilitate greater use of and improvement to bus services. New development will be expected to provide or contribute towards appropriate improvements.

18.15 In 2000 a Quality Bus Partnership (QBP) was formed between Stagecoach, Thanet District and Kent County Council with the aim of increasing local bus patronage. The formation of the Partnership has seen investment in roadside infrastructure and new vehicles as well as other initiatives to improve services, such as the high frequency LOOP and STAR services. However, there are still areas of congestion and inefficiencies on the highway network that prevent the bus services running as well as they might. The QBP will continue to work to remove these restrictions.

18.16 The introduction of the “Thanet LOOP” in October 2004 was an immediate success and the existing Margate and Ramsgate local services the “Thanet STARS”

was upgraded as a result. Bus patronage has steadily increased year on year and continues to do so with more Thanet residents recognising the convenience of bus use for accessibility within Thanet. PLUSBUS tickets are available at all Thanet stations enabling passengers to combine their train and bus tickets for unlimited travel around the district.

18.17 Stagecoach also operates direct routes to Canterbury and Dover. In these towns passengers can join connecting services to the remainder of East Kent, including Folkestone, Faversham and Ashford.

Policy TP04 - Public Transport

Development proposals will be expected to take account of the need to facilitate use of public transport. The Council will seek to approve proposals consisting of or incorporating:

1) improvement of passenger and waiting facilities

2) measures to improve personal security

3) improved accessibility for people with mobility limitations

4) bus/rail interchange facilities

5) secure cycle storage

Coach parking

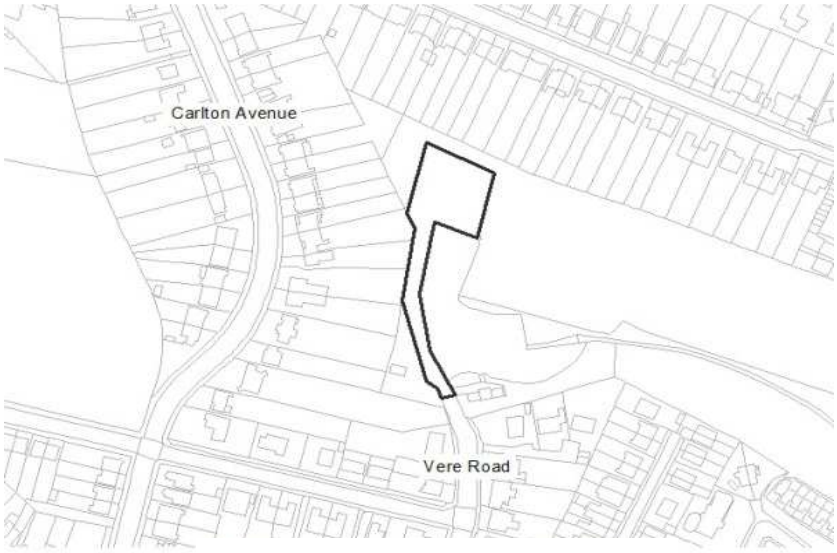
18.18 The tourist trade in Thanet depends to a large extent on coach business. Coach travel is to be encouraged as an acceptable alternative to car based visitor travel. Dedicated sites to park coaches are therefore required. Sites at Palm Bay, Dreamland and Vere Road in Broadstairs are currently used for such purposes. Replacement provision for coach parking, displaced by development at the Rendezvous, Margate is needed; a potential alternative site being within Barnes Avenue car park, Westbrook.

18.19 Ramsgate has no designated coach park, and Broadstairs has limited provision which may prove to be insufficient at peak times. The Council will seek appropriate solutions to accommodate demand on a temporary basis until such time as a specific site may be justified and identified.

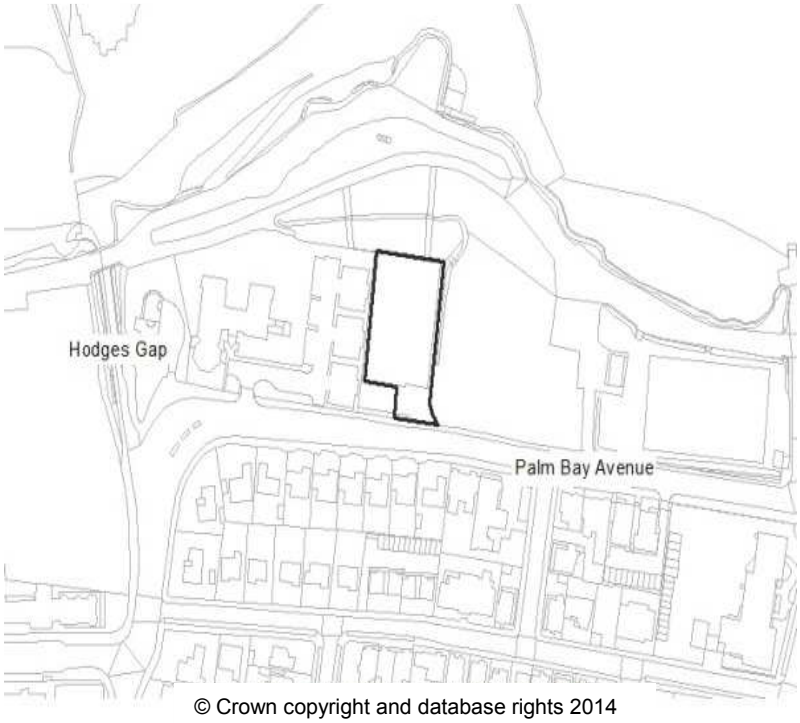
Policy TP05 – Coach Parking

Land at Vere Road, Broadstairs and Palm Bay, Cliftonville, as identified on the maps below, will be retained for use as coach parking to serve the tourist trade.

Map 24 – Vere Road, Broadstairs

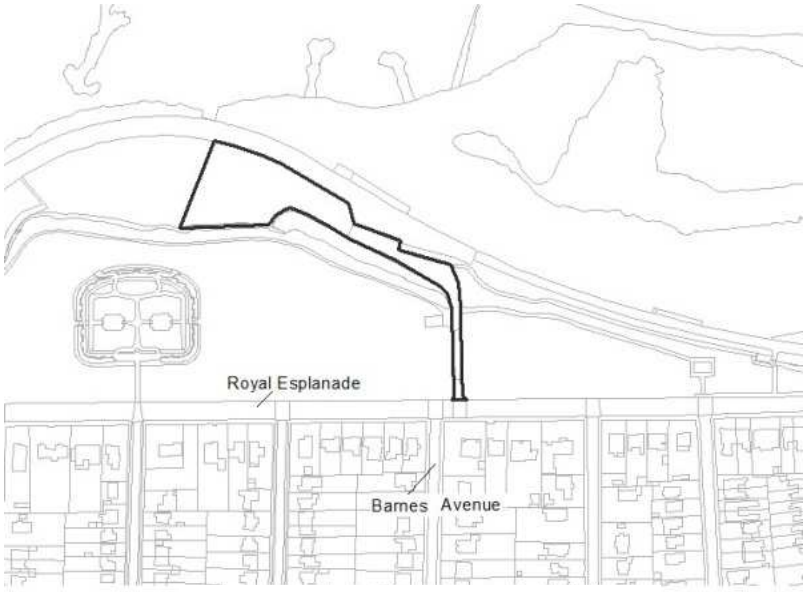


Map 25 – Palm Bay, Cliftonville



Within Barnes Avenue Car Park Westbrook, as identified on the map below, land will be identified and safeguarded and retained for use as coach parking to serve the tourist trade.

Map 26 – Barnes Avenue Car Park, Westbrook



The Council will consider the need to identify a site to accommodate demand for coach parking at Ramsgate.

Car parking

18.20 The availability of car parking is a major influence on choice of means of travel. This Plan recognises the need to maintain some car parking provision, for example to provide choice of travel to urban centres, while restricting provision in new development in order to optimise site development potential, and promote sustainable transport choice.

18.21 The Council will expect new development to make efficient use of sites and optimise site development potential. Accordingly it will encourage well designed schemes that correspondingly minimise the proportion of the site used to accommodate the appropriate level of car parking.

18.22 Dreamland Heritage Amusement Park and other prospective developments are expected to draw increasing numbers of visitors. It is anticipated that during peak periods demand for off-street car parking in Margate and potentially other coastal towns may exceed current capacity. The Council will proactively seek and encourage suitable opportunities and solutions to manage and accommodate demand for car parking.

Policy TP06 – Car Parking

Proposals for development will be expected to make satisfactory provision for the parking of vehicles.

Suitable levels of provision will be considered in relation to individual proposals taking account of the type of development, location, accessibility, availability of opportunities for public transport, likely accumulation of car parking, design considerations and having regard to the guidance referred to below:

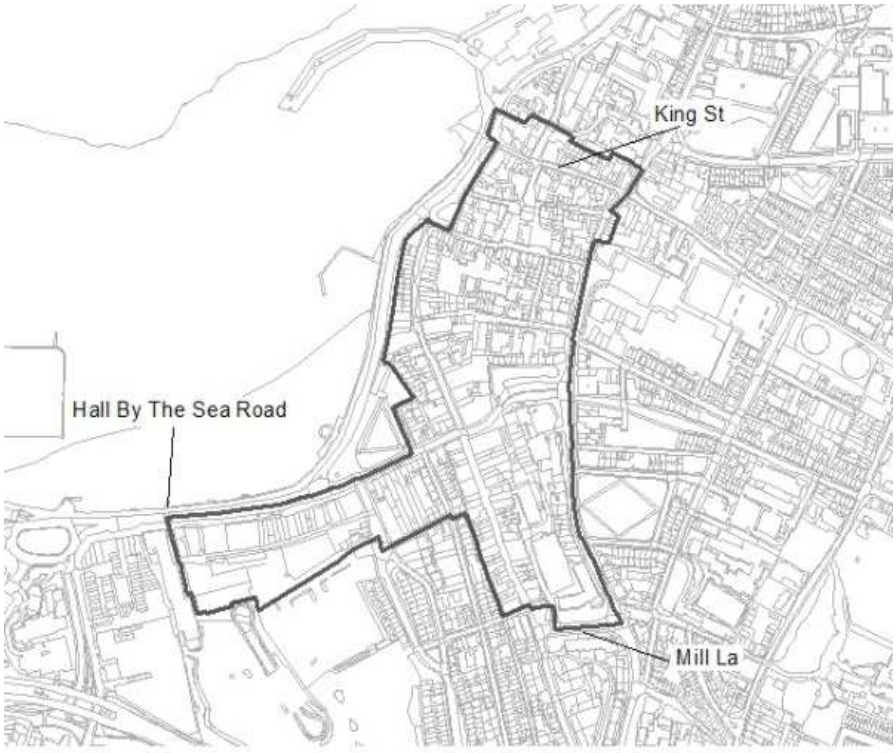
1) In considering the level of parking provision in respect of proposals for residential development (use class C3), the Council will refer to the guidance provided in Kent Design Review: Interim Guidance Note 3 - Residential Parking.

2) In considering the level of parking provision in respect of proposals for other development, the Council will refer to the indicative guidance in the Appendix

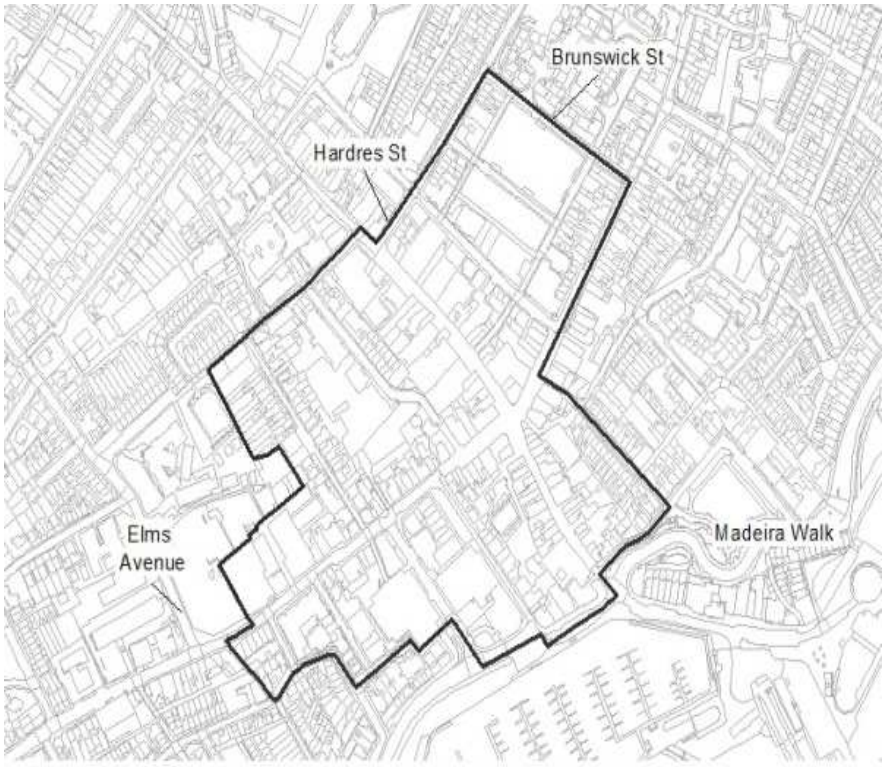
Where the level of provision implied in the above guidance would be detrimental to the character of a conservation area or adversely affect the setting of a listed building or ancient monument then a reduced level of provision may be accepted.

Within the town centres of Margate, Ramsgate and Broadstairs (as defined on the maps below) new development proposals will not be required or expected to provide onsite car parking spaces. Where feasible such proposals should consider measures to encourage occupiers to make greater use of public transport.

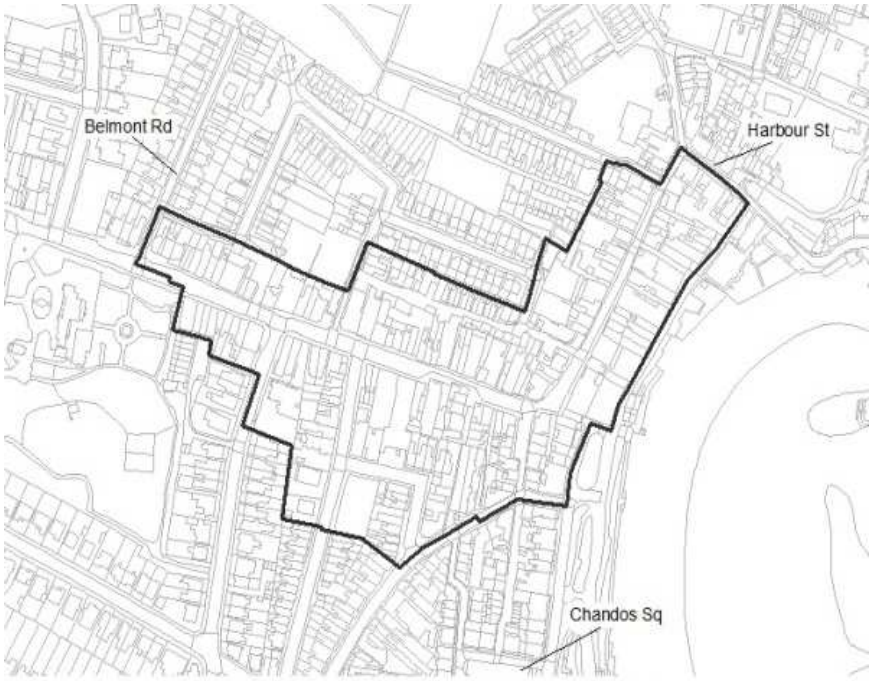
Map 27 – Car Parking in Margate Town Centre



Map 28 – Car parking in Ramsgate Town Centre



Map 29 – Car Parking in Broadstairs Town Centre



Policy TP09 sets out additional policy provisions in respect of car parking at Westwood.

18.23 The attractiveness of town centres for business, shoppers, residents and tourists depends amongst other things on an adequate level of car parking and effective enforcement of traffic regulations to prevent illegal parking on the highway and on public footpaths. In town centres the objective is to reduce the dominance of the private car in favour of walking, cycling and public transport, and to maximise site development potential. Accordingly the approach is to make better use of parking facilities that already exist, rather than providing more, and to apply charging and enforcement policies designed to encourage use of town centre public car parks for short term parking, and to prevent displacement of parking pressures beyond the immediate town centre area.

18.24 In district centres including Birchington, and Northdown Road, non-car transport and optimum use of existing public and on street provision for short stay will be encouraged through appropriate charges and enforcement.

18.25 Outside the areas referred to above, the Council will monitor the situation, and consider appropriate measures and mechanisms to address any problems identified.

Policy TP07 - Town Centre Public Car Parks

In the town centres of Margate, Ramsgate and Broadstairs the existing level of off-street public car parking will be retained. Development resulting in the loss of space at such car parks will be refused unless:

1) the proposal includes satisfactory replacement provision as part of the development or on an alternative site considered appropriate and compatible with the operational requirements of the Council's parking section, or

2) exceptional release would enable provision at an alternative location for which there is greater demand and which is compatible with the operational requirements of the Council's parking section, or

3) evidence demonstrates that the car park is under used and/or loss of spaces would be compatible with the operational requirements of the Council's parking section.

Freight and service delivery

18.26 Effective delivery of goods and services is essential to the health of Thanet's town centres, local business and economic regeneration. Road freight traffic needs to be directed to routes fit for the purpose. The Airport, Thanet's business parks, industrial estates and the Port of Ramsgate are directly accessible through the primary road network. However, town centre roads are generally unsuited to accommodate large vehicles, and off-street servicing facilities are limited. Proposals for new development in town centres will therefore be expected to include adequate off-street servicing. Where feasible, off-street loading areas, enabling goods to be delivered to shops in smaller loads, will be encouraged in new developments.

Policy TP08 - Freight and service delivery

New development proposals will be expected to demonstrate adequate off street servicing.

Car parking at Westwood

18.27 Due to its historically ad hoc pattern of growth, Westwood has a number of large, free car parks whose locations encourage shoppers to drive between them to visit its various retail stores. As a multi-purpose destination, Westwood is collectively over-provided with car parking. The Council will seek to encourage non-car travel to Westwood. Within the area shown on the map below, it will restrict parking provision, and encourage developers to work with the Council to reduce existing parking provision, develop better access, services and facilities for customers who wish to walk, cycle or arrive by public transport. The Council will seek to achieve this through cooperation with developers and in determining development applications to extend existing or build new commercial development.

18.28 A key objective of the Westwood Relief Scheme is to remove private vehicles from the area around the A256/A254 intersection in favour of a pedestrian friendly

public realm enabling safe and convenient movement on foot between various commercial destinations and a smoother flow of through traffic passing around the area. Delivery of the scheme will require some reconfiguration of the road network and land use in the vicinity including potentially locating and rationalising car parking so that access by vehicle is from outside the pedestrian friendly area.

Policy TP09 - Car parking provision at Westwood

At Westwood, new commercial development proposals will be expected to demonstrate specific measures to encourage at least 20% of customers to arrive at the site by means other than car. Such measures will include restricting total levels of car parking provision as follows and will be the subject of a legal agreement.

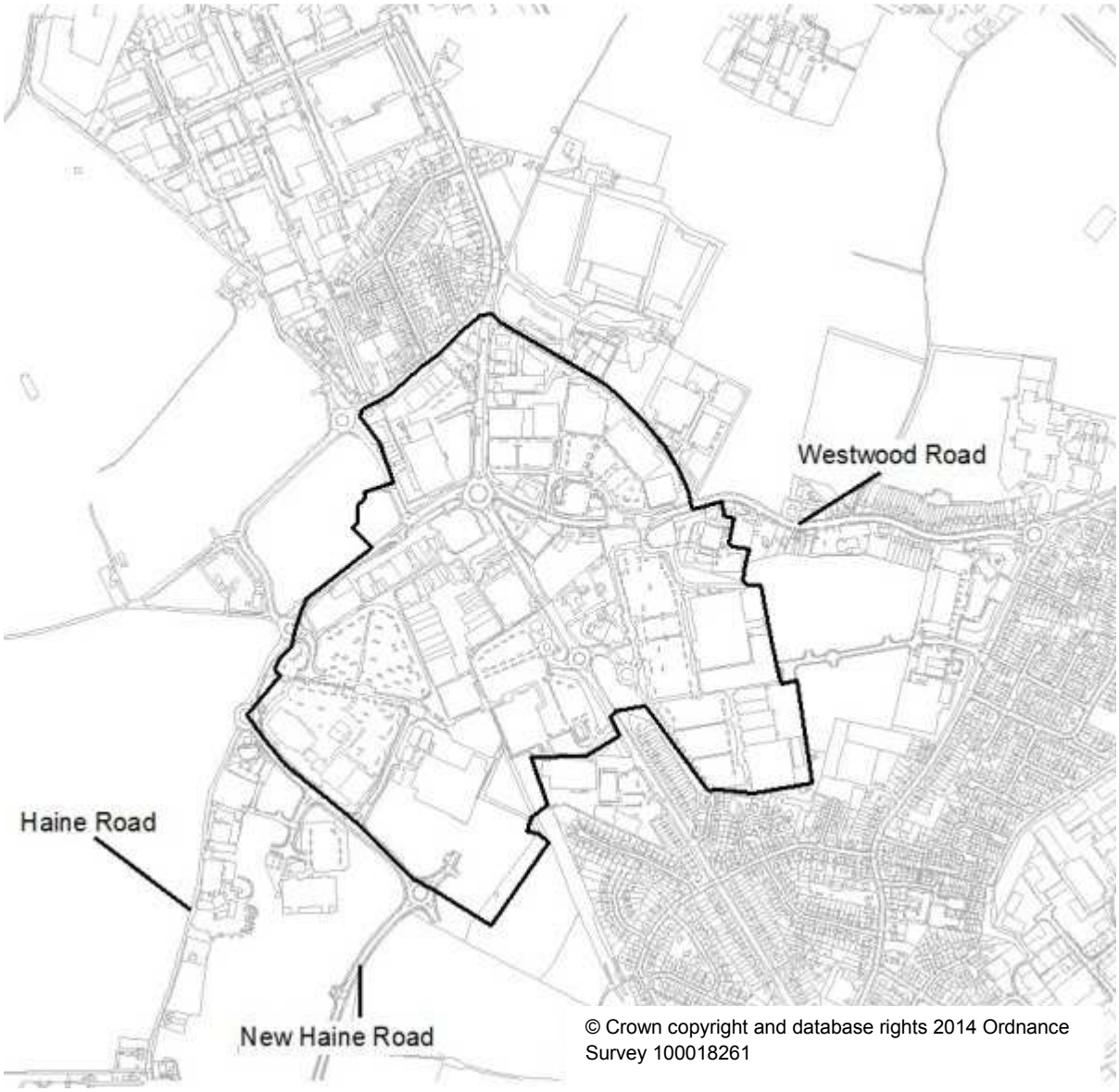
1) Car parking provision in new development exceeding 90% of the indicative maximum level set out in the guidance at Appendix will require specific justification.

2) Where new development is proposed at sites with existing car parking then shared use of car parking will be expected and total provision, assessed on the basis of resultant total floor space of existing and new development, shall not exceed the maximum levels of provision referred in Clause 1.

Where extensions to premises are proposed then no new car parking provision will be permitted. Replacement of any car parking lost as a result of such development will not be permitted unless special justification can be demonstrated.

Proposals for development that may impact upon demand for car parking will be considered in light of compatibility with the Westwood Relief Scheme.

Map 30 – Car Parking at Westwood



Traffic Management

18.29 The emerging Transport Strategy identifies a range of issues to be addressed, and which may require traffic management based solutions. Such issues include the need to address deficiencies in the highway network or junction capacity affecting efficient running of bus services, causing congestion or affecting air quality and the need to improve connectivity and address barriers to walking and cycling.

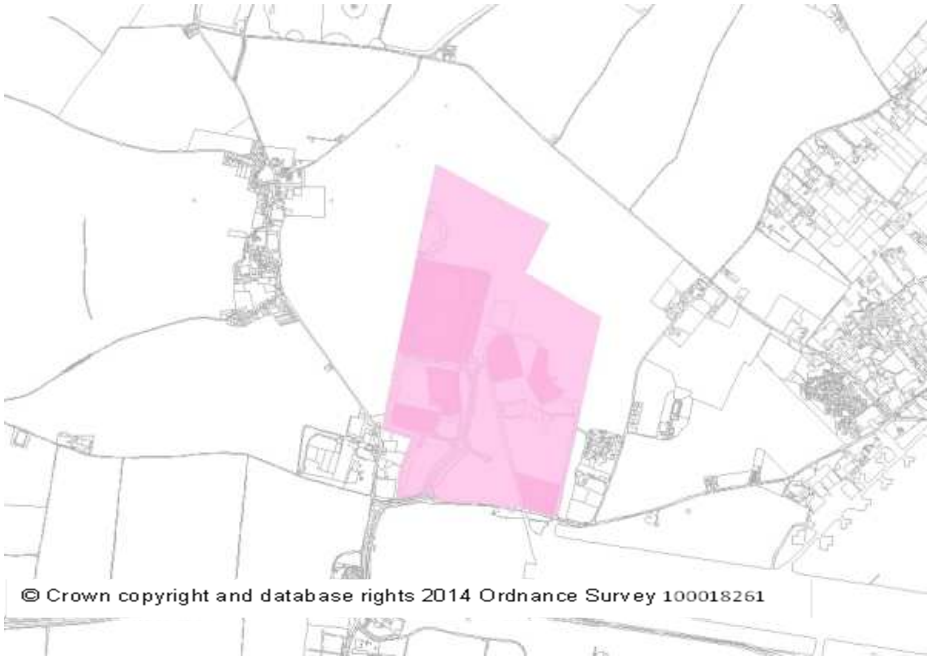
Policy TP10- Traffic Management

Development required to implement traffic management measures designed to realise the best use of the highway network in terms of safety, traffic capacity and environmental conditions will be approved.

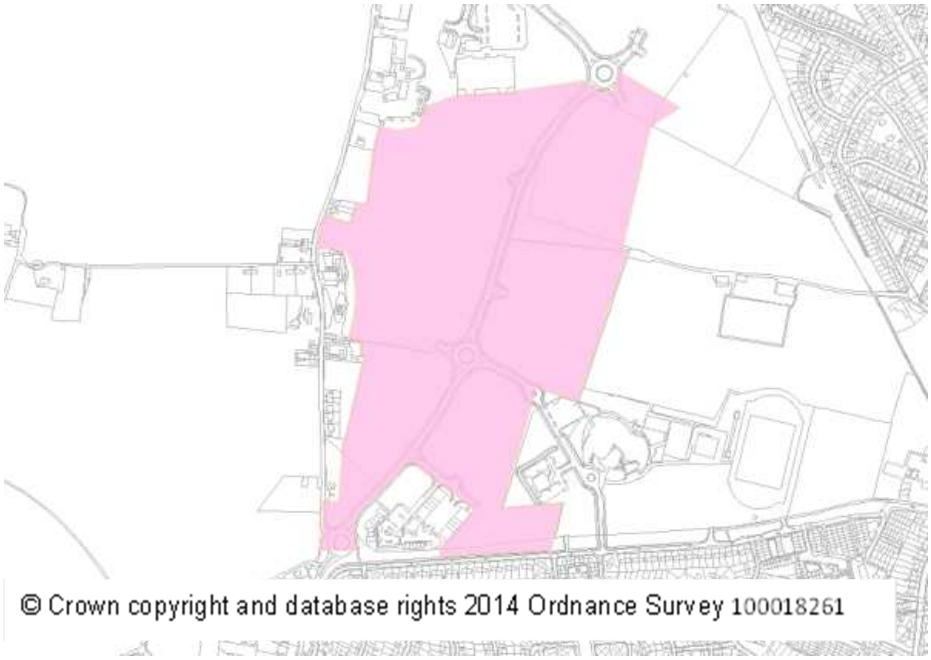
APPENDIX A: ECONOMY

Strategic Employment Sites

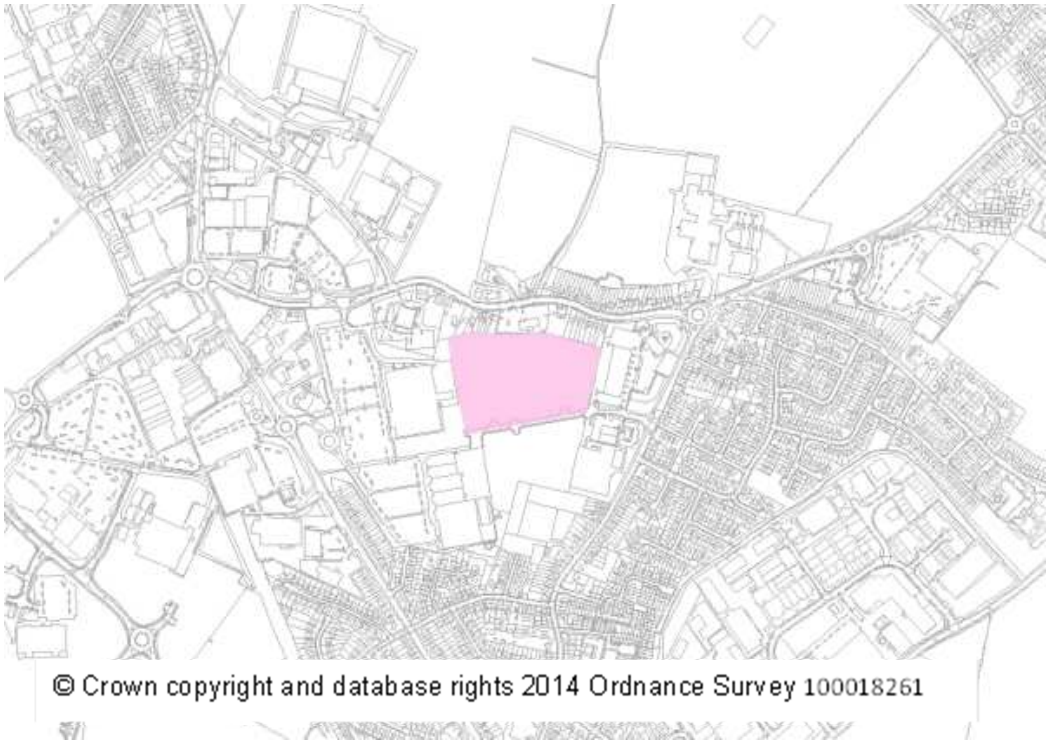
Manston Business Park



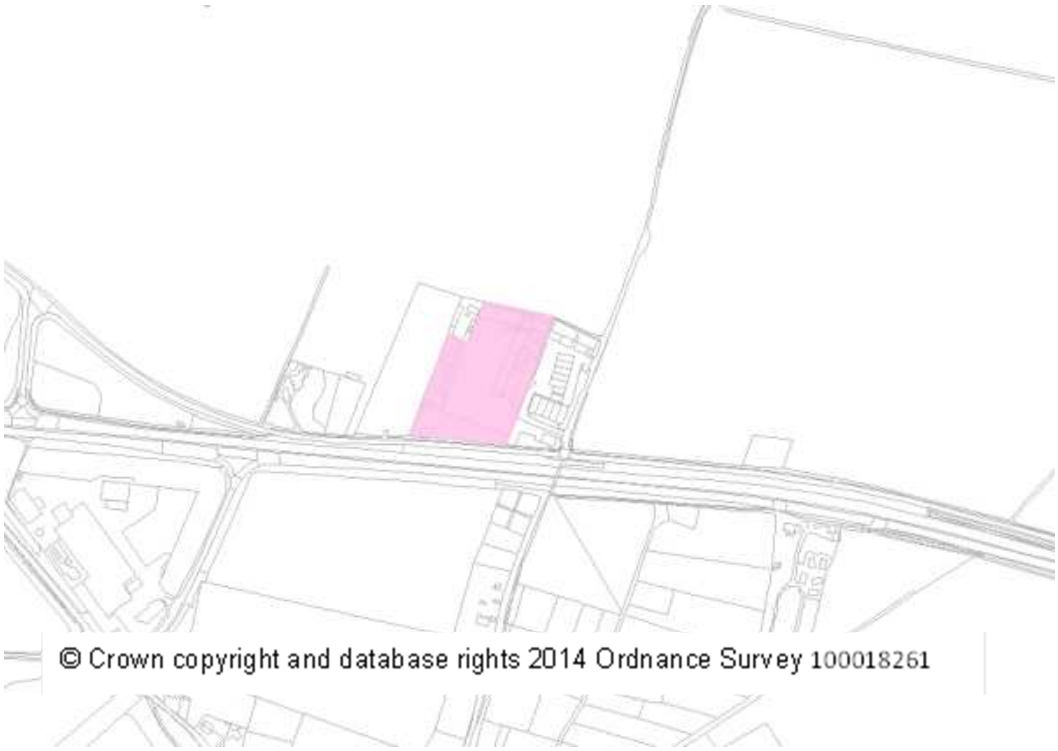
Eurokent



Thanet Reach Business Park

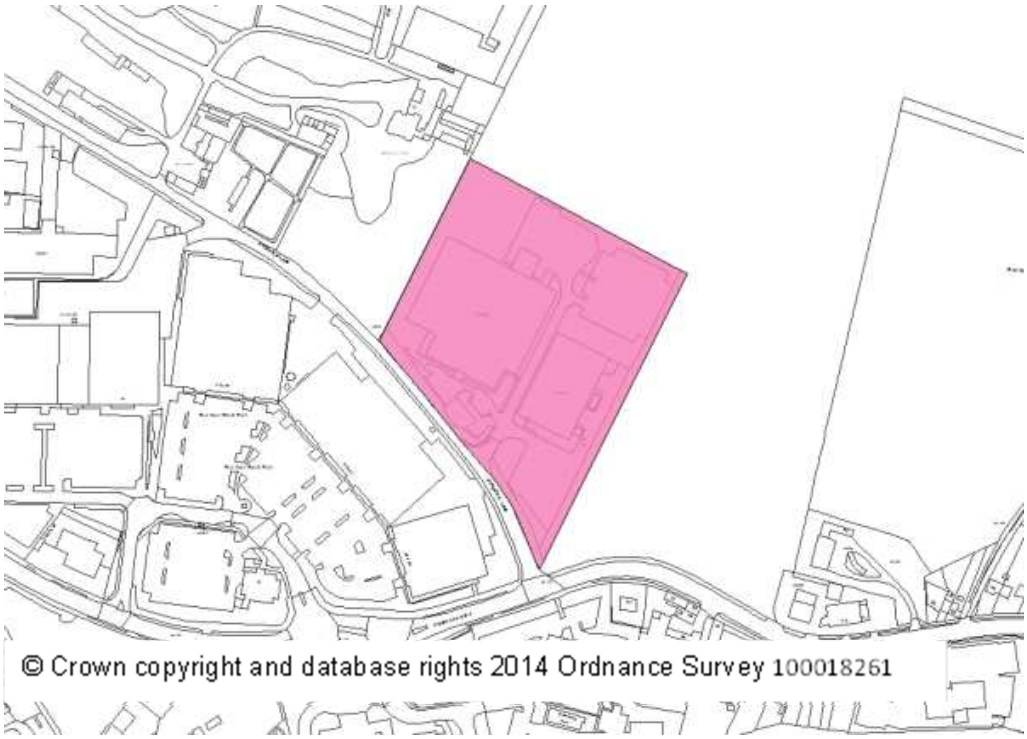


Hedgend industrial Estate

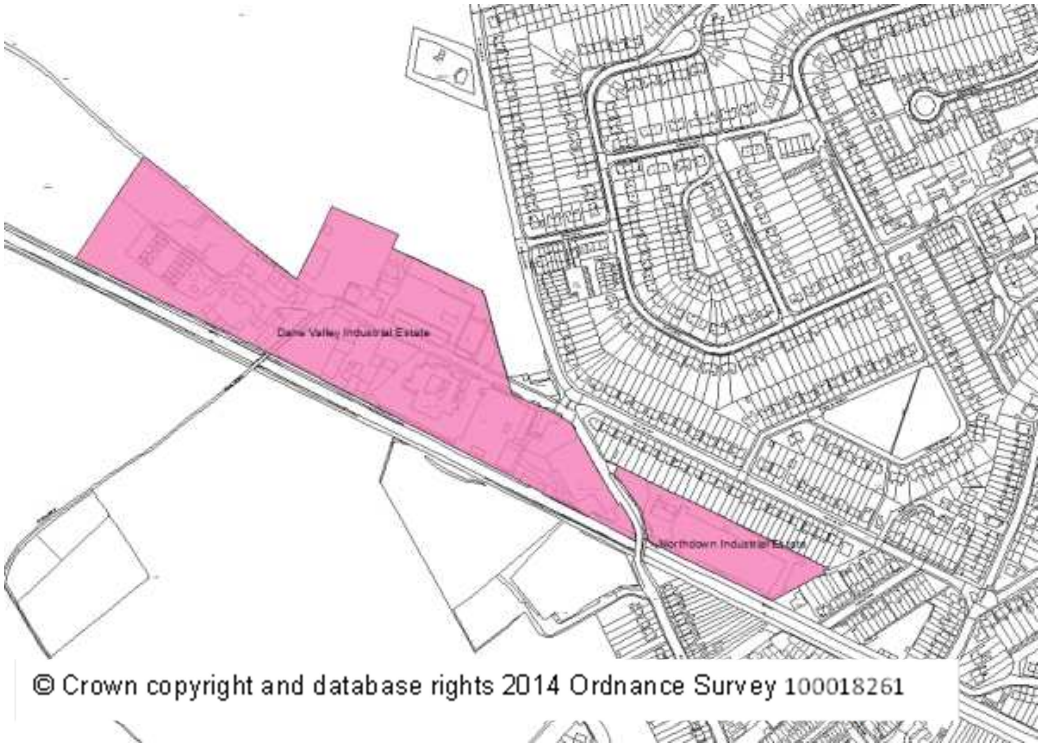


Retained Employment Sites

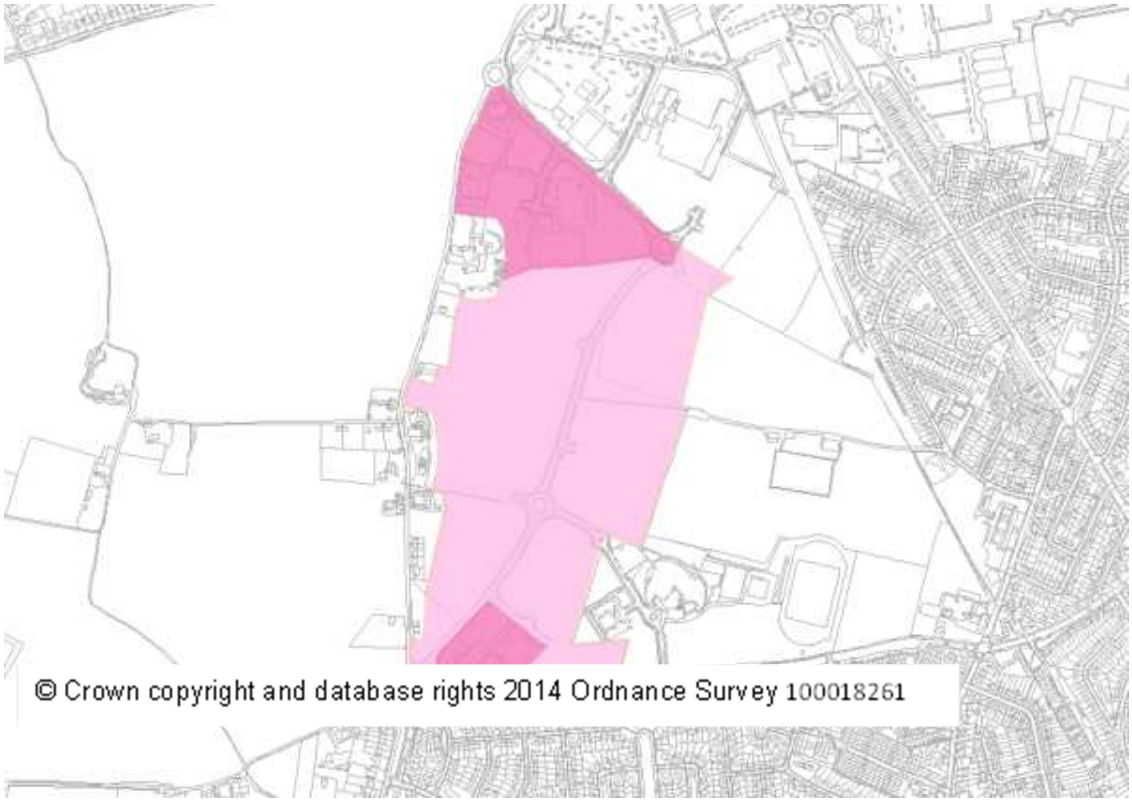
Cromptons Site, Poorhole Lane



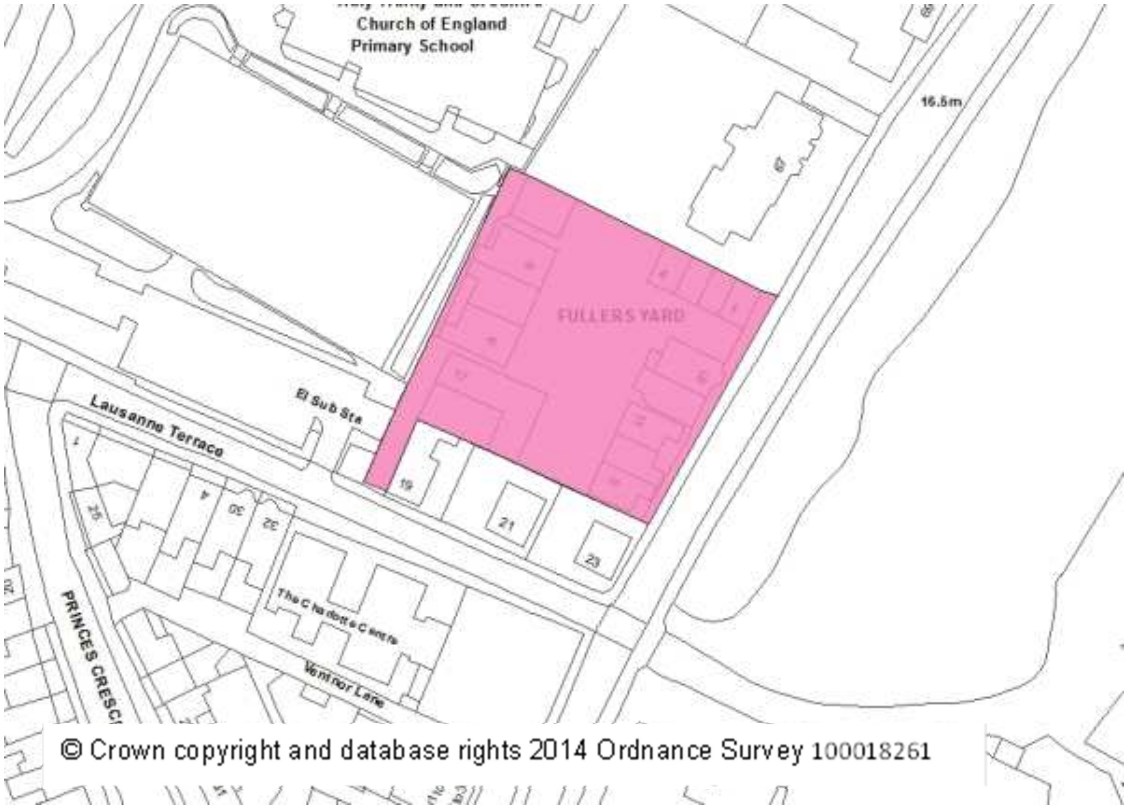
Dane Valley and Northdown Industrial Estates



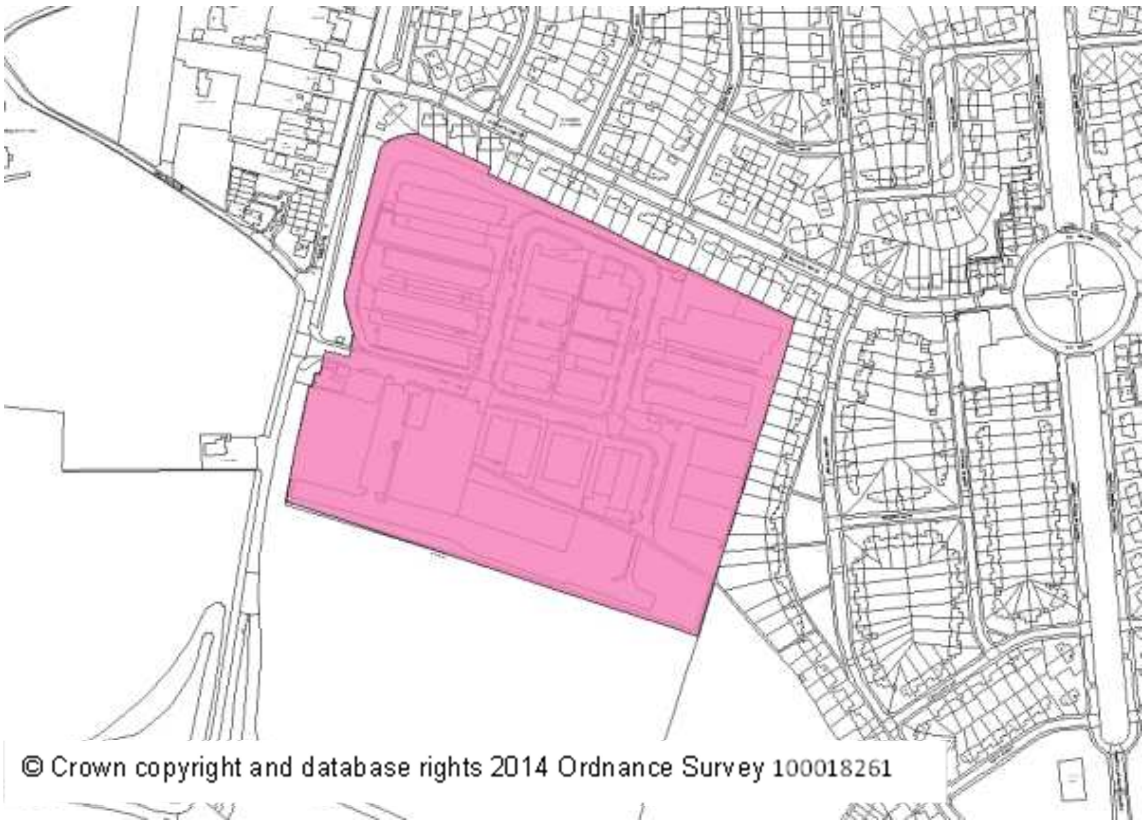
Eurokent



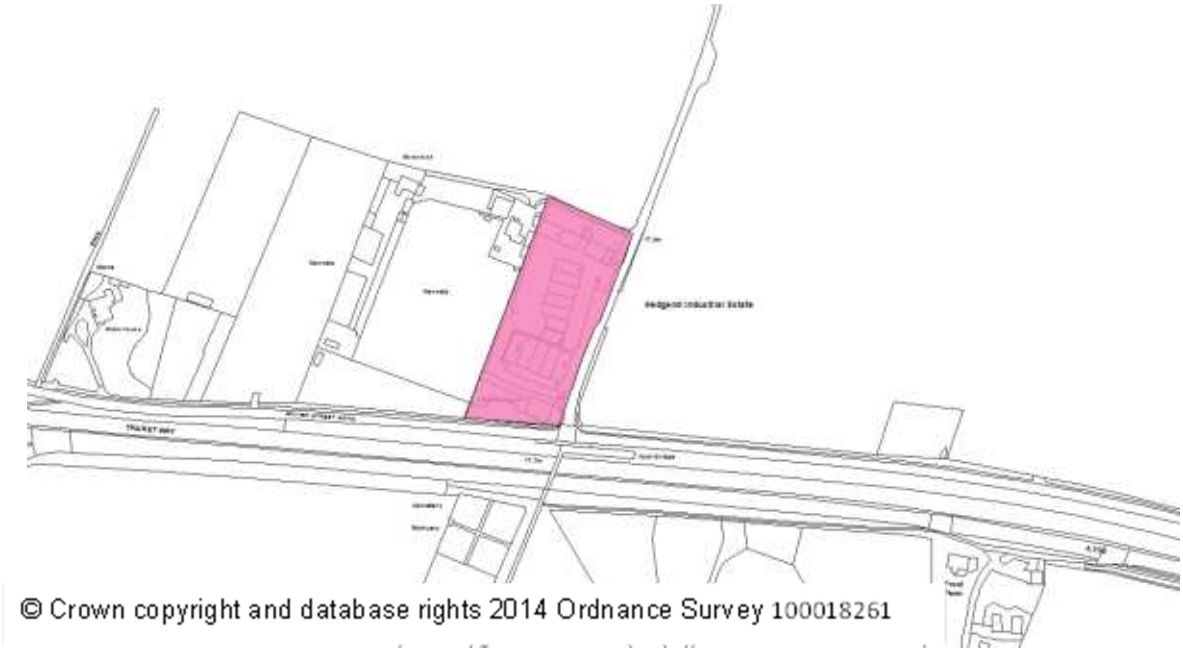
Fullers Yard, Victoria Road



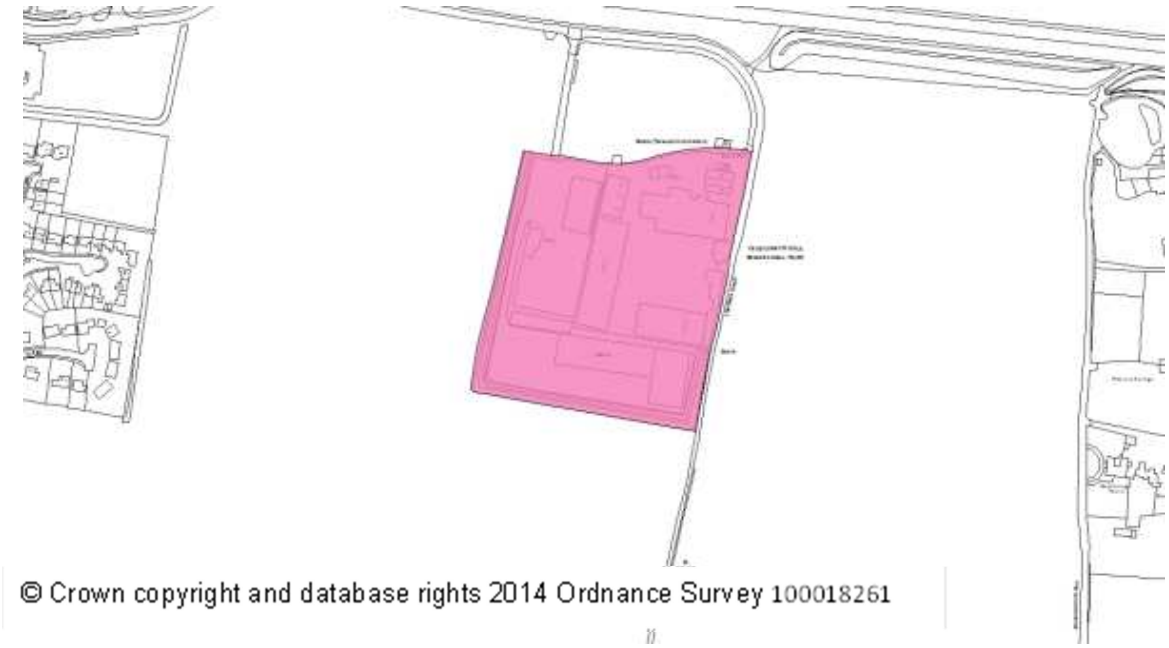
Haine Road Industrial Estate



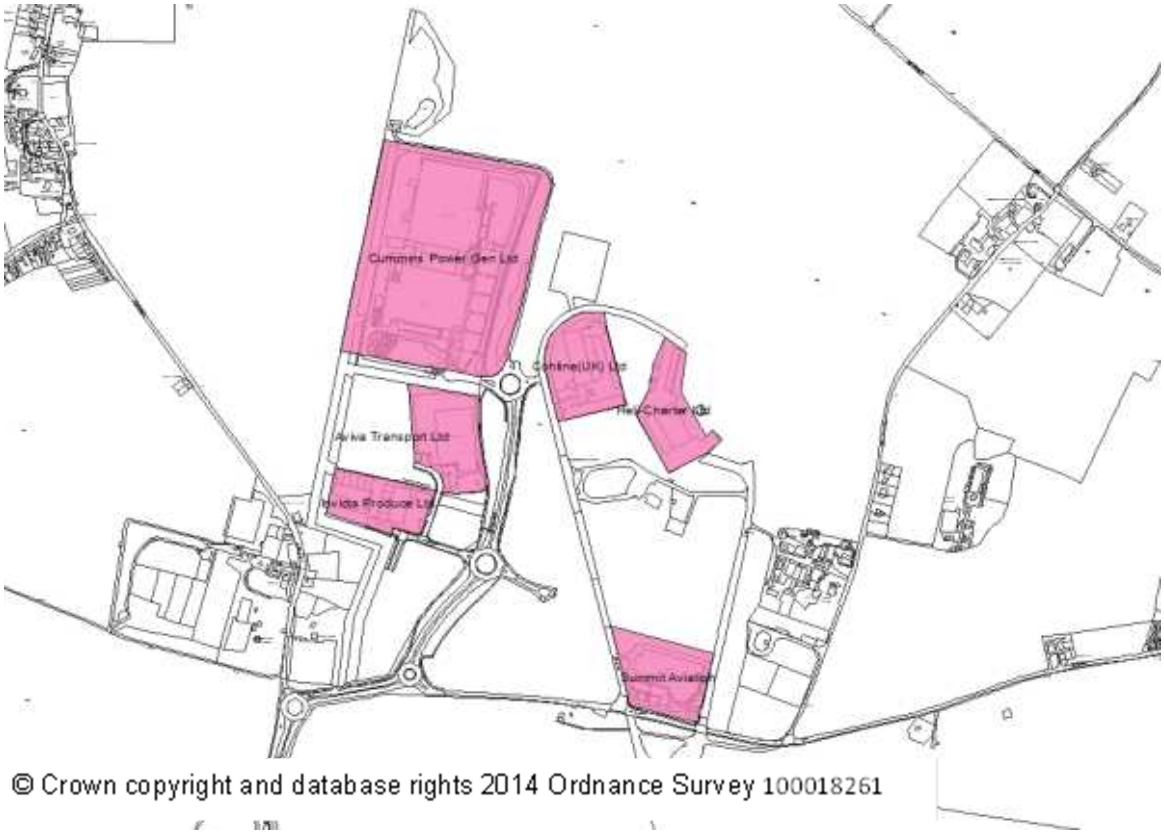
Hedgend Industrial Estate



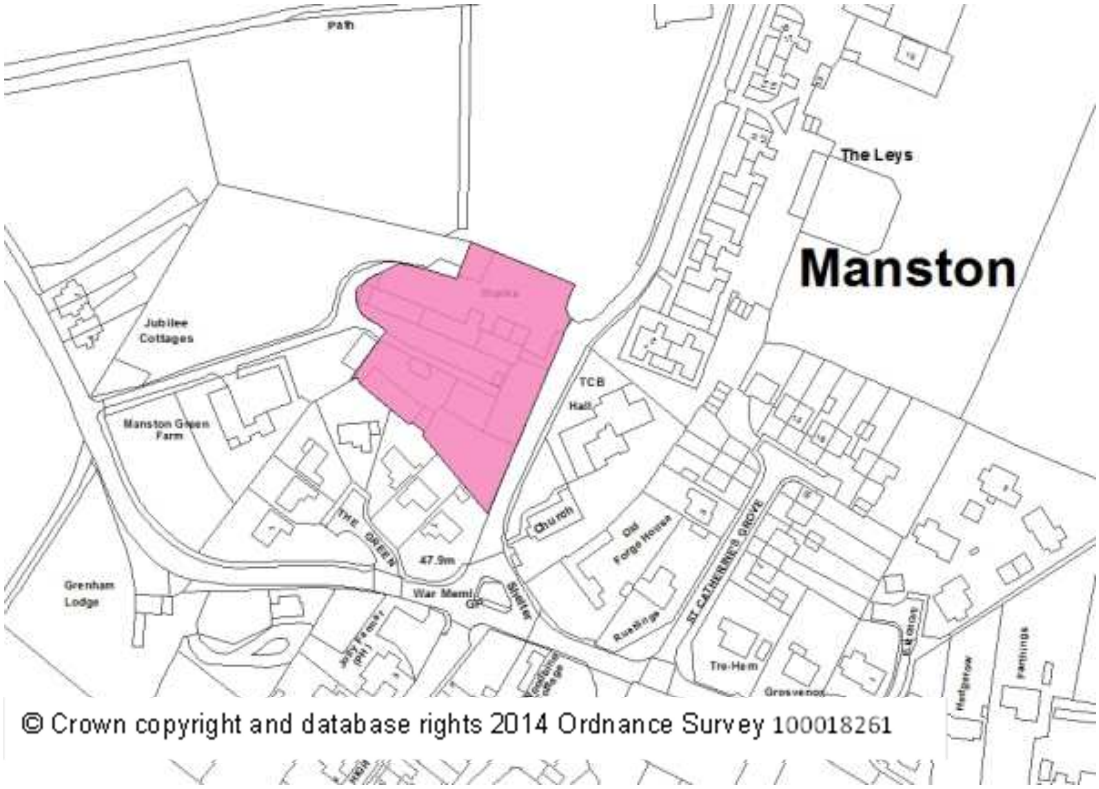
Laundry Road Industrial Estate



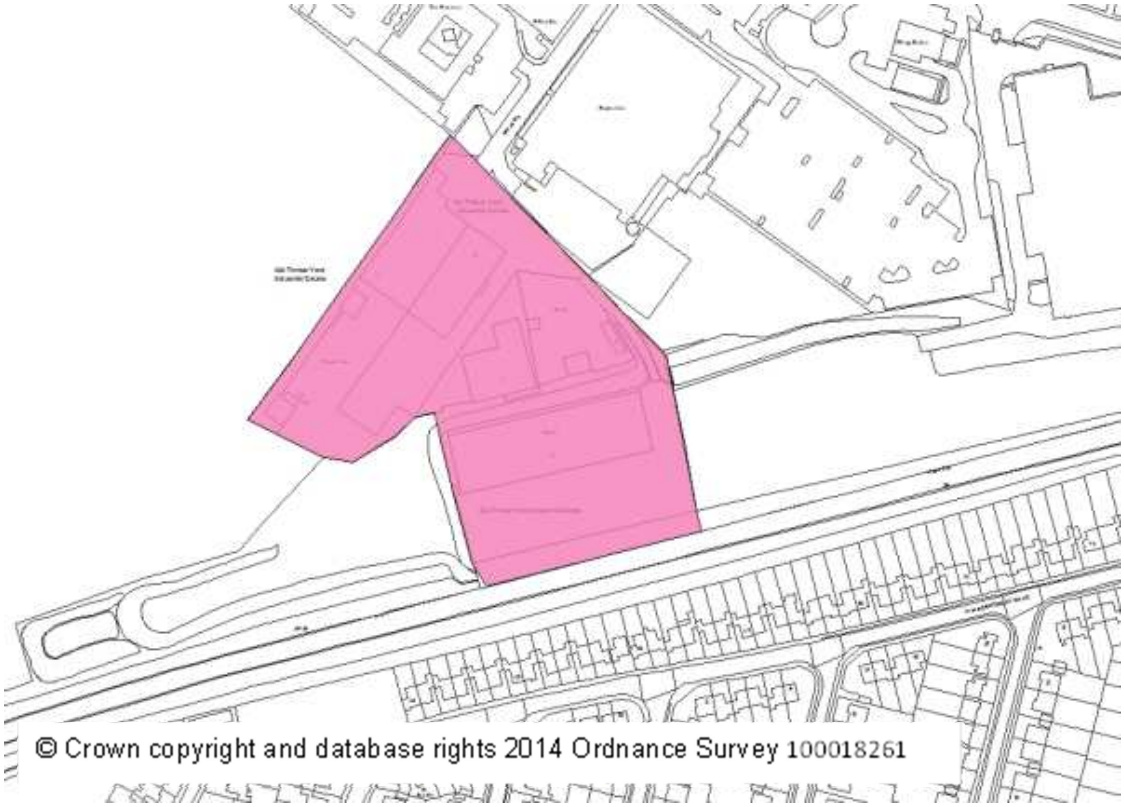
Manston Business Park



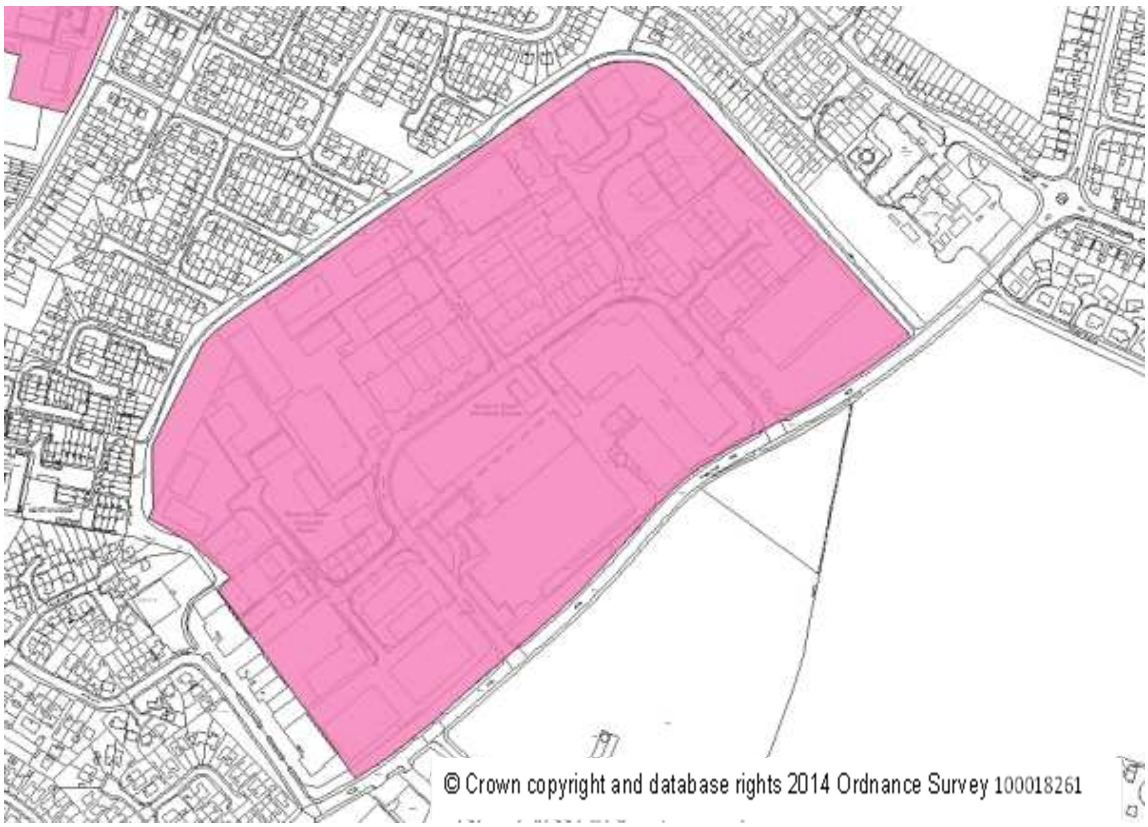
Manston Green Industrial Estate



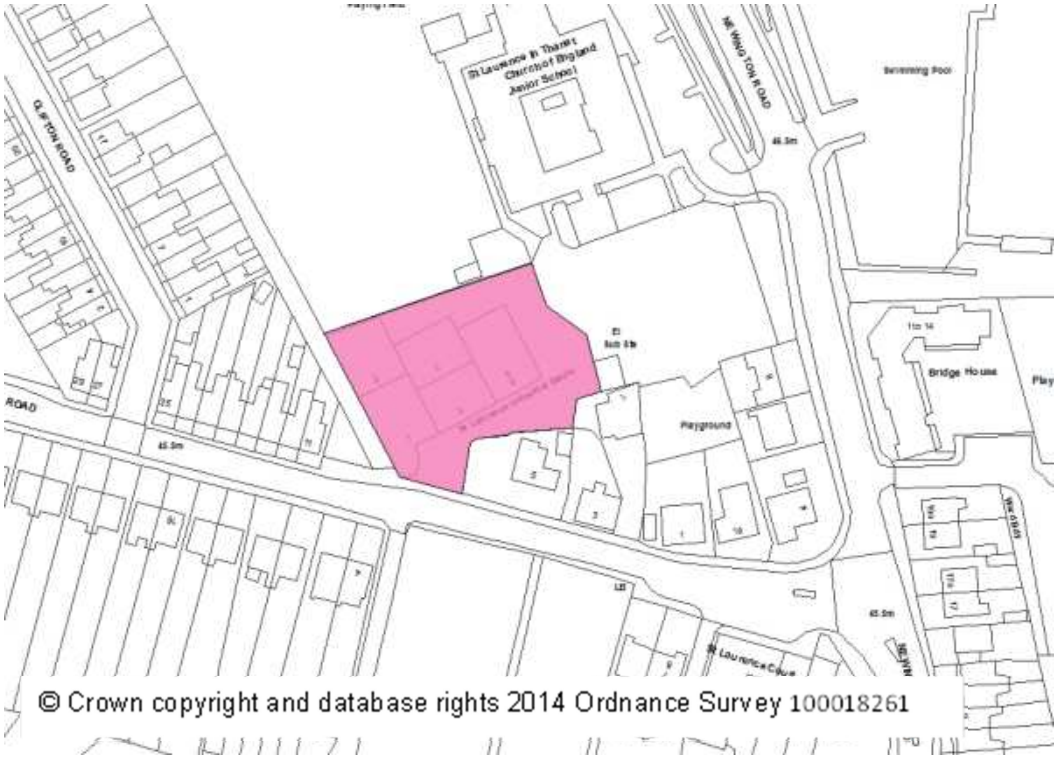
Manston Road Industrial Estate



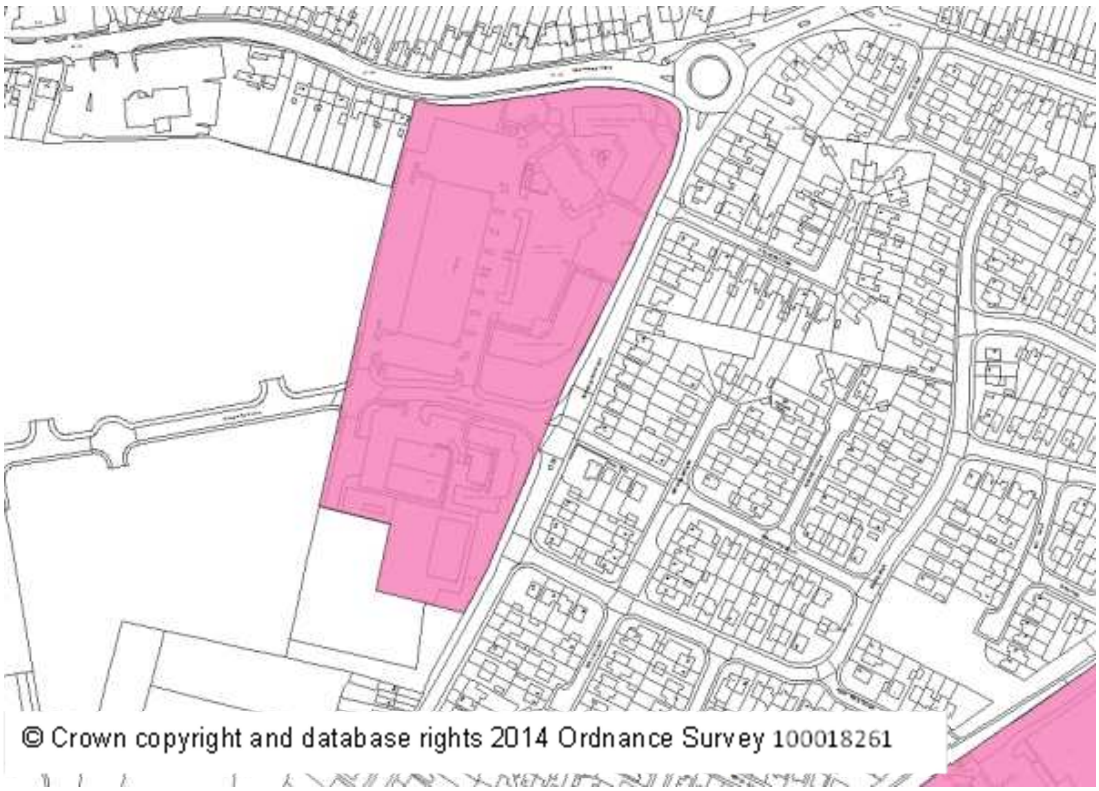
Pysons Road Industrial Estate



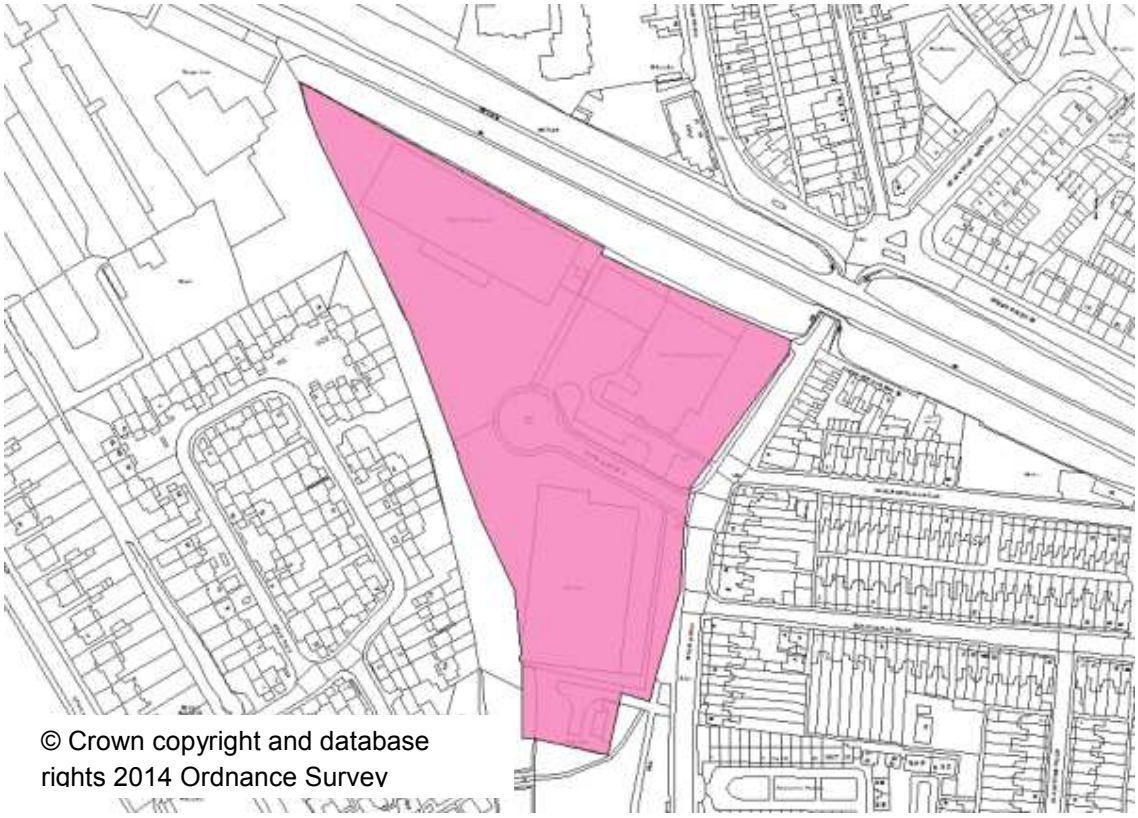
St Lawrence Industrial Estate



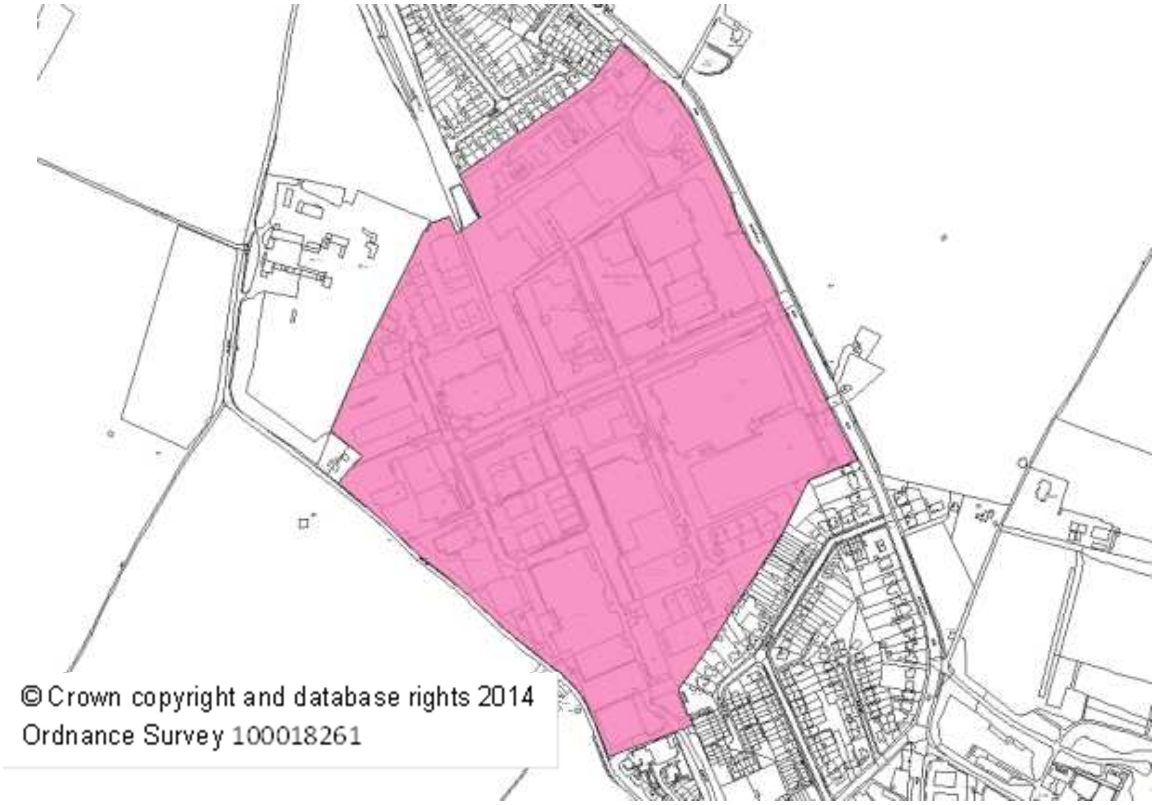
Thanet Reach Business Park



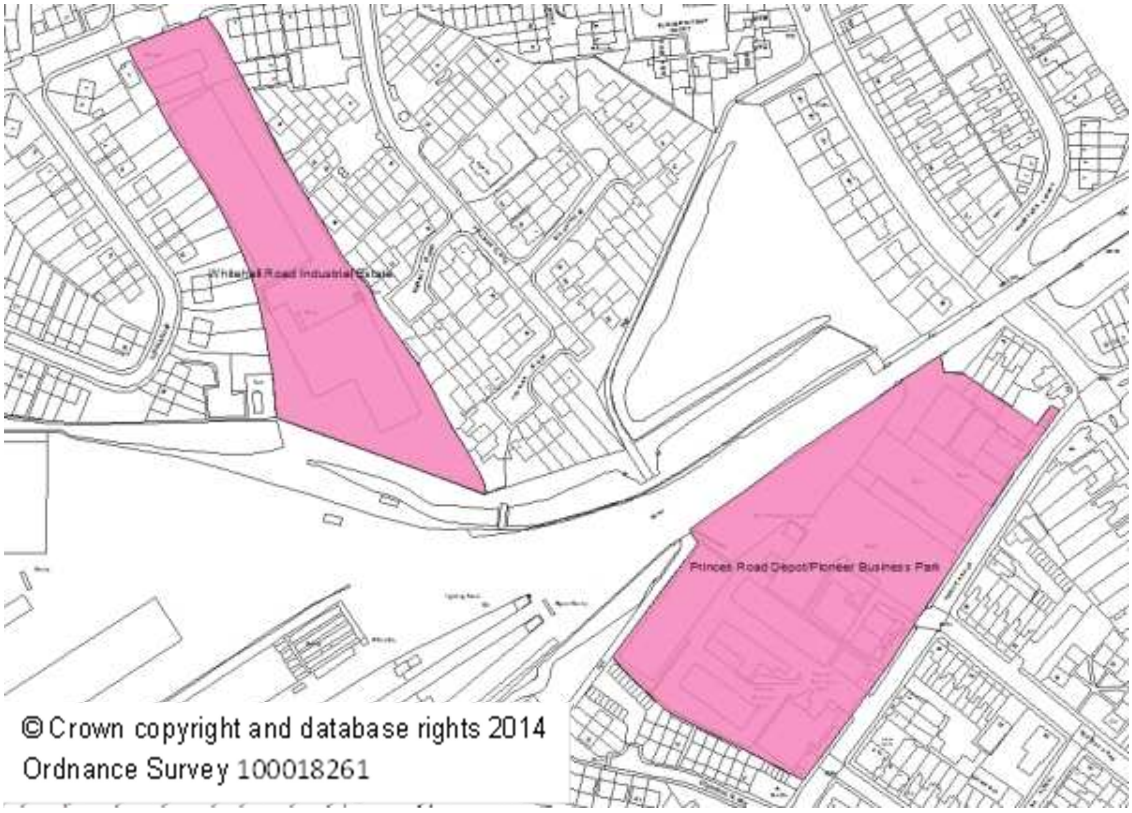
Tivoli Road Industrial Estate



Westwood Industrial Estate



Whitehall Road Industrial, Princes Road Depot and Pioneer Business Park



APPENDIX B: HOUSING

HOUSING SITE ALLOCATIONS

SITE ADDRESS	NOTIONAL DWELLING CAPACITY	NOTIONAL DELIVERY PERIOD					SITE REFERENCE/S
..		now-2016	2016-21	2021-26	2026-31	Post 2031	
STRATEGIC SITES							
Westwood	1450		300	550	600		S511, S553, S447
Birchington	1000		250	350	400		S515, S498, S499,
Westgate	1000		250	350	400		ST1, ST2
Manston Green	700		200	300	200		SS33
SUB TOTAL	**4150**	**0**	**1000**	**1550**	**1600**	**0**	
NON STRATEGIC SITES OUTSIDE URBAN AREA							
South of canterbury Rd, Ramsgate	27			27			S415
Land fronting Park lane, Birchington	90		90				ST3
Land south east of Brooke Avenue, Westbrook	34		34				S505
Land at Haine Rd & Spratling St, Ramsgate	85			73	12		SR60
Land off Nash/Manston Rds, Margate	250		150	100			S540
Land west of Old Haine Road, Ramsgate	250	100	150				S535 & S549
SUB TOTAL	**736**	**100**	**424**	**200**	**12**	**0**	
MIXED USE SITES							
Queen Arms Yard, Margate	24		24				S189
Cottage Car Park	32				32		S411
Margate Town Centre	27				27		S412

SUB TOTAL	**83**	**0**	**24**	**0**	**59**	**0**	
NON STRATEGIC URBAN AREA SITES							
Corner of Dumpton Park Drive and Honeysuckle Road, Ramsgate	17		17				S001
Adjacent to 9 Minnis Road	11				11		S019
Rear of 18-36 St Peter's Road	5			5			S042
End of Seafield Road	30			30			S106
Land at Seafield Rd, Ramsgate	18		18				S106A
Land adjacent to 12 Kings Road	89		89				S107
Adjacent to 8 Chapel Place	6					6	S112
Adjacent to 21 Royal Road & 9 Townley Street	18				18		S113
land adj. Westwood Centre - 1000 dwellings	1020	200	260	280	280		S141
St. Augustine's College -76	97		97				S145
ro 7_10 Marine Gdns - 5 Dwellings	6					6	S158
Royal Sea Bathing Hospital	193		193				S159
Former Allotments	64	50	14				S160
Pleasurama, Ramsgate	107	107					S162
Cavendish Street, Ramsgate	87		87				S164
69 Eaton Road	78	78					S167
Gas Works Boundary Road, Ramsgate	96			96			S168
Granville House	38	38					S172
Land at Wilderness Hill and Dane Road	14	14					S174
6 North Foreland Road	14	14					S179
Newington Library	9		9				S183
79-85 High Street, Ramsgate	10			10			S186a
Gas Holder Station, Margate	22			22			S196
100 Grange Road, Ramsgate	16		16				S200

44 Canterbury Road	9			9			S209
WW Martin, Dane Park Road, Ramsgate	14			14			S215
131-141 King Street	14			14			S216
Pierremont Garage, High Street, Broadstairs	14	14					S217
1,2, 92-96 Harbour Parade	14	14					S219
67 Victoria Road	13			13			S221
139-141 High Street, Ramsgate	12		12				S227
10 Cliff Street, Ramsgate	11	11					S230
9 and 30-32 Cavendish Street, and High Street Ramsgate	12	12					S234
6-14 Victora Road and Church Street, Margate	8	8					S236
24-25a Park Place, Margate	7	7					S238
Beaconsfield House, St Peters Road, Broadstairs	11	11					S239
Court Stairs Lodge, Ramsgate	8		8				S243
Station Approach Yard, Station Approach Birchington	9	9					S250
6-8 Cliff Street, Ramsgate	9	9					S258
Land at Grant Close/Victoria Road, Broadstairs	9	9					S260
77 Hereson Road, Ramsgate	9	9					S262
56, 56a, 58 Station Road, Birchington	6	6					S263
69 Westcliff Road, Ramsgate	8	8					S272
Complete Car Sales, Willsons Road, Ramsgate	10		10				S276
Rear of 28 High Street, Broadstairs	6		6				S290
10-14 Vicarage Crescent, Margate	6	6					S293
38, 38a and 42 St Peters Road, Broadstairs	6		6				S295
Cliff Cottage, Herschell	6	6					S297

Road, Birchington							
27-29 Alexandra Road, Margate	5	5					S301
5 Hardres Street, Ramsgate	6	6					S304
Rear of 102-114 Grange Road	10		10				S316
Brown and Mason Ltd, Canterbury Road, Court Mount Birchington	5	5					S318
167 Pegwell Road	20		20				S321
Units 1-4 Monkton Place Ramsgate	5		5				S322
The Surgery, Bellevue Road, Ramsgate	5	5					S333
23 Western Esplanade, Broadstairs	5	5					S334
Hainault, Haine Road, Ramsgate	5	5					S335
3 and 7 Northumberland Road	5				5		S339
Post Office, Margate	8	8					S358
Vere Rd Car Park	14	14					S376
Highfield Road, Ramsgate	25	25					S393
Fort Hill, Arcadian	28	16	12				S410
Safari House, Ramsgate	28		28				S429
Former Manston Allotments	61		61				S452
Furtiture Mart, Booth Place, Grotto Hill	9		9				S467
Eurokent, New Haine Rd, Ramsgate	350		350				S522
Land at Holy Trinity Primary School	33	33					S525
Laleham School, Margate	36		36				S527[1]
Laleham School, Margate	36		36				S527[2]
Land Victoria Road & Dane Rd, Margate	35				35		S529
Haine Farm	35		5	10	20		S534
Land of Northwood Road, Ramsgate	45		45				S536
Land at Hundreds Farm	10	10					S550
Hereson School	150	150					SR01
45-49 and 51 Sea Road, Westgate	14	7	7				SR02

Land at 57,59, 61, 63, 67 Eaton Road Margate	30	15	15				SR04
Former Ellington High School, Ramsgate	28	28					SR05
Land Adj The Promenade	21	11	10				SR06
Dane Valley Arms, Margate	13	6	7				SR09
St Benedicts Church, Whitehall Road, Ramsgate	12	6	6				SR10
100 South Eastern Road, Ramsgate	11		11				SR11
237 Ramsgate Road, Margate	9		9				SR12
56 Dumpton Park Drive	10		10				SR13
8-12 High Street Broadstairs	10		10				SR15
Builders Yard, The Avenue, Margate	10		10				SR16
Lockwoods Yard, Westgate	10		10				SR18
43-49 High Street, Margate	9		9				SR20
86-88 Ellington Road, Ramsgate	9		9				SR21
Land adjoining Seafield Road	9	6	3				SR22
2a Park Road, Ramsgate	8	8					SR23
33 Belmont Road	8	8					SR25
41-43 Victoria Road, Margate	8	8					SR26
58 Maynard Avenue	8	8					SR27
69 Sea Road, Westgate	8	8					SR28
13 Canterbury Road	6	6					SR30
2 and 3 St Marys Road, Broadstairs	7	7					SR31
Adelaide Gardens and adjoining	7	7					SR32
Dane Valley Filling Station, Margate	7	7					SR34
10-14 The Square Birchington	6	6					SR35
125 High Street, Margate	6	6					SR37
62a Addiscome Road, Margate	6	6					SR41
Abbey Lodge, Priory	6	6					SR42

Road, Ramsgate							
Old School Lodge, New Street, Margate	6	6					SR43
Sheridan Cliff Road, Broadstairs	5	5					SR44
1 Thanet Road, Margate	5	5					SR45
112 High Street, Ramsgate	5	5					SR47
140 King Street, Ramsgate	5	5					SR48
25-27 Turner Street, Ramsgate	5	5					SR50
3-7 Surrey gardens	5	5					SR51
41 Royal Road, Ramsgate	5	5					SR54
Old Forge Buildings, Broadstairs	5	5					SR56
Ramsgate Garden Centre, Hereson Rd, Ramsgate	62		20	20	22		SR57
Land north of Reading Street, Broadstairs	13		4	4	4	1	SR61
Land at Waterside Drive, Westgate	12		12				SR65
Suffolk Avenue, Westgate	14		7	7			SR67
r/o Cecilia Road, Ramsgate	23					23	SR69
Margate Delivery Office, 12-18 Addington StreetAddington Street	10				10		SS16
Ind Units, Marlborough Rd, Marlborough Rd,	10		10				SS20
Haine Lodge, Spratling Street, Spratling Street,	12	12					SS21
Former Newington Nursery & Infants Nursery & Infants	49	49					SS22
Gap House School, 1 Southcliff Parade, Southcliff Parade,	10	10					SS23
Foreland School, Lanthorne Rd, Lanthorne Rd,	14	14					SS24
Thanet Reach Southern Part	80	10	70				SS34
Manston Road Industrial Estate (2	170	170					SS35

sites north & south)							
Part of Pysons Road	26		26				SS36
Dane Valley Industrial Estate - Part of national grid land	60		60				SS37
140-144 Newington Road	50		50				SS40
Magnet and Southern	8	8					SS43
SUB TOTAL	**4235**	**1416**	**1844**	**534**	**405**	**36**	
RURAL SITES (in and outside confines)							
Tothill Street Minster	150	40	110				S512/S436/S85
Station Road Minster	5	5					S088
31 High Street, Minster	7	7					SR33
Land south side of Foxborough Lane	35		35				ST4
Land at The Length, St. Nicholas	25		25				S509
Land at Manor Rd, St Nicholas	50		50				S488/R25-146
Land at &1-75 Monkton St	8	8					S240
Land at Walter's Hall Farm, Monkton	18		18				ST6
Builders yard south of 116-124 Monkton Street, Monkton	20		20				S543
Jentex site Canterbury Rd West, Cliffsend	45		45				S426
Young's Nursery, Arundel Road, Cliffsend	12		12				S455
Site "A" South side of A253, Cliffsend	40		40				S468/435(1)
Land north of Cottington Rd (west of Beech Grove)	40		40				S435(2)
South side Cottington Rd, Cliffsend.	30		30				S416/S561
SUB TOTAL	**485**	**60**	**425**	**0**	**0**	**0**	
CLIFTONVILLE SITES							
Rear of 59-65 Harold Rd	9				9		S46

Adj to 60 harold Rd and rear of 40-56 Harold Rd	14				14		S47
Adt to 14 Harold Rd	10	10					S48
rear of 2-22 Ethelbert Road	8				8		S65
Ethelbert Crescent	30	30					S149
St George's Hotel	87	87					S165
6 Surrey Road	5	5					S348
Capital House	35	18	17				SR3
38 Sweyn Road	5	5					SR52
SUB TOTAL	**203**	**155**	**17**	**0**	**31**	**0**	
SITES COMPLETED SINCE 2013 STUDY BASE DATE							
Land Adj Grange Road, Ramsgate	42	42					S103
Dalby Square	20	20					S150
SUB TOTAL	**62**	**62**	**0**	**0**	**0**	**0**	
SUB TOTAL OF IDENTIFIED SITES	**9954**	**1793**	**3734**	**2284**	**2107**	**36**	
Windfall allowance	2480	440	680	680	680		
Sub Total							
Completed between 2011 and 2012	320	320					
Sub Total							
Grand Total identified, windfall, completed	**12754**	**2553**	**4414**	**2964**	**2787**	**36**	
Grand total to 2031	**12718**						

APPENDIX C: ENVIRONMENT AND QUALITY OF LIFE

List of Open Spaces, Parks, Gardens and Recreation Grounds

St. Luke's Recreation Ground
Streete Court Recreation Ground
Lymington Road
Palm Bay Recreation Ground
Garlinge Recreation Ground
Warre Recreation Ground
Newington Rec and Centre
Minster Recreation Ground
Monkton Recreation Ground
St Nicholas at Wade Bell Meadow
Birchington Recreation Ground
Reading Street
Hartsdown Park
Holmes Park
Memorial Recreation Ground
Pierremont Park
Tivoli Park
Crispe Park
Northdown Park
Ellington Park
Nethercourt Park
Manston Park
Jackey Bakers
Dane Park
Nelson Crescent, Ramsgate
The Vale
St. Peter's Recreation Ground
Charlotte Court
Albion Gardens
Wellington Crescent
Victoria Parade
King George VI Park
Balmoral Gardens
Cliffsend Recreation Ground
Courtstairs Park
Courtstairs Park
Dane Valley Recreation Ground

Informal Recreation Green Space

Salt Drive, Broadstairs
Bridge Road, Margate
Buckhurst Drive, Margate
Laleham Road, Margate
Newgate Promenade, Margate
Summerfield Road,Margate
Yoakley Square, Margate
Dane Gardens, Margate
Dane Mount 15-22, Margate
Dane Valley Road 200-208, Margate
St Francis Close, Margate
Liverpool Lawn, Ramsgate
Lorina Road, Ramsgate
Romily Gardens, Ramsgate

Spencer Square, Ramsgate
Warwick Drive, Ramsgate
Windermere Avenue / Kentmere Avenue, Ramsgate
Victoria Gardens, Ramsgate
Winterstoke Crescent, Ramsgate
Albion Mews Camden Square, Ramsgate
Le Belle Alliance Square, Ramsgate
Epple Bay Avenue, Birchington
Minnis Bay Parade Clifftop, Birchington
Sewell Close, Birchington
Sherwood Road, Birchington
Sea Road, Westgate
Cottington Road, Ramsgate
Princess Margaret Avenue, Ramsgate
Regency Lawns Westcliffe Prom, Ramsgate
Hopeville Avenue, Broadstairs
Coleman Crescent, Ramsgate
Hildersham Close, Broadstairs
Kings Avenue, Birchington
Cliff Road, Birchington
Marine Gardens, Margate
Hawley Square, Margate
Broad Street, Ramsgate
Vincent Close, Broadstairs
Hornet Close, Broadstairs
Epple Bay Avenue, Birchington
Canute Road, Birchington
Viking Close, Birchington
Balmoral Gardens, Broadstairs
Marine Drive, Broadstairs
St. George's Lawns, Margate
Trinity Gardens, Margate
Winter Gardens, Margate
Lewis Crescent, Margate
Land at Sunken Garden, Margate
Open Space, Westbrook, Margate
Sea Road Gardens, Westgate
Hugin Ship Site, Ramsgate
Minnis Bay, Birchington
Nursery Fields, Acol
Royal Esplanade, Ramsgate
Courtstairs Park Path, Ramsgate
The Courts,Margate
Earlsmead Crescent (Private), Ramsgate

Natural and Semi Natural Green Space

Tivoli Woods, Margate
Golf Course Roughs, Broadstairs
Ramsgate Cemetery, Ramsgate
Monkton Chalk Pit
St Nicolas at Wade Church Yard
St. Mary Magdalene Churchyard
Pegwell Bay Country Park,
Beech Grove, Ramsgate
Neame Woods, Birchington
Grange Way, Broadstairs
Mocketts Wood, Broadstairs
Princes Walk, Margate

Wildgrass, Westbrook, Margate
Private Woodland, Sir Moses Montefiore, Ramsgate
Fort Lower Promenade, Margate
Former railway track, Nash Road
Former Hoverport site

Amenity Greenspace

Broadstairs

Colburn Road Estate,
Harrowdene,
Mockett Drive,
Stanley Road,
Westover Gardens,
Linley Road,
Percy Avenue Clifftops,
Ramsgate Road
Alderney Gardens,
Fair Street,
St. Peter's Court,
The Maples,
St. Peter's Amenity,
Grange Way Cricket Club,
Dumpton Gap,
Joss Bay Picnic Site,
Francis Road,

Margate

Addiscombe Gardens
Highfield Gardens
Selwyn Drive
St. Peter's Court
Arthur Road
Ashurst Gardens
Dalby Square
Foreland Avenue
Friendly Close
George V Avenue
Knockholt Road
Lister Road
Saltwood/Cudham/Thurnden Gardens,
Tenderden Way Flats
William Avenue Balcomb Crescent,
Invicta House Appledore
Balmoral Road 2-36
Biddenden Close
Eltham Close 17-34
Rosedale 19-25 College 92-4
Sarah and Taddy Gardens
Tomlin Drive Block 5-12
William Avenue 2-6 24-36
Winter Gardens
Land at Buenos Ayres
Headcorn Gardens/ Kilndown Gardens

Ramsgate

Arklow Square, Ramsgate
Auckland Avenue, Ramsgate

Brecon Square, Ramsgate
Colombo Square, Ramsgate
Hamilton Close, Ramsgate
Hopes Lane, Ramsgate
Melbourne Avenue, Ramsgate
Plains of Waterloo, Ramsgate
Quetta Road, Ramsgate
Riverdale Road, Ramsgate
Southwood Gardens, Ramsgate
St Johns Avenue, Ramsgate
Stirling Way, Ramsgate
West Dumpton Lane, Ramsgate
Cannon Road Car Park, Ramsgate
Eskdale Avenue, Ramsgate
Albion Mews, Ramsgate
Ashley Close, Ramsgate
Brunswick Court Complex, Ramsgate
Clements Road, Ramsgate
Highfield Court, Ramsgate
Hurst Grove, Ramsgate
Pullman Close, Ramsgate
Sundew Grove 1-6, Ramsgate
The Centre, Ramsgate
Dumpton Park Drive, Ramsgate
St Mildred's Road 40-42, Ramsgate
Cliffsend Road, Ramsgate
Primrose Way, Ramsgate
Margate Road, Ramsgate
Sparkes Estate,Ramsgate
Chatham Court Margate Road, Ramsgate
Harbour Towers, Ramsgate
Chichester Road 82-90, Ramsgate
Trove Kennedy Newcastle, Ramsgate

Other Settlements

Promenade Visual Amenity, Birchington
Minnis Bay, Birchington
Coastguards Cottages, Birchington
Cunningham Crescent, Birchington
Grenville Gardens, Birchington
Hawkhurst Close, Birchington
Minnis Bay Car Park Café, Birchington
Yew Tree Close, Birchington
Lyell Road, Birchington
Adrian Square, Westgate
Ethelbert Square, Westgate
Sudbury Place, Westgate

Outdoor Sports Facilities : Football

Birchington 1
Birchington 2
Garlinge 1
Garlinge 2
Garlinge 3
Garlinge 4
Jakey Bakers 1
Jakey Bakers 2
Lymington

Minster	St Lukes	Warre
Monkton	St Peters	St Nicolas at Wade
Northdown	Tivoli	

Outdoor Sports Facilities: **Rugby**

St Peters Rec 1	St Peters Rec 2	St Peters Rec 3

Outdoor Sports Facilities: **Cricket**

Dumpton	Jakey Bakers 3	Northdown 1
Hartsdown	Margate	Northdown 2
Jakey Bakers 1	Minster	St Nicholas At Wade
Jakey Bakers 2	Monkton	Westgate

Outdoor Sports Facilities: **Childrens Play Spaces**

Memorial Recreation Ground, Broadstairs

Pierremont Park, Broadstairs

St. Peter's Recreation, Broadstairs

Hartsdown Park (Estimated), Margate

Dane Park, Margate

Coleman Crescent, Ramsgate

Minnis Bay Play,Birchington

Birchington Memorial Ground, Birchington

Lymington Road Play, Westgate

Caxton Road Play, Margate

Tivoli Play, Margate

Swinford Gardens Play, Margate

Northdown Play, Margate

Spratling Street Play

Ellington Park Play, Ramsgate

Boundary Road Play, Ramsgate

King George VI Play, Ramsgate

Camden Square, Ramsgate

Courtstairs Park, Ramsgate

Crispe Road, Birchington

Laleham Road, Margate

Dane Valley Road Play, Margate

Warre Recreation Ground, Ramsgate

Jackey Bakers Play, Ramsgate

Princess Margaret's Play, Ramsgate

The Street Monkton

Minster Rec Play

St Nicholas at Wade Play

Crispe Park, Birchington

Dane Valley Road Play 2, Margate

Nethercourt Park, Ramsgate

Vincent Close, Broadstairs

Cliffsend Road Play, Ramsgate

Outdoor Sports Facilities: Allotments

Tivoli Allotments, Margate

Brooke Avenue, Margate

Jackey Bakers, Ramsgate

Margate Road, Ramsgate

Norman Road,Broadstairs

Quex Park, Birchington

Lymington Road, Westgate

Nash Road, Margate

Prospect Road, Broadstairs

Reading Street Allotments, Broadstairs

Chilton Lane, Ramsgate

Culmers Land Allotments, Broadstairs

Dane Valley, Margate

All Saints Allotments, Birchington

Ramsgate Cemetery Allotments, Ramsgate

Outdoor Sports Facilities:Churchyards and Cemeteries

Church of St. Mary Magdalene, Monkton

Thanet Cemetery

Thanet Minster Cemetery

St. Mary's Church

St. Nicholas Church

Ramsgate Cemetery

Nuns Cemetery

All Saints Church Birchington

St. Lawrence Churchyard

St John the Baptist Church - Margate

St. George's Cemetery

Addington Closed Church Yard

St. George's Churchyard, Ramsgate

St. Mildred's Church Acol

St. Peter's Churchyard

Vale Square Churchyard

APPENDIX D: TYPES OF DEVELOPMENT THAT WOULD TRIGGER THE NEED FOR AN AIR QUALITY ASSESSMENT

Table 01 – Types of development that would trigger the need for an air quality assessment

Description	Criteria
Locality of development	• Developments within or which may impact on sensitive areas or areas of poor air quality e.g. Air Quality Management Areas. • Introduction of new relevant exposure where potential existing pollution sources occur e.g. residential development in an industrial/commercial area. • Along roads with narrow streets (street canyons) and stationary or queuing traffic.
Nature of development	• New industrial development (e.g. boiler plant/energy production/permitted installations/authorised processes); • New rail, road building and signalling, bridge, tunnel, port or airport developments; • Waste handling activities; • Minerals development; • Significant heating plant.
Scale of development	Significant residential/commercial floor space or number of units. Criteria should be discussed with the local authority, as this will be determined on a case by case basis depending on the locality. *As a guide only* • *commercial development with a gross floor space of >1000m2;* • *Residential development with >80 residential units.*
Traffic Impact Assessment	For roads >10,000 annual average daily traffic

	(AADT) flows: • Traffic volume change of >5%; • Traffic speed change of 10kph. Significant change in traffic composition e.g. significant increase in HGVs as determined by the local authority (As a guide only > 20 per day).
Parking spaces	100 parking spaces (outside an AQMA) and 50 parking spaces (inside an AQMA)
Construction impacts · Nature and scale of development · Timescale and phasing	Developments with significant dust potential where relevant exposure. Proximity of nearby residents <200m. Significant scale of demolition/construction phase. Risk category: HIGH. • Development of over 15,000m2 of land, or; • Development of over 150 properties or; • Potential for emissions and dust to have significant impact on sensitive receptors or; • Major development as defined by a Kent and Medway authority. Length of time >6 months. If construction is expected to last for more than six months, then traffic management measures and the effect of the additional construction vehicles should also be assessed.

APPENDIX E: TRANSPORT AND INFRASTRUCTURE

Guidance on car parking provision (indicative maximum provision)

Retail	Indicative maximum spaces
Food retail up to 1,000m2	1 per 18m2 (includes staff parking)
Food retail over 1,000m2	1 per 14 m2 (includes staff parking)
Non food retail	1 per 25m2 (includes staff parking)

Financial and Professional services	Indicative maximum spaces
	1 per 20m2 (includes staff parking)

Restaurants & cafes	Indicative maximum spaces
Restaurants	1 per 6m2 plus 1 per two staff
Transport cafes	1 per 15m2 plus 1 per two staff

Drinking establishments	Indicative maximum spaces
	1 per 10m2 plus 1 space per two staff

Hot food takeaways	Indicative maximum spaces
	1 per 8m2 plus 1 space per two staff

Business	Indicative maximum spaces
Offices up to 500m2	1 per 20m2
Offices 501m2 to 2,500m2	1 per 25m2
Offices over 2,500m2	1 per 30m2
High tech/Research/Industrial	1 per 35m2

General industrial	Indicative maximum spaces
Up to 200m2	3 spaces
Over 200m2	1 per 50m2

Storage & distribution	Indicative maximum spaces
Storage & Distribution	1 per 110m2
Wholesale Trade Distribution	1 per 35m2

Hotels	Indicative maximum spaces
Hotels, motels, boarding & guest houses	1 per bedroom plus 1 per two staff
Other	1 per unit/pitch plus 1 per three units of five person capacity or greater plus 1 per two staff

Residential Institutions	Indicative maximum spaces
Nursing homes/residential care homes	1 per six beds or residents plus 1 per resident staff plus 1 per two other staff
Hospitals & Hospices	2 per three beds plus 1 per two staff
Residential schools, colleges or training centres	1 per fifteen residents plus 1 per resident staff plus 1 per two other staff

Non residential institutions	Indicative maximum spaces
Primary & secondary schools	1 per staff plus 10%
Further & higher education	1 per seven students plus 1 per staff
Libraries/art galleries/museums/public exhibition hall	1 per 60m2
Places of worship	1 per five seats
Medical centres/clinics/surgeries (including veterinary	4 per consulting room/treatment room plus 1 per two staff

surgeries)	
nurseries/crèches & playschools	1 per 4 children plus 1 space per two staff
Day care centres	1 per four attendees plus 1 per two staff
Law courts	6 per courtroom plus 1 per two staff

Assembly & Leisure	**Indicative maximum spaces**
Cinemas, concert halls, conference centres, bingo halls	1 per five seats
Social clubs, discotheques, dance halls, ballrooms	1 per 22m2
Multi-activity sports & leisure centres, swimming pools, ice rinks, health & fitness centres, gymnasia	1 per 22m2 plus 1 per fifteen seats where appropriate
Marinas & other boating facilities	1 per mooring or berth
Stadia	1 per 15 seats
Bowling greens/centres/alleys, snooker halls, tennis/squash, badminton clubs	3 per lane/court table plus 1 per fifteen spectator seats where applicable
Outdoor sports facilities, playing fields	1 per two participants plus 1 per fifteen spectators
Golf courses & driving ranges	3 per hole/bay
Equestrian centres, riding stables	1 per stable
Historic house & gardens, country parks	1 per 400 visitors
Theme parks/leisure parks	1 per two hundred visitors per annum
Other	1 per 22m2

Other	**Indicative maximum spaces**
Car sales	1 per 50m2 plus 1 per two staff
Petrol filling stations	1 per 20m2
Night clubs/casinos	1 per 22m2
Theatres	1 per 5 seats

Retail warehouse clubs	1 per 25m2
Amusement arcades	1 per 22m2
Residential hostels	1 per six residents plus 1 per resident staff and 1 per two other staff
Vehicle servicing and repair	4 per service bay plus 1 per 2 staff
Taxi, vehicle hire, coach & bus depots	1 per four registered vehicles plus 1 per two staff
Open commercial use (e.g. scrap yards, recycling centres)	To be assessed individually plus 1 space per two staff

Guidance on cycle parking provision

Retail	**Provision (cycle parking spaces)**
Up to 1,000m2	1 per 200m2 customer & 1 per 200m2 employees
Up to 5000m2	1 per 400m2 customer & 1 per 400m2 employees
Over 5000m2	1 per 2500m2 customer & 1 per 2500m2 employees

Financial and Professional services	**Provision (cycle parking spaces)**
	1 per 1000m2 customer & 1 per 200m2 employees

Restaurants & cafes	**Provision (cycle parking spaces)**
	1 per 10 seats customers & 1 per 20 seats employees

Drinking establishments	**Provision (cycle parking spaces)**
	1 per 10 seats customers & 1 per 20 seats employees

Hot food takeaways	Provision (cycle parking spaces)
	1 per 10 seats customers & 1 per 20 seats employees

Business	Provision (cycle parking spaces)
	1 per 200m2 employees & 1 per 1000m2 visitors

General industrial	Provision (cycle parking spaces)
	1 per 200m2 employees & 1 per 1000m2 visitors

Storage & distribution	Provision (cycle parking spaces)
	1 per 200m2 employees & 1 per 1000m2 visitors

Hotels	Provision (cycle parking spaces)
	1 per 10 bed spaces

Residential Institutions	Provision (cycle parking spaces)
Residential institutions & hospitals	1 per 10 bed spaces
Residential schools, colleges and training centres	1 per 5 students.

Dwellings	Provision (cycle parking spaces)1 per dwelling

Individual residential dwellings	1 per bedroom
Flats & maisonettes	1 per unit
Sheltered accommodation	1 space per 5 units

Non residential institutions	**Provision (cycle parking spaces)**
Primary schools	1 per 50 pupils
Secondary schools and further & higher education	1 per 5 pupils/students
Medical centres/surgeries	1 per two consulting/treatment rooms
Other (including libraries and places of worship)	1 per 50 seats or 100m2

Assembly & Leisure	**Provision (cycle parking spaces)**
Leisure and entertainment venues	1 per 300 seats customers & 1 per 300 seats employees
Sports facilities	1 per 10 participants plus 10% plus 1 per 10 staff

EUROPEAN COUNCIL **Brussels, 8 March 2011**

EUCO 2/1/11
REV 1

CO EUR 2
CONCL 1

COVER NOTE

from :	General Secretariat of the Council
to :	Delegations
Subject :	**EUROPEAN COUNCIL** **4 FEBRUARY 2011** **CONCLUSIONS**

Delegations will find attached the conclusions of the European Council (4 February 2011).

1. Beyond the immediate action required to tackle the most pressing challenges posed by the economic and financial crisis, it is important to continue laying solid foundations for a sustainable and job-creating growth. This is the purpose of the Europe 2020 Strategy for jobs and growth adopted last June. Today, the European Council focused on two sectors – energy and innovation – which are key to Europe's future growth and prosperity. It agreed on a number of priority actions whose implementation will contribute much to enhancing growth and job creation as well as promoting Europe's competitiveness.

I. ENERGY

2. Safe, secure, sustainable and affordable energy contributing to European competitiveness remains a priority for Europe. Action at the EU level can and must bring added value to that objective. Over the years, a lot of work has been carried out on the main strands of an EU energy policy, including the setting of ambitious energy and climate change objectives and the adoption of comprehensive legislation supporting these objectives. Today's meeting of the European Council underlined the EU's commitment to these goals through a number of operational conclusions, as set out below.

3. The EU needs a fully functioning, interconnected and integrated **internal energy market**. Legislation on the internal energy market must therefore be speedily and fully implemented by Member States in full respect of the agreed deadlines. Council and European Parliament are invited to work towards the early adoption of the Commission's proposal for a Regulation on energy markets integrity and transparency.

4. The internal market should be completed by 2014 so as to allow gas and electricity to flow freely. This requires in particular that in cooperation with ACER national regulators and transmission systems operators step up their work on market coupling and guidelines and on network codes applicable across European networks. Member States, in liaison with European standardization bodies and industry, are invited to accelerate work with a view to adopting technical standards for electric vehicle charging systems by mid-2011 and for smart grids and meters by the end of 2012. The Commission will regularly report on the functioning of the internal energy market, paying particular attention to consumers **including the more vulnerable ones** in line with the Council conclusions of 3 December 2010.

5. Major efforts are needed to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in line with the priorities identified by the Commission communication on energy infrastructure. This is crucial to ensure that solidarity between Member States will become operational, that alternative supply/transit routes and sources of energy will materialise and that renewables will develop and compete with traditional sources. It is important to streamline and improve authorisation procedures, while respecting national competences and procedures, for the building of new infrastructure; the European Council looks forward to the forthcoming proposal from the Commission in that respect. The various initiatives undertaken by Member States to integrate markets and networks at a regional level as well as those outlined in the Commission communication contribute to the objective and deserve support. No EU Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardized by lack of the appropriate connections.

6. The bulk of the important financing costs for infrastructure investments will have to be delivered by the market, with costs recovered through tariffs. It is vital to promote a regulatory framework attractive to investment. Particular attention should be given to the setting of tariffs in a transparent and non-discriminatory manner at levels consistent with financing needs and to the appropriate cost allocation for cross-border investments, enhancing competition and competitiveness and taking account of the impact on consumers. However, some projects that would be justified from a security of supply/solidarity perspective, but are unable to attract enough market-based finance, may require some limited public finance to leverage private funding. Such projects should be selected on the basis of clear and transparent criteria. The Commission is invited to report by June 2011 to the Council on figures on the investments likely to be needed, on suggestions on how to respond to financing requirements and on how to address possible obstacles to infrastructure investment.

7. In order to further enhance its security of supply, Europe's potential for sustainable extraction and use of conventional and unconventional (shale gas and oil shale) fossil fuel resources should be assessed.

8. Investments in **energy efficiency** enhance competitiveness and support security of energy supply and sustainability at low cost. The 2020 20% energy efficiency target as agreed by the June 2010 European Council, which is presently not on track, must be delivered. This requires determined action to tap the considerable potential for higher energy savings of buildings, transport and products and processes. As of 1 January 2012, all Member States should include energy efficiency standards taking account of the EU headline target in public procurement for relevant public buildings and services. The Council is invited to promptly examine the upcoming Commission proposal for a new Energy Efficiency Plan, setting out in more detail a series of policies and measures across the full energy supply chain. It will review the implementation of the EU energy efficiency target by 2013 and consider further measures if necessary.

9. The Commission is invited to strengthen its work with Member States on the implementation of the **Renewable Energy** Directive, in particular as regards consistent national support schemes and cooperation mechanisms.

10. The EU and its Member States will promote investment in **renewables and safe and sustainable low carbon technologies** and focus on implementing the technology priorities established in the European Strategic Energy Technology plan. The Commission is invited to table new initiatives on smart grids, including those linked to the development of clean vehicles, energy storage, sustainable bio fuels and energy saving solutions for cities.

11. There is a need for better coordination of EU and Member States' activities with a view to ensuring consistency and coherence in the EU's **external relations** with key producer, transit, and consumer countries. The Commission is invited to submit by June 2011 a communication on security of supply and international cooperation aimed at further improving the consistency and coherence of the EU's external action in the field of energy. The Member States are invited to inform from 1 January 2012 the Commission on all their new and existing bilateral energy agreements with third countries; the Commission will make this information available to all other Member states in an appropriate form, having regard to the need for protection of commercially sensitive information. The High Representative is invited to take fully account of the energy security dimension in her work. Energy security should also be fully reflected in the EU's neighbourhood policy.

12. The EU should take initiatives in line with the Treaties in the relevant international fora and develop mutually beneficial energy partnerships with key players and around strategic corridors, covering a wide range of issues, including regulatory approaches, on all subjects of common interest, such as energy security, safe and sustainable low carbon technologies, energy efficiency, the investment environment and maintaining and promoting the highest standards for nuclear safety. It should encourage neighbouring countries to embrace its relevant internal energy market rules, notably by extending and deepening the Energy Community Treaty and promoting regional cooperation initiatives. In the context of the Energy Strategy 2020 it should also develop measures as necessary to ensure a level playing field for EU power producers vis-à-vis producers outside the European Economic Area. Europe needs to diversify its routes and sources of supply. The Commission is accordingly invited to continue its efforts to facilitate the development of strategic corridors for the transport of large volumes of gas such as the Southern Corridor.

13. Work should be taken forward as early as possible to develop a reliable, transparent and rules-based partnership with Russia in areas of common interest in the field of energy and as part of the negotiations on the post-Partnership and Cooperation Agreement process and in the light of on-going work on the Partnership for Modernization and the Energy Dialogue.

14. The EU will cooperate with third countries in order to address the volatility of energy prices and will take this work forward within the G20.

15. The European Council looked forward to the elaboration of a **low carbon 2050 strategy** providing the framework for the longer term action in the energy and other related sectors. Reaching the EU objective, in the context of necessary reductions according to the IPCC by developed countries as a group, of reducing greenhouse gas emissions by 80-95% by 2050 compared to 1990 as agreed in October 2009 will require a revolution in energy systems, which must start now. Due consideration should be given to fixing intermediary stages towards reaching the 2050 objective. The European Council will keep developments under review on a regular basis.

II. INNOVATION

16. Investment in education, research, technology and innovation is a key driver of growth, and innovative ideas that can be turned into new marketable products and services help create growth and quality jobs. The European Council called for the implementation of a strategic and integrated approach to boosting innovation and taking full advantage of Europe's intellectual capital, to the benefit of citizens, companies - in particular SMEs - and researchers. It will monitor progress in the framework of the follow up to the Europe 2020 Strategy.

17. In this connection, the European Council noted the trends and developments revealed by the current Commission innovation scoreboard. It invited the Commission to quickly develop a single integrated indicator to allow a better monitoring of progress in innovation. It will keep developments concerning the above under review.

18. Innovation contributes to tackling the most critical **societal challenges** we are facing. Europe's expertise and resources must be mobilized in a coherent manner and synergies between the EU and the Member States must be fostered in order to ensure that innovations with a societal benefit get to the market quicker. Joint programming should be developed. The launch of the pilot Innovation Partnership on active and healthy ageing is an important step in that context. Regular monitoring by the Council will be necessary in order to reach long term objectives as well as concrete goals to be fixed year by year. The Council will take the necessary political decisions on future Innovation Partnerships before they are launched.

19. Europe needs a unified research area to attract talent and investment. Remaining gaps must therefore be addressed rapidly and the **European Research Area** completed by 2014 to create a genuine single market for knowledge, research and innovation. In particular, efforts should be made to improve the mobility and career prospects of researchers, the mobility of graduate students and the attractiveness of Europe for foreign researchers. Furthermore, information about publicly financed R&D should be better disseminated, whilst respecting intellectual property rights, notably through the establishment of an inventory of EU-funded R&D, linked to similar inventories of R&D programmes funded at national level.

20. Private investment in innovative products and services should be encouraged, in particular by improving **framework conditions**. In this regard, the Commission is invited to:

- make proposals to accelerate, simplify and modernize standardization procedures, notably to allow standards developed by industry to be turned into European standards under certain conditions;
- provide guidance on the application of the Directives on public procurement; more generally public procurement should be better geared to creating greater demand for innovative goods and services;
- conduct a mid-term review of the relevant State aid frameworks during 2011;
- explore options for setting up an intellectual property rights valorisation instrument at the European level, in particular to ease SMEs' access to the knowledge market and to report back to the Council by the end of 2011.

21. The Commission is invited to make rapid progress in key areas of the digital economy to ensure the creation of the Digital Single Market by 2015, including the promotion and protection of creativity, the development of e-commerce and the availability of public sector information

22. Every effort should be pursued to lift remaining legal and administrative obstacles to the cross-border operation of venture capital. The Commission is invited to present proposals by the end of 2011:

- for putting in place an EU-wide venture capital scheme building on the EIF and other relevant financial institutions and in cooperation with national operators;
- for scaling up the Risk Sharing Finance Facility;
- and for assessing how best to meet the needs of fast growing innovative companies through a market-based approach. In this connection the Commission is also invited to explore the feasibility of a Small Business Innovation Research Scheme.

23. In conducting fiscal consolidation, Member States should give priority to **sustainable growth-friendly expenditure** in areas such as research and innovation, education and energy.

24. Such efforts should be coupled with clear reform measures aimed at boosting the effectiveness of Member States' research and innovation systems. At national level, Member States recall their willingness to devote at least 50% of ETS revenue to finance climate-related action, including innovative projects. They should also improve the use of existing Structural Funds allocated to research and innovation projects.

25. It is crucial that EU instruments aimed at fostering R&D&I be simplified in order to facilitate their take-up by the best scientists and the most innovative companies, in particular by agreeing between the relevant institutions a new balance between trust and control and between risk taking and risk avoidance. The Commission is invited to make proposals by the end of the year, ensuring that the full range of research and innovation financing instruments work together within a common strategic framework. The development of financing mechanisms adequate for the financing of major European projects that are important drivers for research and innovation should be explored. It is more than ever crucial to improve the efficiency of public expenditure at national and EU levels. In this connection, the simplification of the financial regulation should be adopted by the end of the year in order to ensure effective delivery mechanisms for EU policies.

III. ECONOMIC SITUATION

26. The European Council reviewed the economic situation and noted that the overall economic outlook is improving although important challenges still remain. It agreed on the way forward to the March European Council.

27. The European Council called on the Council to reach in March a general approach on the Commission's legislative proposals on economic governance, ensuring full implementation of the recommendations of the Task Force, so as to reach a final agreement with the EP by the end of June. This will allow strengthening the Stability and Growth Pact and implementing a new macroeconomic framework.

28. It called on the European Banking Authority and other relevant authorities to conduct ambitious stress tests and on Member States to ensure that concrete plans, compliant with EU State aid rules, are in place to deal with any bank that demonstrates vulnerabilities in the stress tests.

29. In the context of the European Semester and on the basis of the Annual Growth Survey presented by the Commission, the March European Council will identify the priorities for structural reforms and fiscal consolidation for the next round of stability and convergence programmes as well as in the EU's areas of competence, including the single market. On this basis, and steered by the Europe 2020 integrated guidelines, Member States are invited to submit in April their national reform programmes as well as their stability or convergence programmes.

30. The March European Council will also adopt the final decision on the limited treaty change to set up the European Stability Mechanism.

31. The European Council welcomed the attached Statement by the Heads of State or government of the euro area and the EU institutions.

IV. EXTERNAL RELATIONS

32. The European Council adopted a declaration on Egypt and the region (annex II).

33. The European Council emphasised that developments in the Mediterranean region make it even more urgent to respect previous peace agreements and to achieve rapid progress in the Middle East Peace Process. It expressed the expectation that the Quartet meeting on 5 February 2011 in Munich will make a substantive contribution to this process.

34. The European Council endorsed the conclusions on Belarus adopted by the Foreign Affairs Council on 31 January, including the decision to impose restrictive measures. The European Union reiterates its strong commitment to strengthening its engagement with Belarusian civil society. The European Union remains committed to its policy of critical engagement, including through dialogue and the Eastern Partnership, conditional on the respect for the principles of democracy, the rule of law and human rights. The Foreign Affairs Council will regularly re-examine the situation in Belarus and stand ready to consider further targeted measures in all areas as appropriate.

ANNEX I

STATEMENT BY THE HEADS OF STATE OR GOVERNMENT OF THE EURO AREA AND THE EU INSTITUTIONS

Following their December 2010 Statement, and reiterating their readiness to do whatever is required to ensure the stability of the euro area as a whole, the Heads of State or government of the euro area and the EU institutions reviewed progress in the implementation of the comprehensive strategy to preserve financial stability and ensure that the euro area will emerge stronger from the crisis.

This strategy includes the legislative package on economic governance, the stress tests and the financial sector repair, and the implementation of the European semester. In addition, they agreed on the following steps as part of the global package to be finalized in March:

- Continued successful implementation of existing programmes with Greece and Ireland.

- Assessment by the Commission, in liaison with the ECB, of progress made in euro area Member States in the implementation of measures taken to strengthen fiscal positions and growth prospects.

- Concrete proposals by the Eurogroup on the strengthening of the EFSF so as to ensure the necessary effectiveness to provide adequate support.

- Finalization under the chairmanship of the President of the Eurogroup of the operational features of the European Stability Mechanism in line with the mandate agreed upon in December.

Building on the new economic governance framework, Heads of State or government will take further steps to achieve a new quality of economic policy coordination in the euro area to improve competitiveness, thereby leading to a higher degree of convergence, without undermining the single market. Non-euro members will be invited to participate in the coordination. The President of the European Council will undertake consultations with the Heads of State or government of the euro area Member States and report back, identifying concrete ways forward in line with the Treaty. To this effect, he will closely cooperate with the President of the Commission. He will ensure that the Heads of State or government of the interested non-euro area Member States are duly involved in the process.

ANNEX II

DECLARATION ON EGYPT AND THE REGION

The European Council is following with utmost concern the deteriorating situation in Egypt. It condemned in the strongest terms the violence and all those who use and encourage violence. It emphasised the right of all citizens to demonstrate freely and peacefully, under due protection from law enforcement authorities. Any attempt to restrict the free flow of information, including aggression and intimidation directed against journalists and human rights defenders, is unacceptable.

The European Council called on the Egyptian authorities to meet the aspirations of the Egyptian people with political reform not repression. All parties should show restraint and avoid further violence and begin an orderly transition to a broad-based government. The European Council underlined that this transition process must start now. The basis for the EU's relationship with Egypt must be the principles set out in the Association Agreement and the commitments made.

The European Council saluted the peaceful and dignified expression by the Tunisian and Egyptian people of their legitimate, democratic, economic and social aspirations which are in accordance with the values the European Union promotes for itself and throughout the world. The European Council emphasised that the citizens' democratic aspirations should be addressed through dialogue and political reform with full respect for human rights and fundamental freedoms, and through free and fair elections. It called on all parties to engage in a meaningful dialogue to that end.

The European Union is determined to lend its full support to the transition processes towards democratic governance, pluralism, improved opportunities for economic prosperity and social inclusion, and strengthened regional stability. The European Council is committed to a new partnership involving more effective support in the future to those countries which are pursuing political and economic reforms including through the European Neighbourhood Policy and the Union for the Mediterranean.

In this context, the European Council

- asked the High Representative to convey our message on her forthcoming visit to Tunisia and Egypt;

- invited the High Representative within the framework of this partnership to develop a package of measures aimed at lending European Union support to the transition and transformation processes (strengthening democratic institutions, promoting democratic governance and social justice, and assisting the preparation and conduct of free and fair elections); and to link the European Neighbourhood Policy and Union for the Mediterranean more to these objectives; and

- invited the High Representative and the Commission to adapt rapidly the instruments of the European Union, to make humanitarian aid available and to propose measures and projects to stimulate cooperation, exchange and investment in the region with the aim of promoting economic and social development, including advanced status for Tunisia.

Communities and Local Government

National Planning Policy Framework

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Communities and Local Government

National Planning Policy Framework

March 2012
Department for Communities and Local Government

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Ministerial foreword

The purpose of planning is to help achieve sustainable development.

Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations.

Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world. We must house a rising population, which is living longer and wants to make new choices. We must respond to the changes that new technologies offer us. Our lives, and the places in which we live them, can be better, but they will certainly be worse if things stagnate.

Sustainable development is about change for the better, and not only in our built environment.

Our natural environment is essential to our wellbeing, and it can be better looked after than it has been. Habitats that have been degraded can be restored. Species that have been isolated can be reconnected. Green Belt land that has been depleted of diversity can be refilled by nature – and opened to people to experience it, to the benefit of body and soul.

Our historic environment – buildings, landscapes, towns and villages – can better be cherished if their spirit of place thrives, rather than withers.

Our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence, yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity.

So sustainable development is about positive growth – making economic, environmental and social progress for this and future generations.

The planning system is about helping to make this happen.

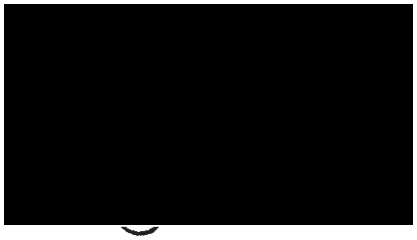
Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. This framework sets out clearly what could make a proposed plan or development unsustainable.

In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

This should be a collective enterprise. Yet, in recent years, planning has tended to exclude, rather than to include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them. Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities.

This National Planning Policy Framework changes that. By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.



Rt Hon Greg Clark MP
Minister for Planning

Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied.[1] It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

2. Planning law requires that applications for planning permission must be determined in accordance with the development plan,[2] unless material considerations indicate otherwise.[3] The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions.[4] Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements.

3. This Framework does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications.

4. This Framework should be read in conjunction with the Government's planning policy for traveller sites. Local planning authorities preparing plans for and taking decisions on travellers sites should also have regard to the policies in this Framework so far as relevant.

5. This Framework does not contain specific waste policies, since national waste planning policy will be published as part of the National Waste Management Plan for England.[5] However, local authorities preparing waste plans and taking decisions on waste applications should have regard to policies in this Framework so far as relevant.

1 A list of the documents revoked and replaced by this Framework is at Annex 3.
2 This includes the Local Plan and neighbourhood plans which have been made in relation to the area (see glossary for full definition).
3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.
4 Sections 19(2)(a) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. In relation to neighbourhood plans, under section 38B and C and paragraph 8(2) of new Schedule 4B to the 2004 Act (inserted by the Localism Act 2011 section 116 and Schedules 9 and 10) the independent examiner will consider whether having regard to national policy it is appropriate to make the plan.
5 The Waste Planning Policy Statement will remain in place until the National Waste Management Plan is published.

Achieving sustainable development

International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy *Securing the Future* set out five 'guiding principles' of sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.

6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

   - **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
   - **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
   - **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

8. These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.

9. Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

   - making it easier for jobs to be created in cities, towns and villages;
   - moving from a net loss of bio-diversity to achieving net gains for nature;[6]
   - replacing poor design with better design;
   - improving the conditions in which people live, work, travel and take leisure; and
   - widening the choice of high quality homes.

10. Plans and decisions need to take local circumstances into account, so that they respond to the different opportunites for achieving sustainable development in different areas.

The presumption in favour of sustainable development

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.[7]

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13. The National Planning Policy Framework constitutes guidance[8] for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.

6 Natural Environment White Paper, *The Natural Choice: Securing the Value of Nature*, 2011.
7 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.
8 A list of the documents revoked and replaced by this Framework is at Annex 3. Section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 states, in relation to plan-making, that the local planning authority must have regard to national policies and advice contained in guidance issued by the Secretary of State.

14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

    For **plan-making** this means that:

    - local planning authorities should positively seek opportunities to meet the development needs of their area;
    - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
        - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
        - specific policies in this Framework indicate development should be restricted.[9]

    For **decision-taking** this means:[10]

    - approving development proposals that accord with the development plan without delay; and
    - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
        - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
        - specific policies in this Framework indicate development should be restricted.[9]

15. Policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:

    - develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;

9 For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

10 Unless material considerations indicate otherwise.

- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and
- identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed.

Core planning principles

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
- not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);

- contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);
- conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

Delivering sustainable development

1. Building a strong, competitive economy

18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

19. The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

20. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.

21. Investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing. In drawing up Local Plans, local planning authorities should:

- set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth;

- set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area. Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances;
- plan positively for the location, promotion and expansion of clusters or networks of knowledge driven, creative or high technology industries;
- identify priority areas for economic regeneration, infrastructure provision and environmental enhancement; and
- facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.

22. Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.

2. Ensuring the vitality of town centres

23. Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:

- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- define a network and hierarchy of centres that is resilient to anticipated future economic changes;
- define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;
- promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive;
- allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should

therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;

- allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;
- set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;
- recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and
- where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.

24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

25. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m).This should include assessment of:

    - the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
    - the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.

3. Supporting a prosperous rural economy

28. Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
- promote the development and diversification of agricultural and other land-based rural businesses;
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres; and
- promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.

4. Promoting sustainable transport

29. Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.

30. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. In preparing Local Plans, local planning authorities should therefore support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport.

31. Local authorities should work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including large scale facilities such as rail freight interchanges, roadside facilities for motorists or transport investment necessary to support strategies for the growth of ports, airports or other major generators of travel demand in their areas. The primary function of roadside facilities for motorists should be to support the safety and welfare of the road user.

32. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

33. When planning for ports, airports and airfields that are not subject to a separate national policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. Plans should take account of this Framework as well as the principles set out in the relevant national policy statements and the Government Framework for UK Aviation.

34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.

35. Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to

- accommodate the efficient delivery of goods and supplies;
- give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;
- create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and where appropriate establishing home zones;
- incorporate facilities for charging plug-in and other ultra-low emission vehicles; and
- consider the needs of people with disabilities by all modes of transport.

36. A key tool to facilitate this will be a Travel Plan. All developments which generate significant amounts of movement should be required to provide a Travel Plan.

37. Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.

38. For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.

39. If setting local parking standards for residential and non-residential development, local planning authorities should take into account:

    - the accessibility of the development;
    - the type, mix and use of development;
    - the availability of and opportunities for public transport;
    - local car ownership levels; and
    - an overall need to reduce the use of high-emission vehicles.

40. Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles. They should set appropriate parking charges that do not undermine the vitality of town centres. Parking enforcement should be proportionate.

41. Local planning authorities should identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice.

5. Supporting high quality communications infrastructure

42. Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.

43. In preparing Local Plans, local planning authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband. They should aim to keep the numbers of radio and telecommunications masts and the sites for such installations to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures should be used, unless the need for a new site has been justified. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate.

44. Local planning authorities should not impose a ban on new telecommunications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of telecommunications development or insist on minimum distances between new telecommunications development and existing development. They should ensure that:

    - they have evidence to demonstrate that telecommunications infrastructure will not cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and
    - they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and telecommunications services.

45. Applications for telecommunications development (including for prior approval under Part 24 of the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:

    - the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college or within a statutory safeguarding zone surrounding an aerodrome or technical site; and
    - for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission on non-ionising radiation protection guidelines; or
    - for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.

46. Local planning authorities must determine applications on planning grounds. They should not seek to prevent competition between different operators, question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission guidelines for public exposure.

6. Delivering a wide choice of high quality homes

47. To boost significantly the supply of housing, local planning authorities should:

    - use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
    - identify and update annually a supply of specific deliverable[11] sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
    - identify a supply of specific, developable[12] sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

11 To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

12 To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.

- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.

48. Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.

49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

    - plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
    - identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
    - where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.

51. Local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. They should normally approve planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.

52. The supply of new homes can sometimes be best achieved through planning for larger scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities.

Working with the support of their communities, local planning authorities should consider whether such opportunities provide the best way of achieving sustainable development. In doing so, they should consider whether it is appropriate to establish Green Belt around or adjoining any such new development.

53. Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

54. In rural areas, exercising the duty to cooperate with neighbouring authorities, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. Local planning authorities should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs.

55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
  - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
  - reflect the highest standards in architecture;
  - significantly enhance its immediate setting; and
  - be sensitive to the defining characteristics of the local area.

7. Requiring good design

56. The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.

58. Local and neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area. Such policies should be based on stated objectives for the future of the area and an understanding and evaluation of its defining characteristics. Planning policies and decisions should aim to ensure that developments:

    - will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
    - establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
    - optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;
    - respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;
    - create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
    - are visually attractive as a result of good architecture and appropriate landscaping.

59. Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.

60. Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

61. Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

62. Local planning authorities should have local design review arrangements in place to provide assessment and support to ensure high standards of design.

They should also when appropriate refer major projects for a national design review.[13] In general, early engagement on design produces the greatest benefits. In assessing applications, local planning authorities should have regard to the recommendations from the design review panel.

63. In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

65. Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

66. Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the new development should be looked on more favourably.

67. Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority's detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

68. Where an area justifies a degree of special protection on the grounds of amenity, an Area of Special Control Order[14] may be approved. Before formally proposing an Area of Special Control, the local planning authority is expected to consult local trade and amenity organisations about the proposal. Before a direction to remove deemed planning consent is made for specific advertisements,[15] local planning authorities will be expected to demonstrate that the direction would improve visual amenity and there is no other way of effectively controlling the display of that particular class of advertisement. The comments of organisations, and individuals, whose interests would be affected by the direction should be sought as part of the process.

13 Currently provided by Design Council Cabe.
14 Regulation 20, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
15 Regulation 7, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

8. Promoting healthy communities

69. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see. To support this, local planning authorities should aim to involve all sections of the community in the development of Local Plans and in planning decisions, and should facilitate neighbourhood planning. Planning policies and decisions, in turn, should aim to achieve places which promote:

- opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity;
- safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas.

70. To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
- guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and
- ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

71. Local planning authorities should take a positive and collaborative approach to enable development to be brought forward under a Community Right to Build Order, including working with communities to identify and resolve key issues before applications are submitted.

72. The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- give great weight to the need to create, expand or alter schools; and

- work with schools promoters to identify and resolve key planning issues before applications are submitted.

73. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.

74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

75. Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.

77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:

- where the green space is in reasonably close proximity to the community it serves;
- where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- where the green area concerned is local in character and is not an extensive tract of land.

78. Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.

9. Protecting Green Belt land

79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

81. Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.

82. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. If proposing a new Green Belt, local planning authorities should:

- demonstrate why normal planning and development management policies would not be adequate;
- set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;
- show what the consequences of the proposal would be for sustainable development;
- demonstrate the necessity for the Green Belt and its consistency with Local Plans for adjoining areas; and
- show how the Green Belt would meet the other objectives of the Framework.

83. Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green

Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

84. When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary.

85. When defining boundaries, local planning authorities should:

- ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development;
- not include land which it is unnecessary to keep permanently open;
- where necessary, identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;
- make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development;
- satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period; and
- define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

86. If it is necessary to prevent development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.

87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- buildings for agriculture and forestry;

- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order.

91. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

92. Community Forests offer valuable opportunities for improving the environment around towns, by upgrading the landscape and providing for recreation and wildlife. An approved Community Forest plan may be a material consideration in preparing development plans and in deciding planning applications. Any development proposals within Community Forests in the Green Belt should be subject to the normal policies controlling development in Green Belts.

10. Meeting the challenge of climate change, flooding and coastal change

93. Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable

and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development.

94. Local planning authorities should adopt proactive strategies to mitigate and adapt to climate change,[16] taking full account of flood risk, coastal change and water supply and demand considerations.

95. To support the move to a low carbon future, local planning authorities should:

- plan for new development in locations and ways which reduce greenhouse gas emissions;
- actively support energy efficiency improvements to existing buildings; and
- when setting any local requirement for a building's sustainability, do so in a way consistent with the Government's zero carbon buildings policy and adopt nationally described standards.

96. In determining planning applications, local planning authorities should expect new development to:

- comply with adopted Local Plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and
- take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

97. To help increase the use and supply of renewable and low carbon energy, local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. They should:

- have a positive strategy to promote energy from renewable and low carbon sources;
- design their policies to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts;
- consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources;[17]
- support community-led initiatives for renewable and low carbon energy, including developments outside such areas being taken forward through neighbourhood planning; and

16 In line with the objectives and provisions of the Climate Change Act 2008.

17 In assessing the likely impacts of potential wind energy development when identifying suitable areas, and in determining planning applications for such development, planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure (read with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure, including that on aviation impacts). Where plans identify areas as suitable for renewable and low-carbon energy development, they should make clear what criteria have determined their selection, including for what size of development the areas are considered suitable.

- identify opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.

98. When determining planning applications, local planning authorities should:

    - not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and
    - approve the application[18] if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should also expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.

99. Local Plans should take account of climate change over the longer term, including factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure.

100. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.[19] Local Plans should be supported by Strategic Flood Risk Assessment and develop policies to manage flood risk from all sources, taking account of advice from the Environment Agency and other relevant flood risk management bodies, such as lead local flood authorities and internal drainage boards. Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by:

    - applying the Sequential Test;
    - if necessary, applying the Exception Test;
    - safeguarding land from development that is required for current and future flood management;
    - using opportunities offered by new development to reduce the causes and impacts of flooding; and
    - where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking

18 Unless material considerations indicate otherwise.
19 Technical guidance on flood risk published alongside this Framework sets out how this policy should be implemented.

opportunities to facilitate the relocation of development, including housing, to more sustainable locations.

101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.

102. If, following application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. For the Exception Test to be passed:

- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
- a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Both elements of the test will have to be passed for development to be allocated or permitted.

103. When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment[20] following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.[21]

104. For individual developments on sites allocated in development plans through the Sequential Test, applicants need not apply the Sequential Test. Applications for minor development and changes of use should not be

20 A site-specific flood risk assessment is required for proposals of 1 hectare or greater in Flood Zone 1; all proposals for new development (including minor development and change of use) in Flood Zones 2 and 3, or in an area within Flood Zone 1 which has critical drainage problems (as notified to the local planning authority by the Environment Agency); and where proposed development or a change of use to a more vulnerable class may be subject to other sources of flooding.

21 The Floods and Water Management Act 2010 establishes a Sustainable Drainage Systems Approving Body in unitary or county councils. This body must approve drainage systems in new developments and re-developments before construction begins.

subject to the Sequential or Exception Tests[22] but should still meet the requirements for site-specific flood risk assessments.

105. In coastal areas, local planning authorities should take account of the UK Marine Policy Statement and marine plans and apply Integrated Coastal Zone Management across local authority and land/sea boundaries, ensuring integration of the terrestrial and marine planning regimes.

106. Local planning authorities should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas or adding to the impacts of physical changes to the coast. They should identify as a Coastal Change Management Area any area likely to be affected by physical changes to the coast, and:

- be clear as to what development will be appropriate in such areas and in what circumstances; and
- make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas.

107. When assessing applications, authorities should consider development in a Coastal Change Management Area appropriate where it is demonstrated that:

- it will be safe over its planned lifetime and will not have an unacceptable impact on coastal change;
- the character of the coast including designations is not compromised;
- the development provides wider sustainability benefits; and
- the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast.[23]

108. Local planning authorities should also ensure appropriate development in a Coastal Change Management Area is not impacted by coastal change by limiting the planned life-time of the proposed development through temporary permission and restoration conditions where necessary to reduce the risk to people and the development.

11. Conserving and enhancing the natural environment

109. The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the

22 Except for any proposal involving a change of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the Sequential and Exception Tests should be applied as appropriate.

23 As required by the Marine and Coastal Access Act 2009.

overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and

- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

110. In preparing plans to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment. Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.

111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.

112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.

113. Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites,[24] so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.

114. Local planning authorities should:

- set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure; and

- maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast.

115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important

24 Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.

considerations in all these areas, and should be given great weight in National Parks and the Broads.[25]

116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

117. To minimise impacts on biodiversity and geodiversity, planning policies should:

- plan for biodiversity at a landscape-scale across local authority boundaries;
- identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;
- promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;
- aim to prevent harm to geological conservation interests; and
- where Nature Improvement Areas are identified in Local Plans, consider specifying the types of development that may be appropriate in these Areas.

118. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made

25 *English National Parks and the Broads: UK Government Vision and Circular 2010* provides further guidance and information about their statutory purposes, management and other matters.

where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;

- development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;
- opportunities to incorporate biodiversity in and around developments should be encouraged;
- planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; and
- the following wildlife sites should be given the same protection as European sites:
  - potential Special Protection Areas and possible Special Areas of Conservation;
  - listed or proposed Ramsar sites;[26] and
  - sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

119. The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

120. To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

121. Planning policies and decisions should also ensure that:

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

26 Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.

- adequate site investigation information, prepared by a competent person, is presented.

122. In doing so, local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

123. Planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts[27] on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts[27] on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;[28] and
- identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

124. Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.

125. By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

27 See Explanatory Note to the Noise Policy Statement for England (Department for the Environment, Food and Rural Affairs).

28 Subject to the provisions of the Environmental Protection Act 1990 and other relevant law.

12. Conserving and enhancing the historic environment

126. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment,[29] including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- the desirability of new development making a positive contribution to local character and distinctiveness; and
- opportunities to draw on the contribution made by the historic environment to the character of a place.

127. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

130. Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

29 The principles and policies set out in this section apply to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-taking.

131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

135. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

136. Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

137. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

138. Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

140. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

141. Local planning authorities should make information about the significance of the historic environment gathered as part of plan-making or development management publicly accessible. They should also require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.[30] However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

13. Facilitating the sustainable use of minerals

142. Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation.

143. In preparing Local Plans, local planning authorities should:

30 Copies of evidence should be deposited with the relevant Historic Environment Record, and any archives with a local museum or other public depository.

- identify and include policies for extraction of mineral resource of local and national importance in their area, but should not identify new sites or extensions to existing sites for peat extraction;
- so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;
- define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked; and define Minerals Consultation Areas based on these Minerals Safeguarding Areas;
- safeguard:
  - existing, planned and potential rail heads, rail links to quarries, wharfage and associated storage, handling and processing facilities for the bulk transport by rail, sea or inland waterways of minerals, including recycled, secondary and marine-dredged materials; and
  - existing, planned and potential sites for concrete batching, the manufacture of coated materials, other concrete products and the handling, processing and distribution of substitute, recycled and secondary aggregate material.
- set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place;
- set out environmental criteria, in line with the policies in this Framework, against which planning applications will be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from noise, dust, visual intrusion, traffic, tip- and quarry-slope stability, differential settlement of quarry backfill, mining subsidence, increased flood risk, impacts on the flow and quantity of surface and groundwater and migration of contamination from the site; and take into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;
- when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction; and
- put in place policies to ensure worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place, including for agriculture (safeguarding the long term potential of best and most versatile agricultural land and conserving soil resources), geodiversity, biodiversity, native woodland, the historic environment and recreation.

144. When determining planning applications, local planning authorities should:

- give great weight to the benefits of the mineral extraction, including to the economy;
- as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage sites, Scheduled Monuments and Conservation Areas;
- ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;
- ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source,[31] and establish appropriate noise limits for extraction in proximity to noise sensitive properties;
- not grant planning permission for peat extraction from new or extended sites;
- provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards, through the application of appropriate conditions, where necessary. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;
- not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes;
- consider how to meet any demand for small-scale extraction of building stone at, or close to, relic quarries needed for the repair of heritage assets, taking account of the need to protect designated sites; and
- recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the potentially long duration of planning permissions reflecting the intermittent or low rate of working at many sites.

145. Minerals planning authorities should plan for a steady and adequate supply of aggregates by:

- preparing an annual Local Aggregate Assessment, either individually or jointly by agreement with another or other mineral planning authorities, based on a rolling average of 10 years sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources);
- participating in the operation of an Aggregate Working Party and taking the advice of that Party into account when preparing their Local Aggregate Assessment;

31 Technical guidance on minerals published alongside this Framework sets out how these policies should be implemented.

- making provision for the land-won and other elements of their Local Aggregate Assessment in their mineral plans taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group as appropriate. Such provision should take the form of specific sites, preferred areas and/or areas of search and locational criteria as appropriate;
- taking account of published National and Sub National Guidelines on future provision which should be used as a guideline when planning for the future demand for and supply of aggregates;
- using landbanks of aggregate minerals reserves principally as an indicator of the security of aggregate minerals supply, and to indicate the additional provision that needs to be made for new aggregate extraction and alternative supplies in mineral plans;
- making provision for the maintenance of landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised. Longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserves relative to markets, and productive capacity of permitted sites;
- ensuring that large landbanks bound up in very few sites do not stifle competition; and
- calculating and maintaining separate landbanks for any aggregate materials of a specific type or quality which have a distinct and separate market.

146. Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:

- co-operating with neighbouring and more distant authorities to co-ordinate the planning of industrial minerals to ensure adequate provision is made to support their likely use in industrial and manufacturing processes;
- encouraging safeguarding or stockpiling so that important minerals remain available for use;
- providing a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment, as follows:
  - at least 10 years for individual silica sand sites;
  - at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and
  - at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.
- taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

147. Minerals planning authorities should also:

- when planning for on-shore oil and gas development, including unconventional hydrocarbons, clearly distinguish between the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production;
- encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;
- indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;
- encourage capture and use of methane from coal mines in active and abandoned coalfield areas; and
- provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

148. When determining planning applications, minerals planning authorities should ensure that the integrity and safety of underground storage facilities are appropriate, taking into account the maintenance of gas pressure, prevention of leakage of gas and the avoidance of pollution.

149. Permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.

Plan-making

Local Plans

150. Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.[32]

151. Local Plans must be prepared with the objective of contributing to the achievement of sustainable development.[33] To this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.

152. Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible, compensatory measures may be appropriate.

153. Each local planning authority should produce a Local Plan for its area. This can be reviewed in whole or in part to respond flexibly to changing circumstances. Any additional development plan documents should only be used where clearly justified. Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.

154. Local Plans should be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.

155. Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.

156. Local planning authorities should set out the **strategic priorities** for the area in the Local Plan. This should include strategic policies to deliver:

    - the homes and jobs needed in the area;

32 Section 38(6) of the Planning and Compulsory Purchase Act 2004.

33 Under section 39(2) of the Planning and Compulsory Purchase Act 2004 a local authority exercising their plan making functions must do so with the objective of contributing to the achievement of sustainable development.

- the provision of retail, leisure and other commercial development;
- the provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
- the provision of health, security, community and cultural infrastructure and other local facilities; and
- climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.

157. Crucially, Local Plans should:

- plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;
- be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date;
- be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations;
- indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map;
- allocate sites to promote development and flexible use of land, bringing forward new land where necessary, and provide detail on form, scale, access and quantum of development where appropriate;
- identify areas where it may be necessary to limit freedom to change the uses of buildings, and support such restrictions with a clear explanation;
- identify land where development would be inappropriate, for instance because of its environmental or historic significance; and
- contain a clear strategy for enhancing the natural, built and historic environment, and supporting Nature Improvement Areas where they have been identified.

Using a proportionate evidence base

158. Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals.

Housing

159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment

should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:

- meets household and population projections, taking account of migration and demographic change;
- addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);[34] and
- caters for housing demand and the scale of housing supply necessary to meet this demand;

- prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.

Business

160. Local planning authorities should have a clear understanding of business needs within the economic markets operating in and across their area. To achieve this, they should:

- work together with county and neighbouring authorities and with Local Enterprise Partnerships to prepare and maintain a robust evidence base to understand both existing business needs and likely changes in the market; and
- work closely with the business community to understand their changing needs and identify and address barriers to investment, including a lack of housing, infrastructure or viability.

161. Local planning authorities should use this evidence base to assess:

- the needs for land or floorspace for economic development, including both the quantitative and qualitative needs for all foreseeable types of economic activity over the plan period, including for retail and leisure development;
- the existing and future supply of land available for economic development and its sufficiency and suitability to meet the identified needs. Reviews of land available for economic development should be undertaken at the same time as, or combined with, Strategic Housing Land Availability Assessments and should include a reappraisal of the suitability of previously allocated land;
- the role and function of town centres and the relationship between them, including any trends in the performance of centres;
- the capacity of existing centres to accommodate new town centre development;
- locations of deprivation which may benefit from planned remedial action; and

34 The planning policy for traveller sites sets out how travellers' accommodation needs should also be assessed.

- the needs of the food production industry and any barriers to investment that planning can resolve.

Infrastructure

162. Local planning authorities should work with other authorities and providers to:

- assess the quality and capacity of infrastructure for transport, water supply, wastewater and its treatment, energy (including heat), telecommunications, utilities, waste, health, social care, education, flood risk and coastal change management, and its ability to meet forecast demands; and
- take account of the need for strategic infrastructure including nationally significant infrastructure within their areas.

Minerals

163. Minerals planning authorities should work with other relevant organisations to use the best available information to:

- develop and maintain an understanding of the extent and location of mineral resource in their areas; and
- assess the projected demand for their use, taking full account of opportunities to use materials from secondary and other sources which could provide suitable alternatives to primary materials.

Defence, national security, counter-terrorism and resilience

164. Local planning authorities should:

- work with the Ministry of Defence's Strategic Planning Team to ensure that they have and take into account the most up-to-date information about defence and security needs in their area; and
- work with local advisors and others to ensure that they have and take into account the most up-to-date information about higher risk sites in their area for malicious threats and natural hazards, including steps that can be taken to reduce vulnerability and increase resilience.

Environment

165. Planning policies and decisions should be based on up-to-date information about the natural environment and other characteristics of the area including drawing, for example, from River Basin Management Plans. Working with Local Nature Partnerships where appropriate, this should include an assessment of existing and potential components of ecological networks. A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors.

166. Local Plans may require a variety of other environmental assessments, including under the Habitats Regulations where there is a likely significant effect on a European wildlife site (which may not necessarily be within the same local authority area), Strategic Flood Risk Assessment and assessments of the physical constraints on land use.[35] Wherever possible, assessments should share the same evidence base and be

35 Such as land instability, contamination and subsidence.

conducted over similar timescales, but local authorities should take care to ensure that the purposes and statutory requirements of different assessment processes are respected.

167. Assessments should be proportionate, and should not repeat policy assessment that has already been undertaken. Wherever possible the local planning authority should consider how the preparation of any assessment will contribute to the plan's evidence base. The process should be started early in the plan-making process and key stakeholders should be consulted in identifying the issues that the assessment must cover.

168. Shoreline Management Plans should inform the evidence base for planning in coastal areas. The prediction of future impacts should include the longer term nature and inherent uncertainty of coastal processes (including coastal landslip), and take account of climate change.

Historic environment

169. Local planning authorities should have up-to-date evidence about the historic environment in their area and use it to assess the significance of heritage assets and the contribution they make to their environment. They should also use it to predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future. Local planning authorities should either maintain or have access to a historic environment record.

170. Where appropriate, landscape character assessments should also be prepared, integrated with assessment of historic landscape character, and for areas where there are major expansion options assessments of landscape sensitivity.

Health and well-being

171. Local planning authorities should work with public health leads and health organisations to understand and take account of the health status and needs of the local population (such as for sports, recreation and places of worship), including expected future changes, and any information about relevant barriers to improving health and well-being.

Public safety from major accidents

172. Planning policies should be based on up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents.

Ensuring viability and deliverability

173. Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

174. Local planning authorities should set out their policy on local standards in the Local Plan, including requirements for affordable housing. They should assess the likely cumulative impacts on development in their area of all existing and proposed local standards, supplementary planning documents and policies that support the development plan, when added to nationally required standards. In order to be appropriate, the cumulative impact of these standards and policies should not put implementation of the plan at serious risk, and should facilitate development throughout the economic cycle. Evidence supporting the assessment should be proportionate, using only appropriate available evidence.

175. Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.

176. Where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements. The need for such safeguards should be clearly justified through discussions with the applicant, and the options for keeping such costs to a minimum fully explored, so that development is not inhibited unnecessarily.

177. It is equally important to ensure that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion. To facilitate this, it is important that local planning authorities understand district-wide development costs at the time Local Plans are drawn up. For this reason, infrastructure and development policies should be planned at the same time, in the Local Plan. Any affordable housing or local standards requirements that may be applied to development should be assessed at the plan-making stage, where possible, and kept under review.

Planning strategically across local boundaries

178. Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the **strategic priorities** set out in paragraph 156. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.

179. Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans.[36] Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework. As part of this process, they should consider producing joint

36 In marine areas, local planning authorities should collaborate with the Marine Management Organisation to ensure that policies across the land/sea boundary are integrated.

planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.

180. Local planning authorities should take account of different geographic areas, including travel-to-work areas. In two tier areas, county and district authorities should cooperate with each other on relevant issues. Local planning authorities should work collaboratively on strategic planning priorities to enable delivery of sustainable development in consultation with Local Enterprise Partnerships and Local Nature Partnerships. Local planning authorities should also work collaboratively with private sector bodies, utility and infrastructure providers.

181. Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.

Examining Local Plans

182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

Neighbourhood plans

183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.

Decision-taking

186. Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

187. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Pre-application engagement and front loading

188. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

189. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they do offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications.

190. The more issues that can be resolved at pre-application stage, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

191. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.

192. The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations Assessment and Flood Risk Assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.

193. Local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

194. Local planning authorities should consult the appropriate bodies when planning, or determining applications, for development around major hazards.

195. Applicants and local planning authorities should consider the potential of entering into planning performance agreements, where this might achieve a faster and more effective application process.

Determining applications

196. The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan,[37] unless material considerations indicate otherwise.[38] This Framework is a material consideration in planning decisions.

197. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

198. Where a Neighbourhood Development Order has been made, a planning application is not required for development that is within the terms of the order. Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

Tailoring planning controls to local circumstances

199. Local planning authorities should consider using Local Development Orders to relax planning controls for particular areas or categories of development, where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area, such as boosting enterprise.

200. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

201. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. Where such an order is in

37 Section 38(1) of the Planning and Compulsory Purchase Act 2004: this includes adopted or approved development plan documents i.e. the Local Plan and neighbourhood plans which have been made in relation to the area (and the London Plan).

38 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

place, no further planning permission is required for development which falls within its scope.

202. Neighbourhood Development Orders and Community Right to Build Orders require the support of the local community through a referendum. Therefore, local planning authorities should take a proactive and positive approach to proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination. Policies in this Framework that relate to decision-taking should be read as applying to the consideration of proposed Neighbourhood Development Orders, wherever this is appropriate given the context and relevant legislation.

Planning conditions and obligations

203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

206. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Enforcement

207. Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

Annex 1: Implementation

208. The policies in this Framework apply from the day of publication.

209. The National Planning Policy Framework aims to strengthen local decision making and reinforce the importance of up-to-date plans.

210. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

211. For the purposes of decision-taking, the policies in the Local Plan (and the London Plan) should not be considered out-of-date simply because they were adopted prior to the publication of this Framework.

212. However, the policies contained in this Framework are material considerations which local planning authorities should take into account from the day of its publication. The Framework must also be taken into account in the preparation of plans.

213. Plans may, therefore, need to be revised to take into account the policies in this Framework. This should be progressed as quickly as possible, either through a partial review or by preparing a new plan.

214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004[39] even if there is a limited degree of conflict with this Framework.

215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

216. From the day of publication, decision-takers may also give weight[40] to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

217. Advice will be available immediately and free of charge from a support service provided by the Local Government Association, the Planning

39 In development plan documents adopted in accordance with the Planning and Compulsory Purchase Act 2004 or published in the London Plan.

40 Unless other material considerations indicate otherwise.

Inspectorate and the Department for Communities and Local Government. This will assist local planning authorities in considering the need to update their Local Plan and taking forward efficient and effective reviews.

218. Where it would be appropriate and assist the process of preparing or amending Local Plans, regional strategy[41] policies can be reflected in Local Plans by undertaking a partial review focusing on the specific issues involved. Local planning authorities may also continue to draw on evidence that informed the preparation of regional strategies to support Local Plan policies, supplemented as needed by up-to-date, robust local evidence.

219. This Framework has been drafted to reflect the law following the implementation of the Localism Act 2011, so, where appropriate, policies will apply only when the relevant legislation is in force.

41 Regional strategies remain part of the development plan until they are abolished by Order using powers taken in the Localism Act. It is the government's clear policy intention to revoke the regional strategies outside of London, subject to the outcome of the environmental assessments that are currently being undertaken.

Annex 2: Glossary

Affordable housing: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as "low cost market" housing, may not be considered as affordable housing for planning purposes.

Aged or veteran tree: A tree which, because of its great age, size or condition is of exceptional value for wildlife, in the landscape, or culturally.

Air Quality Management Areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

Ancient woodland: An area that has been wooded continuously since at least 1600 AD.

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point. Heritage assets with archaeological interest are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them.

Article 4 direction: A direction which withdraws automatic planning permission granted by the General Permitted Development Order.

Best and most versatile agricultural land: Land in grades 1, 2 and 3a of the Agricultural Land Classification.

Birds and Habitats Directives: European Directives to conserve natural habitats and wild fauna and flora.

Climate change adaptation: Adjustments to natural or human systems in response to actual or expected climatic factors or their effects, including from changes in rainfall and rising temperatures, which moderate harm or exploit beneficial opportunitiClimate change mitigation: Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.

Coastal Change Management Area: An area identified in Local Plans as likely to be affected by coastal change (physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion).

Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

Community Forest: An area identified through the England Community Forest Programme to revitalise countryside and green space in and around major conurbations.

Community Infrastructure Levy: A levy allowing local authorities to raise funds from owners or developers of land undertaking new building projects in their area.

Community Right to Build Order: An Order made by the local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a site-specific development proposal or classes of development.

Competent person (to prepare site investigation information): A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

Decentralised energy: Local renewable energy and local low-carbon energy usually but not always on a relatively small scale encompassing a diverse range of technologies.

Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

Development plan: This includes adopted Local Plans, neighbourhood plans and the London Plan, and is defined in section 38 of the Planning and Compulsory Purchase Act 2004. (Regional strategies remain part of the development plan until they are abolished by Order using powers taken in the Localism Act. It is the government's clear policy intention to revoke the regional strategies outside of London, subject to the outcome of the environmental assessments that are currently being undertaken.)

Economic development: Development, including those within the B Use Classes, public and community uses and main town centre uses (but excluding housing development).

Ecological networks: These link sites of biodiversity importance.

Ecosystem services: The benefits people obtain from ecosystems such as, food, water, flood and disease control and recreation.

Edge of centre: For retail purposes, a location that is well connected and up to 300 metres of the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Environmental Impact Assessment: A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment.

European site: This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas, and is defined in regulation 8 of the Conservation of Habitats and Species Regulations 2010.

Geodiversity: The range of rocks, minerals, fossils, soils and landforms.

Green infrastructure: A network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.

Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).

Heritage Coast: Areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

Historic environment record: Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

Inclusive design: Designing the built environment, including buildings and their surrounding spaces, to ensure that they can be accessed and used by everyone.

Instrumentation operated in the national interest: Includes meteorological and climate monitoring installations, satellite and radio communication, defence and national security sites and magnetic calibration facilities operated by or on behalf of the Government, delegated authorities or for defence purposes.

International, national and locally designated sites of importance for biodiversity: All international sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites.

Local Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a specific development proposal or classes of development.

Local Enterprise Partnership: A body, designated by the Secretary of State for Communities and Local Government, established for the purpose of creating or improving the conditions for economic growth in an area.

Local Nature Partnership: A body, designated by the Secretary of State for Environment, Food and Rural Affairs, established for the purpose of protecting and improving the natural environment in an area and the benefits derived from it.

Local planning authority: The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority apply to the district council, London borough council, county council, Broads Authority, National Park Authority and the Greater London Authority, to the extent appropriate to their responsibilities.

Local Plan: The plan for the future development of the local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. Current core strategies or other planning policies, which under the regulations would be considered to be development plan documents, form part of the Local Plan. The term includes old policies which have been saved under the 2004 Act.

Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

Major Hazards: Major hazard installations and pipelines, licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.

Minerals of local and national importance: Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including hydrocarbons), tungsten, kaolin, ball clay, potash and local minerals of importance to heritage assets and local distinctiveness.

Mineral Safeguarding Area: An area designated by Minerals Planning Authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.

National Trails: Long distance routes for walking, cycling and horse riding.

Nature Improvement Areas: Inter-connected networks of wildlife habitats intended to re-establish thriving wildlife populations and help species respond to the challenges of climate change.

Neighbourhood Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) through which Parish Councils and neighbourhood forums can grant planning permission for a specific development proposal or classes of development.

Neighbourhood plans: A plan prepared by a Parish Council or Neighbourhood Forum for a particular neighbourhood area (made under the Planning and Compulsory Purchase Act 2004).

Older people: People over retirement age, including the active, newly-retired through to the very frail elderly, whose housing needs can encompass accessible, adaptable general needs housing for those looking to downsize from family housing and the full range of retirement and specialised housing for those with support or care needs.

Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area.

Out of town: A location out of centre that is outside the existing urban area.

People with disabilities: People have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism and mental health needs.

Planning condition: A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

Planning obligation: A legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Playing field: The whole of a site which encompasses at least one playing pitch as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2010.

Pollution: Anything that affects the quality of land, air, water or soils, which might lead to an adverse impact on human health, the natural environment or general amenity. Pollution can arise from a range of emissions, including smoke, fumes, gases, dust, steam, odour, noise and light.

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

Primary shopping area: Defined area where retail development is concentrated (generally comprising the primary and those secondary frontages which are adjoining and closely related to the primary shopping frontage).

Primary and secondary frontages: Primary frontages are likely to include a high proportion of retail uses which may include food, drinks, clothing and household goods. Secondary frontages provide greater opportunities for a diversity of uses such as restaurants, cinemas and businesses.

Priority habitats and species: Species and Habitats of Principle Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006.

Ramsar sites: Wetlands of international importance, designated under the 1971 Ramsar Convention.

Renewable and low carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).

Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Safeguarding zone: An area defined in Circular 01/03: Safeguarding aerodromes, technical sites and military explosives storage areas, to safeguard such sites.

Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Shoreline Management Plans: A plan providing a large-scale assessment of the risk to people and to the developed, historic and natural environment associated with coastal processes.

Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.

Special Areas of Conservation: Areas given special protection under the European Union's Habitats Directive, which is transposed into UK law by the Habitats and Conservation of Species Regulations 2010.

Special Protection Areas: Areas which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds found within European Union countries. They are European designated sites, classified under the Birds Directive.

Site investigation information: Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 (2001) Code of Practice for the Investigation of Potentially Contaminated Sites). The minimum information that should be provided by an applicant is the report of a desk study and site reconnaissance.

Site of Special Scientific Interest: Sites designated by Natural England under the Wildlife and Countryside Act 1981.

Stepping stones: Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

Strategic Environmental Assessment: A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

Supplementary planning documents: Documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

Sustainable transport modes: Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra low emission vehicles, car sharing and public transport.

Town centre: Area defined on the local authority's proposal map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in Local Plans, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Transport assessment: A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies what measures will be required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport and what measures will need to be taken to deal with the anticipated transport impacts of the development.

Transport statement: A simplified version of a transport assessment where it is agreed the transport issues arising out of development proposals are limited and a full transport assessment is not required.

Travel plan: A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives through action and is articulated in a document that is regularly reviewed.

Wildlife corridor: Areas of habitat connecting wildlife populations.

Windfall sites: Sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available.

Annex 3: Documents replaced by this Framework

1. Planning Policy Statement: *Delivering Sustainable Development* (31 January 2005)
2. Planning Policy Statement: *Planning and Climate Change – Supplement to Planning Policy Statement 1* (17 December 2007)
3. Planning Policy Guidance 2: *Green Belts* (24 January 1995)
4. Planning Policy Statement 3: *Housing* (9 June 2011)
5. Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (29 December 2009)
6. Planning Policy Statement 5: *Planning for the Historic Environment* (23 March 2010)
7. Planning Policy Statement 7: *Sustainable Development in Rural Areas* (3 August 2004)
8. Planning Policy Guidance 8: *Telecommunications* (23 August 2001)
9. Planning Policy Statement 9: *Biodiversity and Geological Conservation* (16 August 2005)
10. Planning Policy Statement 12: *Local Spatial Planning* (4 June 2008)
11. Planning Policy Guidance 13: *Transport* (3 January 2011)
12. Planning Policy Guidance 14: *Development on Unstable Land* (30 April 1990)
13. Planning Policy Guidance 17: *Planning for Open Space, Sport and Recreation* (24 July 2002)
14. Planning Policy Guidance 18: *Enforcing Planning Control* (20 December 1991)
15. Planning Policy Guidance 19: *Outdoor Advertisement Control* (23 March 1992)
16. Planning Policy Guidance 20: *Coastal Planning* (1 October 1992)
17. Planning Policy Statement 22: *Renewable Energy* (10 August 2004)
18. Planning Policy Statement 23: *Planning and Pollution Control* (3 November 2004)
19. Planning Policy Guidance 24: *Planning and Noise* (3 October 1994)
20. Planning Policy Statement 25: *Development and Flood Risk* (29 March 2010)
21. Planning Policy Statement 25 Supplement: *Development and Coastal Change* (9 March 2010)
22. Minerals Policy Statement 1: *Planning and Minerals* (13 November 2006)
23. Minerals Policy Statement 2: *Controlling and Mitigating the Environmental Effects of Minerals Extraction In England*. This includes its Annex 1: *Dust* and Annex 2: *Noise* (23 March 2005 - Annex 1: 23 March 2005 and Annex 2: 23 May 2005)
24. Minerals Planning Guidance 2: *Applications, permissions and conditions* (10 July 1998)
25. Minerals Planning Guidance 3: Coal *Mining and Colliery Spoil Disposal* (30 March 1999)
26. Minerals Planning Guidance 5: *Stability in surface mineral workings and tips* (28 January 2000)
27. Minerals Planning Guidance 7: *Reclamation of minerals workings* (29 November 1996)

28. Minerals Planning Guidance 10: *Provision of raw material for the cement industry* (20 November 1991)
29. Minerals Planning Guidance 13: *Guidance for peat provision in England* (13 July 1995)
30. Minerals Planning Guidance 15: *Provision of silica sand in England* (23 September 1996)
31. Circular 05/2005: *Planning Obligations* (18 July 2005)
32. Government Office London Circular 1/2008: *Strategic Planning in London* (4 April 2008)
33. Letter to Chief Planning Officers: *Town and Country Planning (Electronic Communications) (England) Order 2003* (2 April 2003)
34. Letter to Chief Planning Officers: *Planning Obligations and Planning Registers* (3 April 2002)
35. Letter to Chief Planning Officers: *Model Planning Conditions for development on land affected by contamination* (30 May 2008)
36. Letter to Chief Planning Officers: *Planning for Housing and Economic Recovery* (12 May 2009)
37. Letter to Chief Planning Officers: *Development and Flood Risk – Update to the Practice Guide to Planning Policy Statement 25* (14 December 2009)
38. Letter to Chief Planning Officers: *Implementation of Planning Policy Statement 25 (PPS25) – Development and Flood Risk* (7 May 2009)
39. Letter to Chief Planning Officers: *The Planning Bill – delivering well designed homes and high quality places* (23 February 2009)
40. Letter to Chief Planning Officers: *Planning and Climate Change – Update* (20 January 2009)
41. Letter to Chief Planning Officers: *New powers for local authorities to stop 'garden- grabbing'* (15 June 2010)
42. Letter to Chief Planning Officer: *Area Based Grant: Climate Change New Burdens* (14 January 2010)
43. Letter to Chief Planning Officers: *The Localism Bill* (15 December 2010)
44. Letter to Chief Planning Officers: *Planning policy on residential parking standards, parking charges, and electric vehicle charging infrastructure* (14 January 2011)

DEPARTMENT OF ENERGY & CLIMATE CHANGE

National Policy Statement for Electricity Networks Infrastructure (EN-5)

Planning for new energy infrastructure

July 2011

Department of Energy and Climate Change

National Policy Statement for Electricity Networks Infrastructure (EN-5)

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of the Planning Act 2008

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Contents

Part 1 Introduction

1.1 Background

1.1.1 The new electricity generating infrastructure that the UK needs to move to a low carbon economy while maintaining security of supply will be heavily dependent on the availability of a fit for purpose and robust electricity network. That network will need to be able to support a more complex system of supply and demand than currently and cope with generation occurring in more diverse locations.

1.2 Role of this NPS in the planning system

1.2.1 This National Policy Statement (NPS), taken together with the Overarching National Policy Statement for Energy (EN-1), provides the primary basis for decisions taken by the Infrastructure Planning Commission (IPC) on applications it receives for electricity networks infrastructure (see Section 1.8 of this NPS). The way in which NPSs guide IPC decision making, and the matters which the IPC is required by the Planning Act 2008 to take into account in considering applications, are set out in Sections 1.1 and 4.1 of EN-1.

1.2.2 Applicants should ensure that their applications, and any accompanying supporting documents and information, are consistent with the instructions and guidance given to applicants in this NPS, EN-1 and any other NPSs that are relevant to the application in question.

1.2.3 This NPS may be helpful to local planning authorities (LPAs) in preparing their local impact reports. In England and Wales this NPS is likely to be a material consideration in decision making on relevant applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent this NPS is a material consideration will be judged on a case by case basis.

1.2.4 Further information on the relationship between NPSs and the town and country planning system, as well as information on the role of NPSs, is set out in paragraphs 13-19 of Annex A to the letter to Chief Planning Officers issued by the Department for Communities and Local Government (CLG) on 9 November 2009[1].

1.2.5 Paragraphs 1.2.2 and 4.1.6 of EN-1 provide details of how this NPS may be relevant to the decisions of the Marine Management Organisation (MMO) and how the Marine Policy Statement (MPS) and any applicable Marine Plan may be relevant to the IPC in its decision making.

1.3 Relationship with EN-1

1.3.1 This NPS is part of a suite of energy NPSs. It should be read in conjunction with EN-1 which covers:

1 http://www.communities.gov.uk/publications/planningandbuilding/letternpsconsultation

- the high level objectives, policy and regulatory framework for new nationally significant infrastructure projects that are covered by the suite of energy NPSs (referred to as energy NSIPs) and any associated development;
- the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development in particular by mitigating and adapting to climate change;
- the need for specific technologies, including the types of infrastructure covered by this NPS;
- key principles to be followed in the examination and determination of applications;
- the role of the Appraisals of Sustainability (AoS) (see Section 1.7 below) in relation to the suite of energy NPSs;
- policy on good design, climate change adaptation and other matters relevant to more than one technology-specific NPS; and
- the assessment and handling of generic impacts that are not specific to particular technologies.

1.3.2 This NPS does not seek to repeat the material set out in EN-1, which applies to all applications covered by this NPS unless stated otherwise. The reasons for policy that is specific to the energy infrastructure covered by this NPS are given, but where EN-1 sets out the reasons for general policy these are not repeated.

1.4 Future planning reform

1.4.1 Aside from cases where the Secretary of State intervenes, or where the application is not covered by a designated NPS, the Planning Act 2008, as in force at the date of designation of this NPS, provides for all applications for development consent to be both examined and determined by the IPC. However, the enactment and entry into force of the provisions of the Localism Bill (introduced into Parliament in December 2010) relating to the Planning Act would abolish the IPC. The function of examining applications would be taken on by a new Major Infrastructure Planning Unit ("MIPU") within the Planning Inspectorate, and the function of determining applications on infrastructure projects by the Secretary of State (who would receive a report and recommendation on each such application from MIPU). In the case of energy projects, this function would be carried out by the Secretary of State for Energy and Climate Change.

1.4.2 If the Localism Bill is enacted and these changes take effect, references in this NPS to the IPC should be read as follows from the date when the changes take effect. Any statement about the IPC in its capacity as an examining body should be taken to refer to MIPU. Any statement about the IPC in its capacity as a decision-maker determining applications should be taken to refer to the Secretary of State for Energy and Climate Change in his capacity as decision-maker; MIPU would have regard to such statements in framing its reports and recommendations to the Secretary of State.

1.5 Geographical coverage

1.5.1 This NPS, together with EN-1, is the primary decision-making guidance document for the IPC when considering development consent applications for NSIPs for electricity networks infrastructure in England and Wales as described in paragraph 1.8.1.

1.5.2 In Scotland, the IPC will not examine applications for electricity network NSIPs. However, energy policy is generally a matter reserved to UK Ministers and this NPS may therefore be a relevant consideration in planning decisions in Scotland.

1.5.3 In Northern Ireland, planning consents for energy infrastructure projects are devolved to the Northern Ireland Executive, so the IPC will not examine applications for energy infrastructure in Northern Ireland.

1.6 Period of validity and review

1.6.1 This NPS will remain in force in its entirety unless withdrawn or suspended in whole or in part by the Secretary of State. It will be subject to review by the Secretary of State in order to ensure that it remains appropriate. Information on the review process is set out in paragraphs 10-12 of Annex A to CLG's letter of 9 November 2009 (see paragraph 1.2.4 above).

1.7 Appraisal of Sustainability and Habitats Regulations Assessment[2]

1.7.1 All of the energy NPSs have been subject to an Appraisal of Sustainability (AoS)[3] incorporating the requirements of the regulations that implement the Strategic Environmental Assessment (SEA) Directive[4]. General information on the AoSs can be found in paragraph 1.7.1 of EN-1. Habitats Regulations Assessment was also done for all the energy NPSs. Paragraph 1.7.13 of EN-1 sets out the conclusions of the HRA.

1.7.2 Key points from the AoS for EN-5 are that:

- through supporting the transition to a low carbon economy, EN-5 is considered to have significant positive effects on the economy and skills AoS objective in the short term;
- effects on ecology are uncertain at this level of appraisal, as they depend on the sensitivity of the environment and the location and design of specific infrastructure;

2 Appraisal of Sustainability for the Revised Draft Electricity Networks available at: http://webarchive.nationalarchives.gov.uk/20110302182042/ https://www.energynpsconsultation.decc.gov.uk/home

3 As required by Section 5(3) of the Planning Act 2008

4 Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

- significant negative effects were identified for the landscape, townscape and visual AoS objective because of the prominent visual nature of electricity networks infrastructure covered in EN-5; and
- electricity networks infrastructure development has similar effects to other types of energy infrastructure, although because of the linear nature of electricity lines, effects are spread across a wider area; for the majority of the AoS objectives (excluding visual), the strategic effects of EN-5 are considered to be neutral.

1.7.3 As required by the SEA Directive, Part 2 of AoS-5 also includes an assessment of reasonable alternatives to the policies set out in EN-5 at a strategic level. The two alternatives assessed were:

(a) the Government would take a strategic view on locations where it is best to develop electricity network infrastructure and limit consenting to those areas; and

(b) the adoption of a presumption that electricity lines should be put underground (generally, or in particular locations, such as Areas of Outstanding Natural Beauty (AONBs)).

1.7.4 Assessment showed that alternative (a) is likely to have effects similar to those of EN-5 because the general location of electricity networks infrastructure is determined by existing network/power station locations and the anticipated location of new stations, and, therefore, the strategic choice of locations will be limited by those factors. However, the alternative is more likely to lead to planning blight, and adverse economic effects through restricting development and investment in the designated corridors. The EN-5 policies are therefore preferred.

1.7.5 Assessment showed that alternative (b) would have effects similar to those of EN-5 policies for climate change, but that it was likely to have negative effects on the security of supply and economic objectives. Effects on soil, water, ecology and archaeology are likely to be negative, at least in the short term, requiring significant mitigation, but there is uncertainty around long term effects depending on the specific location and the sensitivity of the receiving environment. However, long term effects on landscape, townscape and visual impacts will be positive. It would be possible to reduce the potential negative effects of alternative (b) by applying the presumption of undergrounding to particular types of designated landscape, but this would also reduce the perceived positive effect for those outside such areas. Because of the negative effects on security of supply and economic objectives, as well as the other negative effects listed above, it is considered preferable to adopt the policies in EN-5 because the range of factors to be taken into account means that decisions on undergrounding are best taken within a more flexible policy framework using case by case evaluation.

1.8 Infrastructure covered by this NPS

1.8.1 Infrastructure for electricity networks generally can be divided into two main elements:

- transmission systems (the long distance transfer of electricity through 400kV and 275kV lines), and distribution systems (lower voltage lines from 132kV to 230V from transmission substations to the end-user) which can either be carried on towers/poles or undergrounded; and
- associated infrastructure, e.g. substations (the essential link between generation, transmission, and the distribution systems that also allows circuits to be switched or voltage transformed to a useable level for the consumer) and converter stations to convert DC power to AC power and vice versa.

1.8.2 This NPS covers above ground electricity lines whose nominal voltage is expected to be 132kV or above. Any other kind of electricity infrastructure (including lower voltage overhead lines, underground or sub-sea cables at any voltage, and associated infrastructure as referred to above) will only be subject to the Planning Act 2008 – and so be covered by this NPS – if it is in England, and it constitutes associated development for which consent is sought along with an NSIP such as a generating station or relevant overhead line.

Part 2 Assessment and Technology-Specific Information

2.1 Introduction

2.1.1 Part 4 of EN-1 sets out the general principles that should be applied in the assessment of development consent applications across the range of energy technologies. Part 5 of EN-1 sets out policy on the assessment of impacts which are common across a range of these technologies (generic impacts). This NPS is concerned with impacts and other matters which are specific to electricity networks infrastructure or where, although the impact or issue is generic and covered in EN-1, there are further specific considerations arising from this technology.

2.1.2 The policies set out in this NPS are additional to those on generic impacts set out in EN-1 and do not replace them. The IPC should consider this NPS and EN-1 together when considering applications relating to electricity networks infrastructure. In particular, EN-1 sets out the Government's conclusion that there is a significant need for new major energy infrastructure generally (see Part 3 of EN-1). EN-1 includes information regarding the specific need for new major electricity networks infrastructure in Section 3.7. In the light of this, the IPC should act on the basis that the need for the infrastructure covered in this NPS has been demonstrated.

2.2 Factors influencing site selection by applicants

2.2.1 The sections below include references to factors influencing site/route selection by applicants for electricity networks NSIPs. These are not a statement of Government policy, but are included to provide the IPC and others with background information on the criteria that applicants consider when choosing a site or route. The specific criteria considered by applicants, and the weight they give to them, will vary from project to project. The choices which energy companies make in selecting sites reflect their assessment of the risk that the IPC, following the principles set out in paragraph 4.1.1 of EN-1, will not grant consent in any given case. In the market-based GB system, electricity network companies are regulated monopolies which must respond to demand from generators and consumers of electricity by developing and maintaining economical and efficient networks whilst having regard to various non-financial considerations[5]. It is for electricity network companies, responding to actual and anticipated changes in the patterns of supply and demand within the framework of

5 On the market-based system in general and the regulatory position of the transmission and distribution monopolies, see Chapter 2 of *Electricity Market reform: Consultation Document* at http://www.decc.gov.uk/assets/decc/Consultations/emr/1041-electricity-market-reform-condoc.pdf.

regulation of new investment administered by Ofgem, to decide what applications for new electricity networks infrastructure to bring forward and the Government does not seek to direct applicants to particular sites or routes for electricity networks infrastructure[6].

2.2.2 The general location of electricity network projects is often determined by the location, or anticipated location, of a particular generating station and the existing network infrastructure taking electricity to centres of energy use. This gives a locationally specific beginning and end to a line. On other occasions the requirement for a line may not be directly associated with a specific power station but rather the result of the need for more strategic reinforcement of the network. In neither circumstance is it necessarily the case that the connection between the beginning and end points should be via the most direct route (indeed this may be practically impossible), as the applicant will need to take a number of factors, including engineering and environmental aspects, into account.

2.2.3 In order to be able lawfully to install, inspect, maintain, repair, adjust, alter, replace or remove an electric line (above or below ground) and any related equipment such as poles, pylons/transmission towers, transformers and cables, network companies need either to own the land on, over or under which construction is to take place or to hold sufficient rights over, or interest in that land (typically in the form of an easement), or to have permission from the current owner or occupier to install their electric lines and associated equipment and carry out related works (usually referred to as a "wayleave").

2.2.4 Where the network company does not own (or wish to own) the relevant land itself, it may reach a voluntary agreement that gives it either an easement over the land or at least a wayleave permission to use it during the tenure of the current owner or occupier. Where it does not succeed in reaching the agreement it wants, the company may, as part of its application to the IPC, seek to acquire rights compulsorily over the relevant land by means of a provision in the DCO. The applicant may also apply for the compulsory purchase of land: this is not normally sought where lines and cables are installed, but may occur where other electricity network infrastructure, such as a new substation, is required. The above issues may be relevant considerations when the electricity company is considering various potential routes.

2.2.5 There will usually be some flexibility around the location of the associated substations and applicants will give consideration to how they are placed in the local landscape taking account of such things as local topography and the possibility of screening. See Section 2.8 below and Section 5.9 in EN-1.

2.2.6 As well as having duties under section 9 of the Electricity Act 1989, (in relation to developing and maintaining an economical and efficient network), developers will be influenced by Schedule 9 to the Electricity Act 1989[7], which places a duty on all transmission and distribution licence holders, in formulating proposals for new electricity networks infrastructure, to

6 See paragraph 3.3.24 of EN-1

7 http://www.legislation.gov.uk/ukpga/1989/29/schedule/9

"have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and … do what [they] reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects." Depending on the location of the proposed development, statutory duties under section 85 of the Countryside and Rights of Way Act 2000 and section 11A of the National Parks and Access to the Countryside Act 1949 may be relevant.

2.2.7 Transmission and distribution licence holders are also required under Schedule 9 of the Act to produce and publish a statement setting out how they propose to perform this duty generally.

2.3 General assessment principles for electricity networks

2.3.1 EN-1 explains in Section 4.9 that the Planning Act aims to create a holistic planning regime so that the cumulative effects of different elements of the same project can be considered together. Therefore the Government envisages that, wherever reasonably possible, applications for new generating stations and related infrastructure should be contained in a single application to the IPC.

2.3.2 However, particularly for generating stations and the related electricity networks, this may not always be possible or represent the most efficient approach to the delivery of new infrastructure. This could be, for example, because of the differing lengths of time needed to prepare the applications for submission to the IPC, or because a network application relates to multiple generation projects or because the works involved are strategic reinforcements required for a number of reasons. It may also be relevant that the networks application and a related generating station application are likely to come from two different legal entities, or be subject to different commercial and regulatory frameworks. Case studies illustrating the different scenarios that may arise can be found in a report prepared by the Electricity Networks Strategy Group Planning Working Group[8]. Early engagement with the IPC is encouraged in such circumstances.

2.3.3 Where an electricity networks infrastructure project is submitted to the IPC without an accompanying application for a generating station, the IPC should have regard to the matters specified in paragraph 4.9.3 of EN-1, as well as the need for the proposed infrastructure (as set out in Part 3 of EN-1). Circumstances in which the IPC considers it appropriate to consider a networks application separately from related proposals may include where, although the proposed generating station has yet to be consented, there is clear evidence of demand in that:

- the project is wholly or substantially supported by connection agreements or contractual arrangements to provide connection; or
- the project is based on reasonably anticipated future requirements.

8 http://www.ensg.gov.uk/assets/demonstrating_the_need_for_electricity_infrastructure_-_june_2009.pdf

This might be because it is located in an area where there is likely to be either significant increased generation or a significant increase in load on the existing network. An example of how this could be demonstrated is Round 3[9] for offshore windfarms where site licensing arrangements will give a clear indication of the areas within which future applications for consent will be received.

2.3.4 If the IPC believes it needs to probe further then factors it may wish to consider include whether the project would make a significant contribution to the promotion of renewable energy, the achievement of climate change objectives, the maintenance of an appropriate level of security of electricity supply or whether it helps achieve other energy policy objectives.

2.3.5 The IPC should also take into account that National Grid, as the owner of the electricity transmission system in England and Wales, as well as Distribution Network Operators (DNOs), are required under section 9 of the Electricity Act 1989[10] to bring forward efficient and economical proposals in terms of network design, taking into account current and reasonably anticipated future generation demand. National Grid is also required to facilitate competition in the supply and generation of electricity and so has a statutory duty to provide a connection whenever or wherever one is required.

2.3.6 Given that electricity lines form part of a network, there may also be circumstances where a single application contains works in different geographical locations. Where it can be demonstrated that a series of works will reinforce the network as a whole and meet the need set out in EN-1, the IPC should be willing to accept an application that seeks development consent for the entire set of works. Applicants should discuss potential applications of this nature with the IPC in advance of submitting a formal application.

2.4 Climate change adaptation

2.4.1 Part 2 of EN-1 provides information regarding the Government's energy and climate change strategy including policies for mitigating climate change. Section 4.8 of EN-1 sets out the generic considerations that applicants and the IPC should take into account to help ensure that electricity networks infrastructure is resilient to climate change. As climate change is likely to increase risks to the resilience of some of this infrastructure, from flooding for example, or in situations where it is located near the coast or an estuary or is underground, applicants should in particular set out to what extent the proposed development is expected to be vulnerable, and, as appropriate, how it would be resilient to:

- flooding, particularly for substations that are vital for the electricity transmission and distribution network;
- effects of wind and storms on overhead lines;
- higher average temperatures leading to increased transmission losses; and

9 The Crown Estate's third round of offshore wind farm leasing

10 http://www.legislation.gov.uk/ukpga/1989/29/section/9

- earth movement or subsidence caused by flooding or drought (for underground cables).

2.4.2 Section 4.8 of EN-1 advises that the resilience of the project to climate change should be assessed in the Environmental Statement (ES) accompanying an application. For example, future increased risk of flooding would be covered in any flood risk assessment (see Section 5.7 in EN-1).

2.5 Consideration of good design

2.5.1 Section 4.5 of EN-1 sets out the principles for good design that should be applied to all energy infrastructure.

2.5.2 Proposals for electricity networks infrastructure should demonstrate good design in their approach to mitigating the potential adverse impacts which can be associated with overhead lines, particularly those set out in Sections 2.7 to 2.10 below.

2.6 Impacts of electricity networks

2.6.1 Part 5 of EN-1 contains policy for the IPC when assessing potential impacts of energy infrastructure projects (generic impacts). It also contains information to assist the interpretation of the impact sections of all the energy NPSs. When considering impacts for electricity networks infrastructure, all of the generic impacts covered in EN-1 are likely to be relevant, even if they only apply during one phase of the development (such as construction) or only apply to one part of the development (such as a substation). This NPS sets out additional technology-specific considerations on the following generic impacts considered in EN-1:

- Biodiversity and Geological Conservation;
- Landscape and Visual; and
- Noise and Vibration.

2.6.2 In addition, this NPS also sets out technology-specific considerations for the impact of EMFs, which is not an impact considered in EN-1.

2.6.3 The impacts identified in Part 5 of EN-1 and Part 2 of this NPS are not intended to be exhaustive. Applicants are required to assess all likely significant effects of their proposals (see Section 4.2 of EN-1) and the IPC should consider any impacts which it determines are relevant and important to its decision.

2.7 Biodiversity and Geological Conservation

Introduction

2.7.1 Generic biodiversity effects are covered in Section 5.3 of EN-1. However, large birds such as swans and geese may collide with overhead lines associated with power infrastructure, particularly in poor visibility. Large birds in particular may also be electrocuted when landing or taking off by completing an electric circuit between live and ground wires. Even perching birds can be killed as soon as their wings touch energised parts.

Applicant's Assessment

2.7.2 The applicant will need to consider whether the proposed line will cause such problems at any point along its length and take this into consideration in the preparation of the Environmental Impact Assessment (EIA) and ES (see Section 4.2 of EN-1). Particular consideration should be given to feeding and hunting grounds, migration corridors and breeding grounds.

IPC Decision Making

2.7.3 The IPC should ensure that this issue has been considered in the ES and that appropriate mitigation measures will be taken where necessary.

Mitigation

2.7.4 Careful siting of a line away from, or parallel to, but not across, known flight paths can reduce the numbers of birds colliding with overhead lines considerably.

2.7.5 Making lines more visible by methods such as the fitting of bird flappers and diverters to the earth wire, which swivel in the wind, glow in the dark and use fluorescent colours designed specifically for bird vision can also reduce the number of deaths. The design and colour of the diverters will be specific to the conditions – the line and pylon/transmission tower specifications and the species at risk.

2.7.6 Electrocution risks can be reduced through the design of crossarms, insulators and the construction of other parts of high voltage power lines so that birds find no opportunity to perch near energised power lines on which they might electrocute themselves.

2.8 Landscape and Visual

Introduction

2.8.1 Generic landscape and visual effects are covered in Section 5.9 of EN-1. In addition there are specific considerations which apply to electricity networks infrastructure as set out below.

2.8.2 Government does not believe that development of overhead lines is generally incompatible in principle with developers' statutory duty under section 9 of the Electricity Act to have regard to amenity and to mitigate impacts (see paragraph 2.2.6 above). In practice new above ground electricity lines, whether supported by lattice steel towers/pylons or wooden poles, can give rise to adverse landscape and visual impacts, dependent upon their scale, siting, degree of screening and the nature of the landscape and local environment through which they are routed. For the most part these impacts can be mitigated, however at particularly sensitive locations the potential adverse landscape and visual impacts of an overhead line proposal may make it unacceptable in planning terms, taking account of the specific local environment and context. New substations, sealing end compounds and other above ground installations that form connection, switching and voltage transformation points on the electricity networks can also give rise to landscape and visual impacts. Cumulative landscape and visual impacts can arise where new overhead lines are required along with other related developments such as substations, wind farms and/or other new sources of power generation.

2.8.3 Sometimes positive landscape and visual benefits can arise through the reconfiguration or rationalisation of existing electricity network infrastructure.

Applicant's Assessment

2.8.4 Where possible, applicants should follow the principles below in designing the route of their overhead line proposals and it will be for applicants to offer constructive proposals for additional mitigation of the proposed overhead line. While proposed underground lines do not require development consent under the Planning Act 2008, wherever the nature or proposed route of an overhead line proposal makes it likely that its visual impact will be particularly significant, the applicant should have given appropriate consideration to the potential costs and benefits of other feasible means of connection or reinforcement, including underground and sub-sea cables where appropriate. The ES should set out details of how consideration has been given to undergrounding or sub-sea cables as a way of mitigating such impacts, including, where these have not been adopted on grounds of additional cost, how the costs of mitigation have been calculated.

2.8.5 Guidelines for the routeing of new overhead lines, the Holford Rules[11], were originally set out in 1959 by Lord Holford, and are intended as a common sense approach to the routeing of new overhead lines. These guidelines were reviewed and updated by the industry in the 1990s and should be followed by developers when designing their proposals.

2.8.6 In overview, the Holford Rules state[12] that developers should:

- avoid altogether, if possible, the major areas of highest amenity value, by so planning the general route of the line in the first place, even if total mileage is somewhat increased in consequence;
- avoid smaller areas of high amenity value or scientific interest by deviation, provided this can be done without using too many angle towers, i.e. the bigger structures which are used when lines change direction;
- other things being equal, choose the most direct line, with no sharp changes of direction and thus with fewer angle towers;
- choose tree and hill backgrounds in preference to sky backgrounds wherever possible. When a line has to cross a ridge, secure this opaque background as long as possible, cross obliquely when a dip in the ridge provides an opportunity. Where it does not, cross directly, preferably between belts of trees;
- prefer moderately open valleys with woods where the apparent height of towers will be reduced, and views of the line will be broken by trees;
- where country is flat and sparsely planted, keep the high voltage lines as far as possible independent of smaller lines, converging routes, distribution poles and other masts, wires and cables, so as to avoid a concentration of lines or “wirescape”; and
- approach urban areas through industrial zones, where they exist; and when pleasant residential and recreational land intervenes between the approach line and the substation, carefully assess the comparative costs of undergrounding.

11 The “Holford Rules” are a series of planning guidelines first developed in 1959 by Lord Holford, adviser to the then Central Electricity Generating Board on amenity issues. They were reviewed in the 1990s by National Grid . The rules are not published as a single work but they are referred to in a number of planning publications including *Visual Amenity Aspects of High Voltage Transmission* by George A. Goulty (1989) and Planning Overhead Power Line Routes by RJB Carruthers (1987) Research Studies Press Ltd, Letchworth.

12 Notes and explanations of the Holford Rules are available on the National Grid website http://www.nationalgrid.com/NR/rdonlyres/E9E1520A-EB09-4AD7-840B-A114A84677E7/41421/HolfordRules1.pdf

IPC Decision Making

2.8.7 The IPC should recognise that the Holford Rules, and any updates, form the basis for the approach to routeing new overhead lines and take them into account in any consideration of alternatives and in considering the need for any additional mitigation measures.

Undergrounding

2.8.8 Paragraph 3.7.10 of EN-1 sets out the need for new electricity lines of 132kV and above, including overhead lines. Although Government expects that fulfilling this need through the development of overhead lines will often be appropriate, it recognises that there will be cases where this is not so. Where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the IPC will have to balance these against other relevant factors, including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding)[13] .

2.8.9 The impacts and costs of both overhead and underground options vary considerably between individual projects (both in absolute and relative terms). Therefore, each project should be assessed individually on the basis of its specific circumstances and taking account of the fact that Government has not laid down any general rule about when an overhead line should be considered unacceptable. The IPC should, however only refuse consent for overhead line proposals in favour of an underground or sub-sea line if it is satisfied that the benefits from the non-overhead line alternative will clearly outweigh any extra economic, social and environmental impacts and the technical difficulties are surmountable. In this context it should consider:

- the landscape in which the proposed line will be set, (in particular, the impact on residential areas, and those of natural beauty or historic importance such as National Parks, AONBs and the Broads)[14];
- the additional cost of any undergrounding or sub-sea cabling (which experience shows is generally significantly more expensive than overhead lines, but varies considerably from project to project depending on a range of factors, including whether the line is buried directly in open agricultural land or whether more complex tunnelling and civil engineering through conurbations and major cities is required[15]. Repair impacts are also significantly higher than for overhead lines as are the costs associated with any later uprating.); and

13 Proposed underground cables do not require development consent under the Planning Act, but they may form part of a scheme of new infrastructure which is the subject of an application under the Act, and requirements or obligations regarding undergrounding may feature as a means of mitigating some of the adverse impacts of a proposal which does require and is granted development consent.

14 See Section 5.9 of EN-1

15 See Section 5.9 of EN-1

- the environmental and archaeological consequences (undergrounding a 400kV line may mean disturbing a swathe of ground up to 40 metres across[16], which can disturb sensitive habitats, have an impact on soils and geology, and damage heritage assets, in many cases more than an overhead line would).

Mitigation

2.8.10 In addition to following the principles set out in the Holford Rules and considering undergrounding, the main opportunities for mitigating potential adverse landscape and visual impacts of electricity networks infrastructure are:

- consideration of **network reinforcement** options (where alternatives exist) which may allow improvements to an existing line rather than the building of an entirely new line; and
- selection of the **most suitable type and design of support structure** (i.e. different lattice tower types, use of wooden poles etc) in order to minimise the overall visual impact on the landscape.

2.8.11 There are some more specific measures that might be taken, and which the IPC could require through requirements if appropriate, as follows:

- **Landscape schemes**, comprising off-site tree and hedgerow planting are sometimes used for larger new overhead line projects to mitigate potential landscape and visual impacts, softening the effect of a new above ground line whilst providing some screening from important visual receptors. These can only be implemented with the agreement of the relevant landowner(s) and advice from the relevant statutory advisor may also be needed; and
- **Screening**, comprising localised planting in the immediate vicinity of residential properties and principal viewpoints can also help to screen or soften the effect of the line, reducing the visual impact from a particular receptor.

16 The width of disturbed ground needed to match the performance of a proposed overhead line will depend on the desired transmission capacity and the types of suitable cable available.

2.9 Noise and Vibration

Introduction

2.9.1 Generic noise effects are covered in Section 5.11 of EN-1. In addition there are specific considerations which apply to electricity networks infrastructure as set out below.

2.9.2 All high voltage transmission lines have the potential to generate noise under certain conditions.

2.9.3 Line noise is generated when the conductor surface electric stress exceeds the inception level for corona discharge[17] activity which is released as acoustic energy and radiates into the air as sound. Transmission line conductors are designed to operate below this threshold. However, surface contamination on a conductor or accidental damage during transport or installation can cause local enhancement of electric stress and initiate discharge activity leading to the generation of noise.

2.9.4 The highest noise levels generated by a line generally occur during rain. Water droplets may collect on the surface of the conductor and initiate corona discharges with noise levels being dependent on the level of rainfall. Fog may also give rise to increased noise levels, although these levels are lower than those during rain.

2.9.5 After a prolonged spell of dry weather without rain to wash the conductors, contamination may accumulate at sufficient levels to result in increased noise. After heavy rain, these discharge sources are washed away and the line will be quiet again. Surface grease on conductors can also give rise to audible noise effects as grease is able to move slowly under the influence of an electric field, tending to form points which then initiate discharge activity. Surface grease is likely to occur along the entire length of a conductor. Hence there may be many potential discharge sources and, consequently, a high noise level. This will only occur if substandard grease has been used during manufacture or if the conductor has been overheated by carrying excessive electrical load. This can be mitigated by conductor cleaning or replacement.

2.9.6 Transmission line audible noise is generally categorised as “crackle” or “hum”, according to its tonal content. Crackle may occur alone, but hum will usually occur only in conjunction with crackle. Hum is only likely to occur during rain when rates of rainfall exceed 1mm/hr. Crackle is a sound containing a random mixture of frequencies over a wide range, typically 1kHz to 10kHz. No individual pure tone can be identified for any significant duration. Crackle has a generally similar spectral content to the sound of rainfall. Hum is a sound consisting of a single pure tone or tones.

17 Corona discharge is an electrical discharge brought on by the ionization of a fluid surrounding a conductor, which occurs when the strength of the electric field exceeds a certain value, but conditions are insufficient to cause complete electrical breakdown or arcing.

2.9.7 Audible noise effects can also arise from substation equipment such as transformers, quadrature boosters and mechanically switched capacitors. Transformers are installed at many substations, and generate low frequency hum. Whether the noise can be heard outside a substation depends on a number of factors, including transformer type and the level of noise attenuation present (either engineered intentionally or provided by other structures). Noise may also arise from discharges on overhead line fittings such as spacers, insulators and clamps.

Applicant's Assessment

2.9.8 While standard methods of assessment and interpretation using the principles of the relevant British Standards[18] are satisfactory for dry weather conditions, they are not appropriate for assessing noise during rain, which is when overhead line noise mostly occurs, and when the background noise itself will vary according to the intensity of the rain.

2.9.9 Therefore an alternative noise assessment method to deal with rain-induced noise is needed, such as the one developed by National Grid as described in report TR(T)94,1993[19]. This follows recommendations broadly outlined in ISO 1996 (BS 7445:1991)[20] and in that respect is consistent with BS 4142:1997. The IPC is likely to be able to regard it as acceptable for the applicant to use this or another methodology that appropriately addresses these particular issues.

IPC Decision Making

2.9.10 The IPC should ensure that relevant assessment methodologies have been used in the evidence presented to them, and that the appropriate mitigation options have been considered and adopted. Where the applicant can demonstrate that appropriate mitigation measures will be put in place, the residual noise impacts are unlikely to be significant.

2.9.11 Consequently, noise from overhead lines is unlikely to lead to the IPC refusing an application, but it may need to consider the use of appropriate requirements to ensure noise is minimised as far as possible.

Mitigation

2.9.12 Applicants should have considered the following measures:

- the positioning of lines (see Section 2.8 (landscape/visual impact)) to help mitigate noise;
- ensuring that the appropriately sized conductor arrangement is used to minimise potential noise;

18 For example BS4142.

19 Technical Report No. TR(T)94, 1993. A Method for Assessing the Community Response to Overhead Line Noise, National Grid Technology & Science Laboratories.

20 ISO 1996: 1982 (BS7445:1991) Description and Measurement of Environmental Noise, International Standards Organisation (British Standards Institution).

- quality assurance through manufacturing and transportation to avoid damage to overhead line conductors which can increase potential noise effects; and
- ensuring that conductors are kept clean and free of surface contaminants during stringing/installation.

2.9.13 The ES should include information on planned maintenance arrangements. Where this is not the case, the IPC should consider including these by way of requirements attached to any grant of development consent.

2.10 Electric and Magnetic Fields (EMFs)

Introduction

2.10.1 Power frequency Electric and Magnetic Fields (EMFs) arise from generation, transmission, distribution and use of electricity and will occur around power lines and electric cables and around domestic, office or industrial equipment that uses electricity. EMFs comprise electric and magnetic fields. Electric fields are the result of voltages applied to electrical conductors and equipment. Fences, shrubs and buildings easily block electric fields. Magnetic fields are produced by the flow of electric current; however unlike electric fields, most materials do not readily block magnetic fields. The intensity of both electric fields and magnetic fields diminishes with increasing distance from the source.

2.10.2 All overhead power lines produce EMFs, and these tend to be highest directly under a line, and decrease to the sides at increasing distance. Although putting cables underground eliminates the electric field, they still produce magnetic fields, which are highest directly above the cable (see para 2.10.12). EMFs can have both direct and indirect effects on human health. The direct effects occur in terms of impacts on the central nervous system resulting in its normal functioning being affected. Indirect effects occur through electric charges building up on the surface of the body producing a microshock on contact with a grounded object, or vice versa, which, depending on the field strength and other exposure factors, can range from barely perceptible to being an annoyance or even painful.

2.10.3 To prevent these known effects, the International Commission on Non-Ionizing Radiation Protection (ICNIRP[21]) developed health protection guidelines in 1998 for both public and occupational exposure. These are expressed in terms of the induced current density in affected tissues of the body, “basic restrictions”, and in terms of measurable “reference levels” of electric field strength (for electric fields), and magnetic flux density (for magnetic fields). The relationship between the (measurable) electric field strength or magnetic flux density and induced current density in body tissues requires complex dosimetric modelling. The reference levels are such that compliance with them will ensure that the basic restrictions are not reached or exceeded. However, exceeding the reference levels does not necessarily mean that the basic restrictions will not be met; this would be a trigger for further investigation into the specific circumstances. For protecting against indirect effects, the ICNIRP 1998 guidelines give an electric field reference of 5kV m^{-1} for the general public, and keeping electric fields below this level would reduce the occurrence of adverse indirect effects for most individuals to acceptable levels. When this level is exceeded, there is a suite of measures that may be called upon in particular situations, including provision of information, earthing and screening, alongside limiting the field. In some situations there may be no reasonable way of eliminating indirect effects.

21 http://www.icnirp.de/

2.10.4 The levels of EMFs produced by power lines in normal operation are usually considerably lower than the ICNIRP 1998 reference levels. For electricity substations, the EMFs close to the sites tend to be dictated by the overhead lines and cables entering the installation, not the equipment within the site. The Stakeholder Advisory Group on extremely low frequency electric and magnetic fields (ELF EMFs) (SAGE) was set up to provide advice to Government on possible precautionary measures that might be needed to limit public exposure to electric and magnetic fields associated with electricity supply. The Government response to recommendations made in SAGE's first interim assessment sets out those measures that will be taken as a result of the recommendations[22].

2.10.5 The Health Protection Agency's (HPA) Centre for Radiation, Chemical and Environmental Hazards (CRCE) provides advice on standards of protection for exposure to non-ionizing radiation, including the ELF EMFs arising from the transmission and use of electricity. In March 2004, the National Radiological Protection Board (NRPB) (now part of HPA CRCE), published advice on limiting public exposure to electromagnetic fields. The advice recommended the adoption in the UK of the EMF exposure guidelines published by ICNIRP in 1998. These guidelines also form the basis of a 1999 EU Recommendation on public exposure and a Directive on occupational exposure. Resulting from these recommendations, Government policy is that exposure of the public should comply with the ICNIRP (1998) guidelines in terms of the EU Recommendation. The electricity industry has agreed to follow this policy. Applications should show evidence of this compliance as specified in 2.10.9 below.

2.10.6 The balance of scientific evidence over several decades of research has not proven a causal link between EMFs and cancer or any other disease. The HPA CRCE keeps under review emerging scientific research and/or studies that may link EMF exposure with various health problems and provides advice to the Department of Health on the possible need for introducing further precautionary measures.

2.10.7 The Department of Health's Medicines and Healthcare Products Regulatory Agency (MHRA) does not consider that transmission line EMFs constitute a significant hazard to the operation of pacemakers.

2.10.8 There is little evidence that exposure of crops, farm animals or natural ecosystems to transmission line EMFs has any agriculturally significant consequences.

IPC Decision Making

2.10.9 This NPS does not repeat the detail of the ICNIRP 1998 guidelines on restrictions or reference levels nor the 1999 EU Recommendation. Government has developed with the electricity industry a Code of Practice, "Power Lines: Demonstrating compliance with EMF public exposure

22 http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_107123.pdf

guidelines – a voluntary Code of Practice"[23], published in February 2011 that specifies the evidence acceptable to show compliance with ICNIRP (1998) in terms of the EU Recommendation. Before granting consent to an overhead line application, the IPC should satisfy itself that the proposal is in accordance with the guidelines, considering the evidence provided by the applicant and any other relevant evidence. It may also need to take expert advice from the Department of Health.

2.10.10 There is no direct statutory provision in the planning system relating to protection from EMFs and the construction of new overhead power lines near residential or other occupied buildings. However, the Electricity Safety, Quality and Continuity Regulations 2002[24] set out the minimum height, position, insulation and protection specifications at which conductors can be strung between towers to ensure safe clearance of objects. The effect of these requirements should be that power lines at or below 132kV will comply with the ICNIRP 1998 basic restrictions, although the IPC should be satisfied that this is the case on the basis of the evidence produced as specified in the Code of Practice.

2.10.11 Industry currently applies optimal phasing[25] to 275kV and 400kV overhead lines voluntarily wherever operationally possible, which helps to minimise the effects of EMF. The Government has developed with industry a voluntary Code of Practice, "Optimum Phasing of high voltage double-circuit Power Lines – A Voluntary Code of Practice"[26], published in February 2011 that defines the circumstances where industry can and will optimally phase lines with a voltage of 132kV and above. Where the applicant cannot demonstrate that the line will be compliant with the Electricity Safety, Quality and Continuity Regulations 2002, with the exposure guidelines as specified in the Code of Practice on compliance, and with the policy on phasing as specified in the Code of Practice on optimal phasing then the IPC should not grant consent.

2.10.12 Undergrounding of a line would reduce the level of EMFs experienced, but high magnetic field levels may still occur immediately above the cable. It is not the Government's policy that power lines should be undergrounded solely for the purpose of reducing exposure to EMFs. Although there may be circumstances where the costs of undergrounding are justified for a particular development, this is unlikely to be on the basis of EMF

23 http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/development%20consents%20and%20planning%20reform/1256-code-practice-emf-public-exp-guidelines.pdf

24 http://www.legislation.gov.uk/uksi/2002/2665/contents/made

25 Many overhead power lines have two circuits, each consisting of three conductor bundles or "phases" carried on the same pylons. Each circuit produces an electro-magnetic field, and the cumulative field depends on the relative order of the three phases of each circuit. This is referred to as "phasing" and the lowest magnetic fields to the sides of the line are produced by an arrangement called "transposed phasing".

26 http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/development%20consents%20and%20planning%20reform/1255-code-practice-optimum-phasing-power-lines.pdf

exposure alone, for which there are likely to be more cost-efficient mitigation measures. Undergrounding is covered in more detail in paragraphs 2.8.8 – 2.8.9 (landscape and visual).

2.10.13 In order to avoid unacceptable adverse impacts of EMFs from electricity network infrastructure on aviation, the IPC should take account of statutory technical safeguarding zones defined in accordance with Planning Circular 01/03[27], or any successor when considering applications. More detail on this issue can be found in Section 5.4 of EN-1. Where a statutory consultee on the safeguarding of technical facilities identifies a risk that the EMF effect of electricity network infrastructure would compromise the effective and safe operation of such facilities, the potential impact and siting and design alternatives will need to have been fully considered as part of the application.

2.10.14 The diagram at the end of this section shows a basic decision tree for dealing with EMFs from overhead power lines to which the IPC can refer.

Mitigation

2.10.15 The applicant should have considered the following factors:

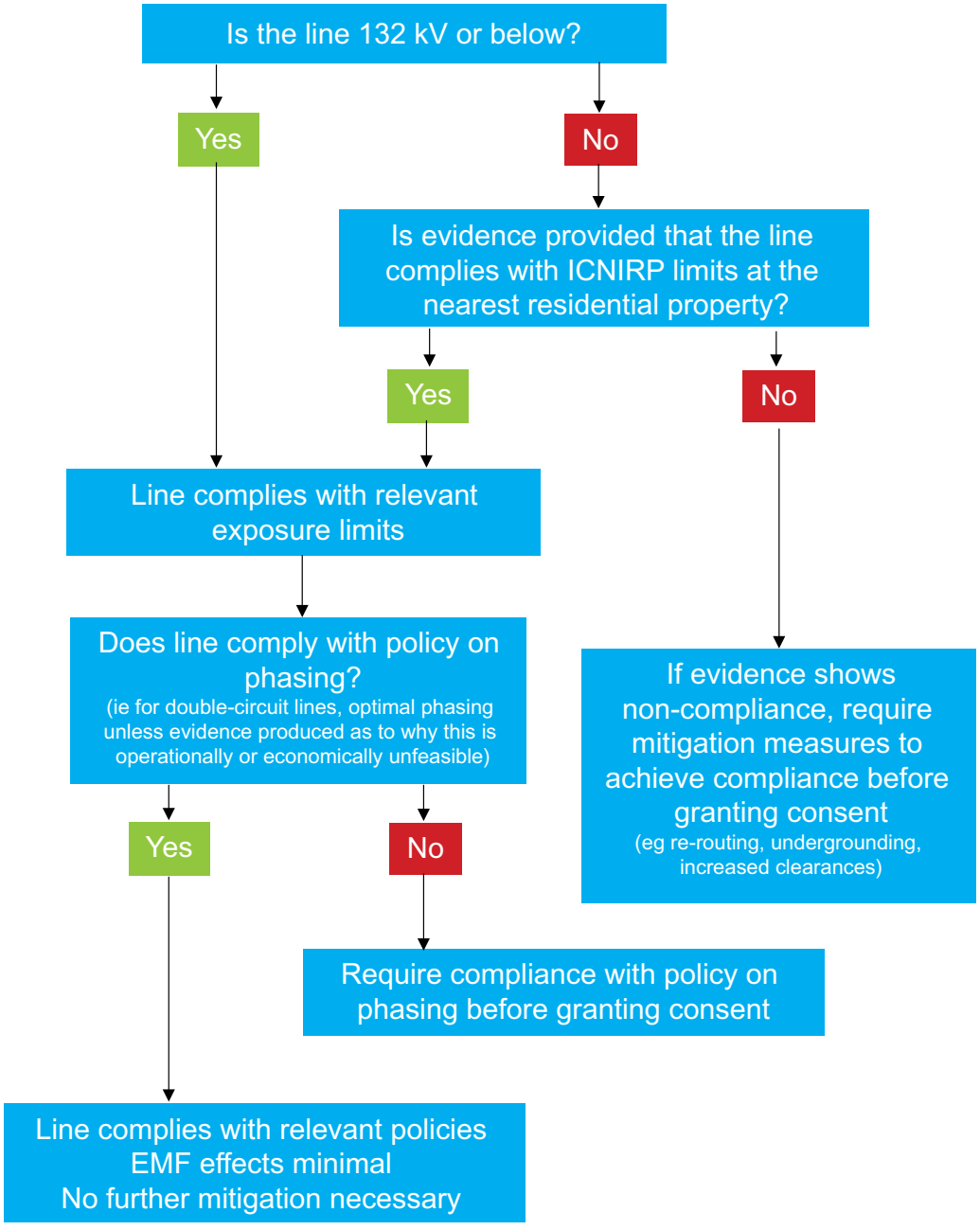
- height, position, insulation and protection (electrical or mechanical as appropriate) measures subject to ensuring compliance with the Electricity Safety, Quality and Continuity Regulations 2002;
- that optimal phasing of high voltage overhead power lines is introduced wherever possible and practicable in accordance with the Code of Practice to minimise effects of EMFs; and
- any new advice emerging from the Department of Health relating to Government policy for EMF exposure guidelines.

However, where it can be shown that the line will comply with the current public exposure guidelines and the policy on phasing, no further mitigation should be necessary.

2.10.16 Where EMF exposure is within the relevant public exposure guidelines, re-routeing a proposed overhead line purely on the basis of EMF exposure, or undergrounding a line solely to further reduce the level of EMF exposure are unlikely to be proportionate mitigation measures.

27 Safeguarding Aerodromes, Technical Sites and Military Explosive Storage Areas

Simplified Route Map for dealing with EMFs



Glossary of key terms[28]

DECC	Department of Energy and Climate Change
NPS	National Policy Statement
EN-1	Overarching NPS for Energy
IPC	Infrastructure Planning Commission
CLG	Department for Communities and Local Government
NSIP	Nationally significant infrastructure project
SEA	Strategic Environmental Assessment (under the Directive of the same name)
AoS	Appraisal of Sustainability
OHL	Overhead line carried on poles or pylons/transmission towers
Substation	An assembly of equipment in an electric power system through which electric energy is passed for transmission, transformation, distribution, or switching
kV	Kilovolts – 1000 volts
DC	Direct current
AC	Alternating current
EIA	Environmental Impact Assessment
ES	Environmental Statement
associated infrastructure	Development associated with the NSIP as defined in Section 115 of the Planning Act
network reinforcement	Uprating/upgrading and improving or replacement of existing lines
Habitats Directive	The European Directive (92/43/EEC) on the Conservation of Natural Habitats and Wild Flora and Fauna
AONB	Area of Outstanding Natural Beauty
HRA	Habitats Regulations Assessment
generic impacts	Potential impacts of any energy infrastructure projects, the general policy for consideration of which is set out in Part 5 of EN-1
DCO	Development Consent Order
EMFs	Electric and magnetic fields
ICNIRP	The International Commission on Non-Ionizing Radiation Protection
ELF EMFs	Extremely low frequency electric and magnetic fields

28 This glossary sets out the most frequently used terms in this NPS. There is a glossary in each of the energy NPSs. The glossary set out in EN-1 may also be useful when reading this NPS.

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DEPARTMENT OF ENERGY & CLIMATE CHANGE

Overarching National Policy Statement for Energy (EN-1)

Planning for new energy infrastructure

July 2011

Department of Energy and Climate Change

Overarching National Policy Statement for Energy (EN-1)

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Contents

Part 1 Introduction

1.1 Background

1.1.1 This National Policy Statement (NPS) sets out national policy for the energy infrastructure defined in Section 1.3 below. It has effect, in combination with the relevant technology-specific NPS (see paragraph 1.4.1), on the decisions by the Infrastructure Planning Commission (IPC) on applications for energy developments that fall within the scope of the NPSs. For such applications this NPS, when combined with the relevant technology-specific energy NPS, provides the primary basis for decisions by the IPC. Under the Planning Act 2008[1] the IPC must also have regard to any local impact report submitted by a relevant local authority, any relevant matters prescribed in regulations, the Marine Policy Statement (MPS) and any applicable Marine Plan, and any other matters which the IPC thinks are both important and relevant to its decision.

1.1.2 The Planning Act 2008 also requires that the IPC must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be in breach of any statutory duty that applies to the IPC;
- be unlawful;
- result in adverse impacts from the development outweighing the benefits; or
- be contrary to regulations about how its decisions are to be taken.

1.1.3 Applicants should therefore ensure that their applications, and any accompanying supporting documents, are consistent with the instructions and guidance in this NPS, the relevant technology-specific NPS and any other NPSs that are relevant to the application in question.

1.2 Role of this NPS in the planning system

1.2.1 This NPS, and in particular the policy and guidance on generic impacts in Part 5, may be helpful to local planning authorities (LPAs) in preparing their local impact reports. In England and Wales this NPS is likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis.

1.2.2 Under the Marine and Coastal Access Act 2009, the Marine Management Organisation (MMO), will determine applications under s.36 and s.36A of the

1 Section 104(2) Planning Act 2008.

Electricity Act 1989 where they relate to a generating station in waters adjacent to England and Wales or in a Renewable Energy Zone (except any part in relation to which Scottish Ministers have functions) provided that the application does not exceed the capacity threshold set out in the Planning Act 2008. The MMO will determine applications in accordance with the Marine Policy Statement (MPS) and any applicable marine plans, unless relevant considerations indicate otherwise. This NPS, in combination with the relevant technology-specific NPSs, may be a relevant consideration for the MMO when it is determining such applications. They may also be a relevant consideration in the preparation of relevant marine plans. The role of the MPS in relation to IPC decisions is set out at paragraph 4.1.6.

1.2.3 Further information on the relationship between NPSs and the town and country planning system, as well as information on the role of NPSs is set out in paragraphs 13 to 19 of the Annex to the letter to Chief Planning Officers issued by the Department for Communities and Local Government (CLG) on 9 November 2009[2].

1.3 Future planning reform

1.3.1 Aside from cases where the Secretary of State intervenes, or where the application is not covered by a designated NPS, the Planning Act 2008, as it is in force at the date on which this NPS was designated, provides that all applications for development consent will be both examined and determined by the IPC. However, the enactment and entry into force of the provisions of the Localism Bill (introduced into Parliament in December 2010) relating to the Planning Act would abolish the IPC. The functions of examining applications would be taken on by a new Major Infrastructure Planning Unit ("MIPU") within the Planning Inspectorate and the function of determining applications on major energy infrastructure projects by the Secretary of State (who would receive a report and recommendation on each such application from MIPU). In the case of energy projects, this function would be carried out by the Secretary of State for Energy and Climate Change.

1.3.2 If the Localism Bill is enacted and these changes take effect, references in this NPS to the IPC should be read as follows from the date when the changes take effect. Any statement about the IPC in its capacity as an examining body should be taken to refer to MIPU. Any statement about the IPC in its capacity as a decision-maker determining applications should be taken to refer to the Secretary of State for Energy and Climate Change in his capacity as decision-maker. MIPU would have regard to such statements in framing its reports and recommendations to the Secretary of State.

1.4 Scope of the Overarching National Policy Statement for Energy

1.4.1 This Overarching National Policy Statement for Energy (EN-1) is part of a suite of NPSs issued by the Secretary of State for Energy and Climate Change. It sets out the Government's policy for delivery of major energy infrastructure. A further five technology-specific NPSs for the energy sector

2 http://www.communities.gov.uk/publications/planningandbuilding/letternpsconsultation

cover: fossil fuel electricity generation (EN-2); renewable electricity generation (both onshore and offshore) (EN-3); gas supply infrastructure and gas and oil pipelines (EN-4); the electricity transmission and distribution network (EN-5); and nuclear electricity generation (EN-6). These should be read in conjunction with this NPS where they are relevant to an application.

1.4.2 The Planning Act 2008[3] sets out the thresholds for nationally significant infrastructure projects (NSIPs) in the energy sector. The Act empowers the IPC to examine applications and make decisions on the following nationally significant energy infrastructure projects:

- electricity generating stations generating more than 50 megawatts onshore and 100 megawatts offshore. This includes generation from fossil fuels, wind, biomass, waste and nuclear. For these types of infrastructure, the Overarching NPS (EN-1) in conjunction with the relevant technology-specific NPSs (EN-2 on fossil fuel generating stations, EN-3 on renewable energy infrastructure or EN-6 on nuclear power generation as appropriate) will be the primary basis for IPC decision making;
- electricity lines at or above 132kV. For this infrastructure, EN-1 in conjunction with the Electricity Networks NPS (EN-5) will be the primary basis for IPC decision making;
- large gas reception and liquefied natural gas (LNG) facilities and underground gas storage facilities (meeting the thresholds set out in the Planning Act 2008, and explained in detail in Section 1.7 of the gas supply infrastructure and gas and oil pipelines NPS (EN-4)). For this infrastructure EN-1 in conjunction with EN-4 will be the primary basis for IPC decision making; and
- cross-country gas and oil pipelines and Gas Transporter pipelines (meeting the thresholds and conditions set out in the Planning Act 2008 and Section 1.7 of EN-4). For this infrastructure EN-1 in conjunction with EN-4 will be the primary basis for IPC decision making.

1.4.3 The Planning Act 2008 enables the IPC to issue a development consent order including consent for development which is associated with the energy infrastructure listed above (subject to certain geographical and other restrictions set out in Section 115 of the Act). The Secretary of State has issued guidance to which the IPC must have regard in deciding whether development is associated development. EN-1, in conjunction with the relevant technology-specific NPS, will be the primary basis for IPC decision making on associated development. The IPC will not consent associated development in Wales, with the exception of certain development associated with underground gas storage facilities for the storage of gas in natural porous strata by a gas transporter (as set out in more detail in EN-4).

1.4.4 The Planning Act 2008 enables the IPC to issue a development consent order that can make provision relating to, or to matters ancillary to, the development of the energy infrastructure listed above. This may include, for example, the granting of wayleaves, the authorisation of tree lopping and the compulsory purchase of land. EN-1 in conjunction with the relevant

3 Part 3 Planning Act 2008.

technology-specific NPSs will be the primary basis for IPC decision making on such matters.

1.4.5 The generation of electricity from renewable sources other than wind, biomass or waste is not within the scope of this NPS. Insofar as this NPS relates to the development of new nuclear power stations, it only has effect in relation to applications for the development of new nuclear power stations on the sites listed in EN-6.

1.5 Geographical coverage

1.5.1 The IPC will examine all applications (other than as specified in this paragraph) for nationally significant infrastructure projects in England and Wales and the offshore Renewable Energy Zone (REZ) (except any part in relation to which Scottish Ministers have functions). In Wales, the IPC will not examine applications for LNG facilities, gas reception facilities or gas transporter pipelines. The IPC will only examine applications for underground gas storage facilities in Wales where the applicant is a licensed gas transporter and the storage is in natural porous strata; precise details are set out in EN-4 and Section 17 of the Planning Act 2008. It will remain possible for Welsh Ministers to consent offshore wind farms in territorial waters adjacent to Wales under the Transport and Works Act 1992 if applicants apply to them rather than the IPC.

1.5.2 In Scotland and in those areas of the REZ where Scottish Ministers have functions, the IPC will not examine applications for nationally significant energy infrastructure projects except as set out in paragraph 1.5.3. However, energy policy is generally a matter reserved to UK Ministers and this NPS may therefore be a relevant consideration in planning decisions in Scotland.

1.5.3 The IPC will examine applications for cross country oil and gas pipelines (meeting the conditions set out in Section 21 of the Planning Act 2008) that have one end in England or Wales and the other in Scotland.

1.5.4 In Northern Ireland, planning consents for all nationally significant infrastructure projects are devolved to the Northern Ireland Executive, so the IPC will not examine applications for energy infrastructure in Northern Ireland and the NPS will not apply there.

1.6 Period of validity and review

1.6.1 This NPS will remain in force in its entirety unless withdrawn or suspended in whole or in part by the Secretary of State. It will be subject to review by the Secretary of State in order to ensure that it remains appropriate. Information on the review process is set out in paragraphs 10 to 12 of the Annex to CLG's letter of 9 November 2009 (see paragraph 1.2.3 above).

1.7 The Appraisal of Sustainability and Habitats Regulations Assessment

1.7.1 All the energy NPSs have been subject to an Appraisal of Sustainability (AoS), as required by the Planning Act 2008. The AoSs also incorporate the analysis of likely significant environmental effects required by the Strategic

Environmental Assessment (SEA) Directive (2001/42/EC). The AoSs for EN-1 to EN-5 have been revised substantially to take account of comments made in response to the consultation which took place between November 2009 and February 2010. The purposes and methods of the AoSs are explained in the revised draft of the AoS for EN-1. Their primary function is to inform consultation on the draft NPSs by providing an analysis of the environmental, social and economic impacts of implementing the energy NPSs by granting development consents for large-scale energy infrastructure projects in accordance with them. A non-technical summary of each AoS has also been published for the benefit of non-specialist readers.

1.7.2 Some key points from the AoS for EN-1 are set out below.

- The energy NPSs should speed up the transition to a low carbon economy and thus help to realise UK climate change commitments sooner than continuation under the current planning system. However there is also some uncertainty as it is difficult to predict the mix of technology that will be delivered by the market against the framework set by the Government.
- The energy NPSs are likely to contribute positively towards improving the vitality and competitiveness of the UK energy market by providing greater clarity for developers which should improve the UK's security of supply and, less directly, have positive effects for health and well-being in the medium to longer term through helping to secure affordable supplies of energy and minimising fuel poverty; positive medium and long term effects are also likely for equalities.
- The development of new energy infrastructure, at the scale and speed required to meet the current and future need, is likely to have some negative effects on biodiversity, landscape/visual amenity and cultural heritage. However the significance of these effects and the effectiveness of mitigation possibilities is uncertain at the strategic and non-locationally specific level at which EN-1 to EN-5 are pitched. Short-term construction impacts are also likely through an increased use of raw materials and resources and negative effects on the economy due to impacts on existing land and sea uses. In general, it should be possible to mitigate satisfactorily the most significant potential negative effects of new energy infrastructure consented in accordance with the energy NPSs, and they explain ways in which this can be done; however, the impacts on landscape/visual amenity in particular will sometimes be hard to mitigate.

1.7.3 There may also be cumulative negative effects on water quality, water resources, flood risk, coastal change and health at the regional or sub-regional levels depending upon location and the extent of clustering of new energy and other infrastructure. Proposed energy developments will still be subject to project level assessments, including Environmental Impact Assessment, and this will address locationally specific effects. The energy NPSs set out mitigation for cumulative negative effects by requiring the IPC to consider accumulation of effects as a whole in their decision-making on individual applications for development consent.

1.7.4 The conclusions of the AoS for the nuclear power NPS (EN-6), which contains more detailed analysis of impacts because EN-6 designates sites potentially suitable for development, are set out in EN-6.

1.7.5 As required by the SEA Directive, Part 3 of the AoS of EN-1 also includes an assessment of reasonable alternatives to the policies set out in EN-1 at a strategic level. In particular, this involved a generic assessment of alternatives which placed more emphasis on three key drivers of policy which are highly relevant to the planning context: securing low cost energy (Alternative A1); reducing greenhouse gas emissions (Alternative A3); and reducing other environmental impacts of energy infrastructure development (Alternative A4). There are many different possible changes which could be made to the individual planning policies set out in EN-1 to EN-5, and very large numbers of possible combinations of those different possible policies. However, any change which was consistent with the overall aims of the energy policies that the consenting of new infrastructure in accordance with the energy NPSs is intended to help achieve, would be motivated by the desire to do more in one or more of the areas represented by Alternatives A1, A3 or A4.

1.7.6 Alternative A1 – placing more emphasis on a low cost of energy – would:

- be likely to have an adverse effect on security of supply if it resulted in greater reliance on imports of fossil fuel or reduced the diversity of energy types;
- indirectly increase carbon emissions if lower energy costs stimulated activity in the wider economy;
- have beneficial effects on the economy and indirectly on human health and well-being because of the stimulus of lower energy costs;
- be likely to have adverse effects on features of the built and natural environment that are not protected by statutory designations.

Although these effects will be local, their cumulative effect over a programme of energy development might be significant.

1.7.7 Alternative A1 compares unfavourably with EN-1 in relation to those aspects of sustainable development which are particularly relevant to achievement of underlying energy policy objectives. It has therefore been rejected.

1.7.8 Alternative A3, placing more emphasis on a reduction in CO_2 emissions would, by definition be beneficial from a climate change point of view. There is also the possibility that it may compare favourably with EN-1 from a human health and well-being and economic perspective.

1.7.9 However it is not clear that it would be possible to give practical effect to such an alternative through the planning system in the next ten years or so without risking negative impacts on security of supply. Equally the planning policies in the energy NPSs as drafted do not put any unjustified barriers in the way of the development of low carbon energy infrastructure (or the networks infrastructure needed to support it). Accordingly, Alternative A3 has not been preferred to EN-1 at this stage, but Government is actively considering other ways in which to encourage industry to accelerate

progress towards a low carbon economy, particularly through the Electricity Market Reform project (see Section 2.2 of this NPS).

1.7.10 Alternative A4, placing more emphasis on reducing other environmental impacts, would:

- be beneficial for the natural and built environment;
- present risks to energy security because more stringent environmental requirements could delay the approval and development of new energy projects.

1.7.11 As noted above, the principal area in which consenting new energy infrastructure in accordance with the energy NPSs is likely to lead to adverse effects which cannot always be satisfactorily mitigated is in respect of landscape and visual effects. EN-1 already contains policies which severely limit the prospects for development of large-scale energy infrastructure in the most attractive landscapes and townscapes. Tightening the development consent policies in EN-1 to make it harder for energy infrastructure to be consented which would have adverse landscape or townscape effects would be likely to make it significantly more difficult to gain consent for a range of large-scale energy infrastructure projects. Alternative A4 is not to be preferred to EN-1, at least until such time as it becomes clear that levels of need for new large-scale energy infrastructure are very much lower than Government anticipates that they will be for the foreseeable future.

1.7.12 Because all the alternatives are assessed as performing less well than EN-1 against one or more of the criteria for climate change or security of energy supply that are fundamental objectives of the plan, the Government's preferred option is to take forward the energy NPS EN-1 and the technology-specific NPSs EN-2 to EN-6. (Further assessment of technology-specific policy alternatives is set out in the AoSs for EN-2 to EN-6.)

1.7.13 Habitats Regulation Assessments (HRA) have been carried out and published for the non-locationally specific NPSs EN-1 to EN-5 and for EN-6 which does specify sites suitable for development. As EN-1 to EN-5 do not specify locations for energy infrastructure, the HRA is a high-level strategic overview. Although the lack of spatial information within the EN-1 to EN-5 made it impossible to reach certainty on the effect of the plan on the integrity of any European Site, the potential for proposed energy infrastructure projects of the kind contemplated by EN-1 to EN-5 to have adverse effects on the integrity of such sites cannot be ruled out. The HRA explains why the Government considers that EN-1 to EN-5 are, nevertheless, justified by imperative reasons of overriding public interest, while noting that its conclusions are only applicable at the NPS level and are without prejudice to any project-level HRA, which may result in the refusal of consent for a particular application. Section 1.7 of EN-6 sets out details of the nuclear HRA.

Part 2 Government policy on energy and energy infrastructure development

2.1 Introduction

2.1.1 This Part outlines the policy context for the development of nationally significant energy infrastructure. It reflects the commitment in the Coalition Programme for Government to take forward the energy NPSs and the policies outlined in the first Annual Energy Statement made to Parliament in July 2010[4]. The Annual Energy Statement presented a clear statement of Government objectives, crucial to meeting key goals on carbon emission reductions, energy security and affordability.

2.1.2 As explained in Part 3, energy is vital to economic prosperity and social well-being and so it is important to ensure that the UK has secure and affordable energy. Producing the energy the UK requires and getting it to where it is needed necessitates a significant amount of infrastructure, both large and small scale. The energy NPSs consider the large scale infrastructure that play a vital role in ensuring we have the secure energy supplies we need.

2.2 The road to 2050

2.2.1 We are committed to meeting our legally binding target to cut greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels[5]. Analysis done on possible 2050 pathways[6] shows that moving to a secure, low carbon energy system is challenging, but achievable. It requires major investment in new technologies to renovate our buildings, the electrification of much of our heating, industry and transport, prioritisation of sustainable bioenergy and cleaner power generation. And it requires major changes in the way energy is used by individuals, by industry, and by the public sector.

2.2.2 Delivering this change is a major challenge not least for energy providers, and the Government is working to ensure their efforts produce the major,

4 http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/237-annual-energy-statement-2010.pdf
5 http://www.decc.gov.uk/en/content/cms/legislation/cc_act_08/cc_act_08.aspx
6 2050 Pathways Analysis, HM Government, 2010 http://www.decc.gov.uk/assets/decc/What%20we%20do/A%20low%20carbon%20UK/2050/216-2050-pathways-analysis-report.pdf

rapid change the UK needs. Within a market-based system[7] and with severe constraints on public expenditure in the near-term, the focus of Government activity in this transformation is clear. It should be on developing a clear, long-term policy framework which facilitates investment in the necessary new infrastructure (by the private sector) and in energy efficiency.

2.2.3 The 2010 Annual Energy Statement outlined DECC's programme in four key areas to support the transition to a secure, safe, low carbon, affordable energy system in the UK:

- saving energy (through the Green Deal[8]) and supporting vulnerable consumers;
- delivering secure energy on the way to a low carbon energy future;
- managing our energy legacy responsibly and cost-effectively; and
- driving ambitious action on climate change at home and abroad.

2.2.4 Not all aspects of Government energy and climate change policy will be relevant to IPC decisions or planning decisions by local authorities, and the planning system is only one of a number of vehicles that helps to deliver Government energy and climate change policy. The role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market responding to rules, incentives or signals from Government – have identified as the types of infrastructure we need in the places where it is acceptable in planning terms. It is important that, in doing this, the planning system ensures that development consent decisions take account of the views of affected communities and respect the principles of sustainable development.

The transition to a low carbon economy

2.2.5 The UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come. Most of our power stations are fuelled by coal and gas. The majority of homes have gas central heating, and on our roads, in the air and on the sea, our transport is almost wholly dependent on oil.

2.2.6 However, the UK needs to wean itself off such a high carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification. Under some of the illustrative 2050 pathways, electricity generation would need to be virtually emission-free, given that we would expect some emissions from industrial and agricultural processes, transport and waste to persist. By 2050, we can

7 The essential characteristics of the market-based policy approach which successive administrations have taken to the GB electricity market since 1990 are summarised in paragraphs 2 to 10 of Chapter 2 of Electricity Market Reform: Consultation Document (December 2010, available at: http://www.decc.gov.uk/en/content/cms/consultations/emr/emr.aspx). Paragraph 11 of that Chapter briefly describes some of the ways in which Government has intervened subsequently to influence market structure or the behaviour of participants. See also paragraph 2.2.18 below.

8 Set out in the Annual Energy Statement http://www.decc.gov.uk/en/content/cms/what_we_do/consumers/green_deal/green_deal.aspx

expect that fossil fuels will be scarcer, but will still be in demand, and that prices will therefore be far higher. Further, the UK's own oil and gas resources will be depleting and, worldwide, the costs and risks of extracting oil in particular will increase.

2.2.7 Continuation of global emissions, including greenhouse gases like carbon dioxide, at current levels could lead average global temperatures to rise by up to 6°C by the end of this century[9]. This would make extreme weather events like floods and droughts more frequent and increase global instability, conflict, public health-related deaths and migration of people to levels beyond any recent experience. Heat waves, droughts, and floods would affect the UK.

2.2.8 To avoid the most dangerous impacts of climate change, the increase in average global temperatures must be kept to no more than 2°C, and that means global emissions must start falling as a matter of urgency. To drive the transition needed the Government has put in place the world's first ever legally binding framework to cut emissions by at least 80% by 2050, that will deliver emission reductions through a system of five year carbon budgets that will set a trajectory to 2050.

2.2.9 To prepare for the impacts of climate change, the Climate Change Act 2008 also sets out a statutory framework for adapting to climate change, with the Government committed to producing a statutory climate change adaptation programme in 2012 (which will be updated on five-yearly cycles). To lead and co-ordinate work in preparation for this, the Government has established the Adapting to Climate Change Programme[10], which includes:

- undertaking a UK Climate Change Risk Assessment; and
- using the "Adaptation Reporting Power" to require certain public bodies and statutory undertakers to set out the risks to their work from a changing climate and what they are doing to manage these risks.

2.2.10 Alongside this, the Government is committed to ensuring that adaptation needs are built into planning and risk management now to ensure the continued and improved success of businesses and new energy NSIPs. Section 4.8 of this NPS sets out how applicants and the IPC should take the effects of climate change into account when developing and consenting infrastructure.

2.2.11 This NPS also sets out how the energy sector can help deliver the Government's climate change objectives by clearly setting out the need for new low carbon energy infrastructure to contribute to climate change mitigation.

9 Climate model projections summarized in the latest Intergovernmental Panel on Climate Change (IPCC) report, the 2007 Fourth Assessment Report, indicate that the global surface temperature is likely to rise a further 1.1 to 6.4 °C (2.0 to 11.5 °F) during the 21st century. IPCC, 2007. Climate Change 2007:Synthesis Report. An Assessment of the Intergovernmental Panel on Climate Change (page 45). http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf

10 http://www.defra.gov.uk/environment/climate/adapting/

The power sector and carbon emissions

2.2.12 The EU Emissions Trading System (EU ETS) forms the cornerstone of UK action to reduce greenhouse gas emissions from the power sector. Since 2005, the EU ETS has set a cap on emissions from the large industrial sectors such as electricity generation and heavy industry and from Phase III (2013-2020) this cap will reduce at an annual rate of 1.74%. It is expected to deliver reductions from these sectors of 21% on 2005 levels by 2020, underpinning the transition to low carbon electricity generation.

2.2.13 The cap set under the EU ETS translates to a finite number of allowances to emit greenhouse gases. The companies involved can trade these allowances with each other, creating a carbon price and enabling the required reductions to be made where they are cheapest. The carbon price generated by the EU ETS makes producing electricity from carbon intensive power stations less attractive and creates an incentive for power station operators to invest in cleaner electricity generation. Whilst the EU ETS is successfully delivering emissions reductions across the UK and Europe, so far the carbon price has not been sufficient to incentivise the required levels of new low carbon investment[11].

2.2.14 To help incentivise investment and bolster the EU-wide carbon price, the Government supports a move across the EU from a 20% to a 30% emissions reduction target by 2020. Moreover, to provide even greater certainty and support to the carbon price in the UK, the Government has announced proposals to reform the climate change levy.

2.2.15 In the UK, we intend to go beyond the EU ETS and ensure that developers deliver the required levels of investment in low carbon generation to decarbonise the way in which we produce electricity and reinforce our security of supply, whilst retaining efficiency and competitiveness. The Government is developing possible ways of achieving this through the Electricity Market Reform project.

Electricity Market Reform

2.2.16 About a quarter of the UK's generating capacity is due to close by 2018 and new low carbon generation is required which is reliable, secure and affordable. For the time being, electricity margins[12] are healthy. However, with the total investment requirement in the electricity sector alone estimated at over £100 billion by the end of this decade, much more has to be done to unlock this investment. The implementation of the Planning Act 2008 (and the projected reforms to it) is part of this process, as the new planning system for major infrastructure is intended to provide a more efficient and transparent decision-making framework which will facilitate the construction of the kinds of new energy infrastructure which we need (as set out in Part 3). However, the Government is also considering what further interventions in energy markets may be necessary in order to ensure that developers

11 CCC, 2009. Meeting Carbon Budgets – the need for a step change. Progress report to Parliament Committee on Climate Change October 2009 (page 112). http://downloads.theccc.org.uk/21667%20CCC%20Report%20AW%20WEB.pdf

12 Part 3 of this NPS provides more information on capacity margins.

come forward with proposals to build enough of these kinds of infrastructure (particularly low carbon infrastructure).

2.2.17 The Government is therefore conducting a detailed appraisal of the way the electricity market should be designed. The consultation on Electricity Market Reform published by DECC in December 2010, sought views on a preferred package of reforms: a carbon price support mechanism, a feed-in tariff for low-carbon technologies, an emissions performance standard, and a capacity mechanism. The Government is considering the role these reforms could play in delivering a system that supports investment in a secure, low carbon, affordable electricity mix for decades to come.

2.2.18 Providing more support and certainty about the carbon price will improve the prospects for low carbon investment in the period before wider ranging electricity market reforms can be introduced, but by itself it will not drive the decarbonisation of the generating mix. What is required is a clear market design that provides consistent, long term signals for investment in the new generating capacity and transmission and distribution infrastructure that is required.

2.2.19 The Planning Act and any market reforms associated with the Electricity Market Reform project will complement each other and are consistent with the Government's established view that the development of new energy infrastructure is market-based. While the Government may choose to influence developers in one way or another to propose to build particular types of infrastructure, it remains a matter for the market to decide where and how to build, as market mechanisms will deliver the required infrastructure most efficiently. Against this background of possibly changing market structures, developers will still need development consent for each proposal. Whatever incentives, rules or other signals developers are responding to, the Government believes that the NPSs set out planning policies which both respect the principles of sustainable development and are capable of facilitating, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain safe, secure, affordable and increasingly low carbon supplies of energy.

Security of energy supplies

2.2.20 It is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy. To manage the risks to achieving security of supply we need:

- sufficient electricity capacity (including a greater proportion of low carbon generation) to meet demand at all times. Electricity cannot be stored[13] so demand for it must be simultaneously and continuously met by its supply. This requires a safety margin of spare capacity to accommodate unforeseen fluctuations in supply or demand;

13 At present we have no ability to store electricity. Currently the only viable utility scale energy storage is hydro pumped storage. Part 3 has more details on pumped storage and the more intelligent use of energy.

- reliable associated supply chains (for example fuel for power stations) to meet demand as it arises;
- a diverse mix of technologies and fuels, so that we do not rely on any one technology or fuel[14]. Diversity can be achieved through the use of different technologies and multiple supply routes (for example, primary fuels imported from a wide range of countries); and
- there should be effective price signals, so that market participants have sufficient incentives to react in a timely way to minimise imbalances between supply and demand.

2.2.21 In the medium term, we face the challenges of reducing our energy demand, replacing existing power plants due for closure and maximising the economic production of our declining domestic oil and gas reserves. Developing our infrastructure (for example with Smart Grids for electricity) will help us maintain and improve our security and access to competitive supplies, particularly for electricity generation and gas importation and storage. This investment challenge drives much of the reform outlined in the 2010 Annual Energy Statement.

2.2.22 Looking further ahead, the 2050 pathways show that the need to electrify large parts of the industrial and domestic heat and transport sectors could double demand for electricity over the next forty years. It makes sense to switch to electricity where practical, as electricity can be used for a wide range of activities (often with better efficiency than other fuels) and can, to a large extent, be scaled up to meet demand. To meet emissions targets, the electricity being consumed will need to be almost exclusively from low carbon sources. Contrast this with the first quarter of 2011, when around 75% of our electricity was supplied by burning gas and coal.

2.2.23 The UK must therefore reduce over time its dependence on fossil fuels, particularly unabated combustion. The Government plans to do this by improving energy efficiency and pursuing its objectives for renewables, nuclear power and carbon capture and storage[15]. However some fossil fuels will still be needed during the transition to a low carbon economy.

14 Part 3 of this NPS has more detail on the advantages of a diverse mix of technologies.
15 CCC, 2008. Building a low carbon economy – the UK's contribution to tackling climate change. The First Report of the Committee on Climate Change December 2008 (pages 415 – 430). http://www.theccc.org.uk/pdf/TSO-ClimateChange.pdf

2.2.24 Box 2.1 further explains the Government's approach to security of supply.

Box 2.1 Maintaining security of supply as we move to a low carbon economy

Great Britain has well developed electricity and gas markets, where suppliers compete to deliver energy to consumers. This is within a framework of effective regulation managed by the independent Gas and Electricity Markets Authority (GEMA), whose objectives are set out in statute. Its principal objective is to protect the interests of present and future consumers, taken as a whole and including their interest in reducing emissions and securing energy supplies. GEMA is supported by the executive body Ofgem.

In this context, one of GEMA's key roles is to regulate monopoly gas and electricity networks to protect consumers, including their interest in adequate and timely investment in our electricity and gas networks consistent with maintaining energy security and reducing carbon emissions.

Within the market, companies have strong incentives to ensure that they have enough supply to meet their customers' needs. Suppliers who find themselves with more customer demand than contracted supply must, if the market as a whole is short, pay the balancing penalty (based on the system marginal price) for each unit they are short. These prices are much higher than the average prices in the same period. Prices signal a level of need for capacity and historic evidence shows companies respond to these signals.

In deciding how much infrastructure to build, companies consider the uncertain future, such as risks associated with technology and the ability to secure fuel supplies at competitive rates. The nature of these risks means that companies tend to invest in a variety of types of capacity.

Price signals are complemented by regular forecasts from a number of bodies, including DECC and National Grid. They provide information to the market in a number of sources, including through annual statutory security of supply reporting from DECC and Ofgem, National Grid's "Seven Year Statement" for electricity and the "Ten Year Statement" for gas. DECC also publishes projections of future demand in the Updated Energy and Emissions Projections every year.

2.2.25 The UK faces two main security of supply challenges during our transition to a low carbon economy:

- increasing reliance on imports of oil and gas as North Sea reserves decline in a world where energy demand is rising and oil and gas production and supply is increasingly politicised; and
- the requirement for substantial and timely private sector investment over the next two decades in power stations, electricity networks and gas infrastructure.

2.2.26 The intention of this suite of energy NPSs is to provide a robust planning framework to facilitate private sector investment. Part 3 of this NPS sets out the planning policy for the IPC in respect of the Government's need for new energy infrastructure projects.

Delivering Government's wider objectives

2.2.27 The Government's wider objectives for energy infrastructure include contributing to sustainable development and ensuring that our energy infrastructure is safe. Sustainable development is relevant not just in terms of addressing climate change, but because the way energy infrastructure is deployed affects the well-being of society and the economy. For example, the availability of appropriate infrastructure supports the efficient working of the market so as to ensure competitive prices for consumers. The regulatory framework also encourages the energy industry to protect the more vulnerable.

2.2.28 The planning framework set out in this NPS and the suite of energy NPSs takes full account of the objective of contributing to the achievement of sustainable development and this has been tested through the AoS. The AoS has examined whether the NPS framework for the development of new energy infrastructure projects is consistent with the objectives for sustainable development, including consideration of other Government policies such as those for the environment, economic development, health and transport (See Section 1.7 of this NPS for the AoS).

Part 3 The need for new nationally significant energy infrastructure projects

3.1 IPC decision making

3.1.1 The UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.

3.1.2 It is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.

3.1.3 The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part.

3.1.4 The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008[16].

3.2 Introduction

3.2.1 Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to produce and transport food; to travel to work, around the country and the world. Our businesses and jobs rely on the use of energy. Energy is essential for the critical services we rely on – from hospitals to traffic lights and cash machines. It is difficult to overestimate the extent to which our quality of life is dependent on adequate energy supplies. The major types of energy that we use are: for generating electricity – fossil fuels, renewable energy and nuclear; for heating and industry – fossil fuels used directly; and for transport – oil-based fuels.

3.2.2 As we move towards 2050 the ways in which we use energy will be transformed. We need to become less dependent on some forms of energy, as new and innovative low carbon technologies and energy efficiency measures are taken up. We also shall become more dependent on others –

16 In determining the planning policy set out in Section 3.1, the Government has considered a range of projections and models that attempt to assess what the UK's future energy needs may be. Figures referenced relate to different timescales and therefore cannot be directly compared. Models are regularly updated and the outputs will inevitably fluctuate as new information becomes available.

for example, demand for electricity will increase if we electrify large parts of transport, heating and industry.

3.2.3 This Part of the NPS explains why the Government considers that, without significant amounts of new large-scale energy infrastructure, the objectives of its energy and climate change policy cannot be fulfilled. However, as noted in Section 1.7, it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts. This Part also shows why the Government considers that the need for such infrastructure will often be urgent. The IPC should therefore give substantial weight to considerations of need. The weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure.

3.3 The need for new nationally significant electricity infrastructure projects

3.3.1 Electricity meets a significant proportion of our overall energy needs and our reliance on it is likely to increase as we move towards our 2050 goals[17]. The key reasons why the Government believes there is an urgent need for new electricity NSIPs are set out below.

Meeting energy security and carbon reduction objectives

3.3.2 The Government needs to ensure sufficient electricity generating capacity is available to meet maximum peak demand, with a safety margin or spare capacity to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events. This is why there is currently around 85 GW of total generation capacity in the UK, whilst the average demand across a year is only for around half[18] of this.

3.3.3 The larger the difference between available capacity and demand (i.e. the larger the safety margin), the more resilient the system will be in dealing with unexpected events, and consequently the lower the risk of a supply interruption. This helps to protect businesses and consumers, including vulnerable households, from rising and volatile prices and, eventually, from physical interruptions to supplies that might impact on essential services.

3.3.4 There are benefits of having a diverse mix of all types of power generation. It means we are not dependent on any one type of generation or one source of fuel or power and so helps to ensure security of supply. In addition, as set out briefly below, the different types of electricity generation have different characteristics which can complement each other:

- fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing

17 Part 2 of this NPS provides details of the Government's energy objectives, including the Government's legal obligation to reduce the UK's greenhouse gas emissions by at least 80% (from 1990 levels) by 2050.

18 DECC: Digest of United Kingdom Energy Statistics (DUKES) table 5.2. http://www.decc.gov.uk/assets/decc/Statistics/publications/dukes/348-dukes-2010-printed.pdf Total demand for UK: 379 TeraWatt hours (TWh), divided by 8760 hours (no. of hours in a year) gives 43 GW average demand.

generation from nuclear and the intermittent generation from renewables. However, until such time as fossil fuel generation can effectively operate with Carbon Capture and Storage (CCS), such power stations will not be low carbon (see Section 3.6).

- renewables offer a low carbon and proven (for example, onshore and offshore wind) fuel source, but many renewable technologies provide intermittent generation (see Section 3.4); and
- nuclear power is a proven technology that is able to provide continuous low carbon generation, which will help to reduce the UK's dependence on imports of fossil fuels (see Section 3.5). Whilst capable of responding to peaks and troughs in demand or supply, it is not as cost efficient to use nuclear power stations in this way when compared to fossil fuel generation.

3.3.5 The UK is choosing to largely decarbonise its power sector by adopting low carbon sources quickly. There are likely to be advantages to the UK of maintaining a diverse range of energy sources so that we are not overly reliant on any one technology (avoiding dependency on a particular fuel or technology type). This is why Government would like industry to bring forward many new low carbon developments (renewables, nuclear and fossil fuel generation with CCS) within the next 10 to 15 years to meet the twin challenge of energy security and climate change as we move towards 2050.

3.3.6 Within the strategic framework established by the Government it is for industry to propose the specific types of developments that they assess to be viable. This is the nature of a market-based energy system[19]. The IPC should therefore act in accordance with the policy set out at in Section 3.1 when assessing proposals for new energy NSIPs.

The need to replace closing electricity generating capacity

3.3.7 In the UK at least 22 GW[20] of existing electricity generating capacity will need to be replaced in the coming years, particularly to 2020. This is as a result of tightening environmental regulation and ageing power stations.

3.3.8 Of this 22 GW, the closure of about 12 GW is driven by the Large Combustion Plant Directive (LCPD)[21], which regulates emissions of sulphur and nitrogen oxides. Generating companies who chose to 'opt out' their coal and oil power stations under the terms of the LCPD are only able to operate

19 The essential characteristics of the market-based policy approach which successive administrations have taken to the GB electricity market since 1990 are summarised in paragraphs 2 to 10 of Chapter 2 of Electricity Market Reform: Consultation Document (December 2010, available at: http://www.decc.gov.uk/en/content/cms/consultations/emr/emr.aspx). Paragraph 11 of that Chapter briefly describes some of the ways in which Government has intervened subsequently to influence market structure or the behaviour of participants.

20 22 GW is about a quarter of the UK's current electricity generating capacity of 85 GW. Closure figures from DECC & DEFRA http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/issues/power_stations/power_stations.aspx http://www.environment-agency.gov.uk/static/documents/Business/lcpd-nationalplan-update.pdf

21 Directive 2001/80/EC: http://ec.europa.eu/environment/air/pollutants/stationary/lcp.htm

for a maximum of 20,000 hours over the period 2008-2015 and will have to close by the end of 2015. In addition to this, based on their published lifetimes, about 10 GW of nuclear generating capacity is expected to close over the next 20 years[22].

3.3.9 Further power station closures are expected to occur after the LCPD due to the Industrial Emissions (Integrated Pollution Prevention and Control) Directive[23], which establishes stricter limits on the emissions of sulphur and nitrogen oxide from large combustion plants than those currently set in the LCPD. Any reduction in generation capacity from current levels will need to be replaced in order to ensure security of supply is maintained.

The need for more electricity capacity to support an increased supply from renewables

3.3.10 As part of the UK's need to diversify and decarbonise electricity generation, the Government is committed to increasing dramatically the amount of renewable generation capacity (see Section 3.4). In the short to medium term, much of this new capacity is likely to be onshore and offshore wind, but increasingly it may include plant powered by the combustion of biomass and waste and the generation of electricity from wave and tidal power.

3.3.11 An increase in renewable electricity is essential to enable the UK to meet its commitments under the EU Renewable Energy Directive[24]. It will also help improve our energy security by reducing our dependence on imported fossil fuels, decrease greenhouse gas emissions and provide economic opportunities. However, some renewable sources (such as wind, solar and tidal) are intermittent and cannot be adjusted to meet demand. As a result, the more renewable generating capacity we have the more generation capacity we will require overall, to provide back-up at times when the availability of intermittent renewable sources is low. If fossil fuel plant remains the most cost-effective means of providing such back-up, particularly at short notice, it is possible that even when the UK's electricity supply is almost entirely decarbonised we may still need fossil fuel power stations for short periods when renewable output is too low to meet demand, for example when there is little wind.

3.3.12 There are a number of other technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage, interconnection and demand-side response, without building additional generation capacity. Although Government believes these technologies will play important roles in a low carbon electricity system, the development and deployment of these technologies at the necessary scale has yet to be achieved. The Government does not therefore consider it prudent to solely rely on these technologies to meet demand without the additional back-up capacity (see further paragraphs 3.3.30-3.3.34 below). It is therefore likely that increasing reliance on renewables will mean that we need more total

22 Nuclear power stations have published lifetimes which reflect an expected closure date. Operators may apply to the Health and Safety Executive and the Nuclear Decommissioning Authority for life extensions. Although life extensions are possible, they are not guaranteed.
23 http://ec.europa.eu/environment/air/pollutants/stationary/ippc/proposal.htm
24 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.

electricity capacity than we have now, with a larger proportion being built only or mainly to perform back-up functions.

Future increases in electricity demand

3.3.13 To meet its 2050 emissions reductions goals, the UK needs to move away from fossil fuels not only as a source of electricity generation, but also in other sectors of industry and for heating and surface transport. Increasing the supply of low carbon electricity is an essential pre-requisite for the switch away from fossil fuels in these areas, and this will further substantially increase demand for electricity.

3.3.14 Government analysis of the different pathways to 2050[25] shows that it will be vital to make energy efficiency improvements per head of population if we are to meet the target of reducing emissions by at least 80% by 2050 (see paragraph 3.3.26 below). However, even with major improvements in overall energy efficiency, we expect that demand for electricity is likely to increase, as significant sectors of energy demand (such as industry, heating and transport) switch from being powered by fossil fuels to using electricity. As a result of this electrification of demand, total electricity consumption (measured in terawatt hours over a year) could double by 2050. Depending on the choice of how electricity is supplied, the total capacity[26] of electricity generation (measured in GW) may need to more than double to be robust to all weather conditions. In some outer most circumstances, for example if there was very strong electrification of energy demand and a high level of dependence on intermittent electricity generation, then the capacity of electricity generation could need to triple. The Government therefore anticipates a substantial amount of new generation will be needed.

The urgency of the need for new electricity capacity

3.3.15 In order to secure energy supplies that enable us to meet our obligations for 2050, there is an urgent need for new (and particularly low carbon) energy NSIPs to be brought forward as soon as possible, and certainly in the next 10 to 15 years, given the crucial role of electricity as the UK decarbonises its energy sector.

3.3.16 Energy NSIPs take a long time to move from design conception to operation and they are generally designed to operate for 30 to 60 years. The Government has therefore considered a planning horizon of 2025 for the energy NPSs in general and for EN-6 in particular, as an interim milestone to secure our longer term objectives. A failure to decarbonise and diversify our energy sources now could result in the UK becoming locked into a system of high carbon generation, which would make it very difficult and expensive to meet our 2050 carbon reduction target. We cannot afford for this to happen.

3.3.17 The Government will keep the relevance of this interim milestone of 2025 for the energy NPSs under review to ensure the NPSs remain appropriate for decision taking.

25 2050 Pathways Analysis, HM Government, 2010
26 The capacity referred to here is nameplate capacity.

3.3.18 It is not possible to make an accurate prediction of the size and shape of demand for electricity in 2025, but in order to get a sense of the possible scale of future demand to 2025, one possible starting point is provided by the most recent Updated Energy and Emissions Projections (UEP)[27] which DECC published in June 2010[28]. It is worth noting that models are regularly updated and the outputs will inevitably fluctuate as new information becomes available. The UEP modelled four different scenarios – see Table 3.1[29], which, amongst other outputs, can be used to illustrate the likely impact of different fossil fuel and carbon prices on the need for new electricity generating capacity by 2025[30]. The projections do not reflect a desired or preferred outcome for the Government in relation to the need for additional electricity generating capacity or the types of electricity generation required.

Table 3.1: Summary of UEP projections of new electricity capacity by 2025

	Low fossil fuels and carbon prices (GW)	Central fossil fuels and carbon prices (GW)	High fossil fuels and carbon prices (GW)	High high fossil fuels and carbon prices (GW)
Projected new electricity capacity required by 2025	50	54	59	59

3.3.19 For the purposes of the UEP, each scenario has an equal likelihood of projecting the UK's future energy needs and mix. Given the severe social and economic disruption that would be caused by insufficient electricity supplies and the long lead time to build new infrastructure to meet any deficit, the Government considers it appropriate to consider the 'high fossil fuel and carbon price scenario' in further detail below because it is prudent to plan for the greatest potential need for new energy NSIPs[31]. To do otherwise would create an unacceptable risk to the delivery of secure, affordable low carbon energy supplies.

3.3.20 The UEP scenarios all suggest that electricity demand in 2025 will be at approximately the same levels as today. Whilst some industry models

27 http://www.decc.gov.uk/en/content/cms/statistics/projections/projections.aspx These updated projections do not take into consideration the policies announced in 'The Coalition: our programme for government', which include a floor price for carbon. A new UEP is expected to be published later in 2011. Assumptions used on carbon and fossil fuels prices can be seen at chapter 2 of UEP.

28 Interim analysis done on emissions projections for the Fourth Carbon Budget indicates similar or slightly higher levels of new capacity might be needed.

29 These figures have been rounded to the nearest GW for the purposes of this NPS. The figures allow for the intermittency of the renewable capacity built in each scenario.

30 Annex I to the UEP shows new capacity – see the UEP website referred to previously.

31 The 'high high fossil fuel and carbon price' scenario also predicts the same amount of new electricity infrastructure, but uses more extreme fuel and carbon prices. Details of the fossil fuel and carbon price assumptions are in chapter 2 of the main UEP report http://www.decc.gov.uk/en/content/cms/statistics/projections/projections.aspx

support this assumption[32], it is quite possible that any of these scenarios may underestimate the increased use of electricity by 2025 as the UK moves to decarbonise. This means that the amount of new capacity needed may be even greater than projected in the high price scenario.

3.3.21 Whilst no such projections of the UK's future energy mix can be definitive, they illustrate the scale of the challenge the UK is facing and help the Government understand how the market may respond. This enables the Government, taking due account of the relevant uncertainties, to ensure that the appropriate policy, legislation and regulation is in place to provide a framework which it judges will enable the market to deliver new energy NSIPs to meet the UK's future energy needs and climate change policy goals.

3.3.22 If we assume, as is prudent, that total electricity demand is unlikely to remain at approximately current levels (and may have increased) in 2025[33] and that a larger amount of generating capacity will be required to serve even the same level of demand[34] then, based on the UEP high fossil fuel and carbon price scenario, the UK would need at least 113 GW of total electricity generating capacity[35] (compared to around 85 GW now), of which at least 59 GW would be new build. A further breakdown of this figure to illustrate the scale of the challenge facing us in terms of new electricity generating infrastructure provision by technology type would be as follows:

- around 33 GW of the new capacity by 2025 would need to come from renewable sources to meet renewable energy commitments as set out in Section 3.4;
- it would be for industry to determine the exact mix of the remaining 26 GW of required new electricity capacity, acting within the strategic framework set by the Government;
- of these figures of 33 GW and 26 GW respectively, around 2 GW of renewables and 8 GW of non-renewable technologies are already under construction[36]. This leaves a balance of 18 GW to come from new non-renewable capacity; and
- the Government would like a significant proportion of this balance to be filled by new low carbon generation and believes that, in principle, new nuclear power should be free to contribute as much as possible towards meeting the need for around 18 GW of new non-renewable capacity by 2025.

32 National Grid projections suggest in some scenarios that electricity demand may remain at today's levels by 2025, see: http://www.nationalgrid.com/NR/rdonlyres/BC92D89F-1191-4048-BB41-A4A57F778C7C/46607/TBE_2011_Combined_20110407.pdf .

33 See paragraph 3.3.14 on likely increases in electricity demand.

34 See paragraph 3.3.11 on intermittency of renewable electricity generation.

35 Annex J to the UEP shows total generation capacity.

36 UEP 40 using National Grid figures April 2010. The Government is aware that there are also a number of energy projects (approximately 9 GW in total as of April 2010) that have obtained planning permission, but have not as yet started to be built. As we cannot be certain that these projects will become operational, the Government considers that it would not be prudent to consider these numbers for the purposes of determining the planning policy in this NPS. Such numbers evolve over time and are regularly updated by National Grid in their Seven Year Statement.

3.3.23 To minimise risks to energy security and resilience, the Government therefore believes it is prudent to plan for a minimum need of 59 GW of new electricity capacity by 2025.

3.3.24 It is not the Government's intention in presenting the above figures to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs. It is not the IPC's role to deliver specific amounts of generating capacity for each technology type. The Government has other mechanisms to influence the current delivery of a secure, low carbon, affordable electricity mix. Indeed, the aim of the Electricity Market Reform project (see Part 2 of this NPS for further details) is to review the role of the variety of Government interventions within the electricity market.

Alternatives to new large scale electricity generation capacity

3.3.25 The Government has considered alternatives to the need for new large scale electricity generation infrastructure[37]. Although we believe that these measures have an important part to play in meeting our energy and climate change objectives, they will not enable us to meet these objectives on their own. The following paragraphs explain how the Government has come to this conclusion.

Reducing demand

3.3.26 Reducing demand for electricity is a key element of the Government's strategy for meeting its energy and climate change objectives. The 2050 Pathways Analysis shows that total UK energy demand from all sectors (heating, transport, agriculture, industry and electricity demand) will need to fall significantly per head of population by 2050 and in the most extreme scenarios, total energy demand could be almost 50% lower than 2007 levels by 2050. The analysis highlights the importance of energy efficiency and the potential that this can have to help achieve our carbon emission reduction targets.

3.3.27 The Government's current policies for reducing electricity demand include:

- introducing the Green Deal to save energy in the home and non-domestic buildings, whilst supporting vulnerable consumers;
- introducing minimum energy efficiency standards and energy labelling for new products on sale (for example on white goods and televisions where there is the "A-G" energy label ratings system);
- a UK voluntary initiative to phase out energy-wasting incandescent light bulbs by 2011;
- ensuring the roll out of smart meters in every home to enable demand side response and allow people to understand their energy use better and thereby make more energy savings;
- incentivising large energy users across business and public sectors to reduce their energy use through simplifying the market-based

37 This included considering alternatives in the Appraisal of Sustainability for the NPSs.

mechanisms of the Carbon Reduction Commitment Energy Efficiency Scheme and Climate Change Agreements;

- providing energy efficiency advice and financial support to improve efficiency (through loans and Enhanced Capital Allowances) to businesses and the public sector; and
- leading by example by reducing electricity use across the central Government estate.

3.3.28 Whilst these policies are critically important and will reduce electricity demand in certain areas, the savings will be offset by increases in other areas, and in particular:

- decarbonisation will require an increased use of electricity in domestic and industrial heating and transport, which as previously discussed (see paragraphs 3.3.13 and 3.3.14), will outweigh increases in energy efficiency, potentially leading to a doubling of electricity demand by 2050; and
- growth in the number of households in the UK will be a key driver of electricity demand in the residential sector.

3.3.29 The Government would like to see decentralised and community energy systems such as micro-generation make a much greater contribution to our targets on reducing carbon emissions and increasing energy security from current levels of these systems. These technologies could lead to some reduction in demand on the main generation and transmission system. They can offer significant economic benefits, for example where heat as well as electricity can be put to commercial use, and reduce pressure for expansion of the national transmission system. This is why the Government has put in place financial rewards for small-scale low carbon electricity generation with Feed-in Tariffs[38]. However, the Government does not believe that decentralised and community energy systems are likely to lead to significant replacement of larger-scale infrastructure. Interconnection of large-scale, centralised electricity generating facilities via a high voltage transmission system enables the pooling of both generation and demand, which in turn offers a number of economic and other benefits, such as more efficient bulk transfer of power and enabling surplus generation capacity in one area to be used to cover shortfalls elsewhere.

More intelligent use of electricity

3.3.30 In addition to the above measures aimed at reducing overall demand, the potential also exists for more intelligent interaction between supply and demand. For instance, although there is currently around 85 GW of total generation capacity in the UK, average demand across a year is only for around half of it because a high proportion of the total capacity is used only at times of peak demand (see paragraphs 3.3.2-3 on the resilience of the electricity system). Moving some demand from a peak to an off-peak time or moving demand when the system is under stress allows opportunities to help

38 Further information on Feed-in Tariffs can be found on the DECC website: http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/feedin_tariff/feedin_tariff.aspx

balance supply and demand. This 'smart demand management' may avoid some power stations being built that only run for a few hours during the year and enable more efficient use of existing stations.

3.3.31 Reductions in peak demand may lead to a corresponding increase in demand at a later time when there is sufficient power available to meet it. In addition, while electrical energy storage allows energy production to be decoupled from its supply, and provides a contribution to meeting peak demand, currently the only commercially viable utility-scale energy storage technology is pumped storage[39]. The UK currently has four pumped storage facilities with a maximum capacity of approximately 3 GW. There is limited further potential in the UK due to a lack of appropriate locations and large capital costs, but high renewable pathways might require more storage beyond 2020, and therefore the commercial climate may change. The Government expects that demand side response, storage and interconnection, will play important roles in a low carbon electricity system, but still envisages back up capacity being necessary to ensure security of supply until other storage technologies reach maturity.

Interconnection of electricity systems

3.3.32 The GB electricity system is largely isolated from other systems. At present we only have a 2 GW link with France, a 1.4 GW interconnector with the Netherlands which began commercial operation in March 2011 and a 450 MW link between Great Britain and Northern Ireland (which has a capacity of around 290 MW in the other direction).

3.3.33 There are a number of potential projects to build additional interconnection which could increase capacity to over 10 GW by around 2020. For example, there is a 500 MW link with Ireland due to start operation in 2012; links to Norway and Belgium (likely to be around 1 GW each) are at the planning stage and several other interconnections for which feasibility studies are being done. However it cannot be assumed that they will all go ahead, so the UK's level of interconnection is likely to remain relatively low for the foreseeable future. Increased investment in interconnection is therefore unlikely to reduce the need for new infrastructure in the UK to a great extent.

Conclusions on alternatives to new large electricity generation

3.3.34 The Government believes that although all of the above measures should and will be actively pursued, their effect on the need for new large scale energy infrastructure will be limited, particularly given the likely increase in need for electricity for domestic and industrial heating and transport as the UK moves to meet its 2050 targets.

39 Pumped storage means using a temporary surplus of electricity to pump water to a high reservoir, and generating hydroelectric power when needed.

3.4 The role of renewable electricity generation

3.4.1 The UK has committed to sourcing 15% of its total energy (across the sectors of transport, electricity and heat) from renewable sources by 2020[40] and new projects need to continue to come forward urgently to ensure that we meet this target. Projections[41] suggest that by 2020 about 30% or more of our electricity generation – both centralised and small-scale – could come from renewable sources, compared to 6.7% in 2009[42]. The Committee on Climate Change in Phase 1 of its advice to Government in September 2010 agreed that the UK 2020 target was appropriate, and should not be increased. Phase 2 was published in May 2011 and provided recommendations on the post 2020 ambition for renewables in the UK, and possible pathways to maximise their contribution to the 2050 carbon reduction targets.

3.4.2 Large scale deployment of renewables will help the UK to tackle climate change, reducing the UK's emissions of carbon dioxide by over 750 million tonnes by 2030. It will also deliver up to half a million jobs by 2020 in the renewables sector[43]. Renewable electricity generation is currently supported in the UK through the Renewables Obligation (RO), which is a market-based support mechanism to encourage investment. Renewables have potential to improve security of supply by reducing reliance on the use of coal, oil and gas supplies to keep the lights on and power our businesses. Meeting the 15% renewables target could reduce fossil fuel demand by around 10% and gas imports by 20-30%. We are committed to meeting 2020 targets and have further ambitions for renewables post-2020. The Committee on Climate Change's May 2011 report [44] included advice on moving to 30% renewable energy capacity by 2030 and a central scenario of 40% renewable electricity.

3.4.3 The UK has substantial renewable energy resources, for example the British Isles have 40% of Europe's wind and some of the highest tidal reaches in the world. Unlike other technologies, the cost of renewables is in the construction and maintenance alone as the resource itself is usually free, so it helps protect consumers against the volatile but generally increasing cost of fossil fuels. Future large-scale renewable energy generation is likely to come from the following sources:

- *Onshore Wind* – onshore wind is the most well-established and currently the most economically viable source of renewable electricity available for future large-scale deployment in the UK;
- *Offshore Wind* – offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets;

40 DECC (2009): The UK Renewable Energy Strategy (p.30) http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/renewable%20energy%20strategy/1_20090717120647_e_@@_theukrenewableenergystrategy2009.pdf

41 It is important to recognise that we may reach our renewable energy goals in different ways, depending on how the drivers to investment, supply chain and non-financial barriers evolve. As a result, the lead scenario presented in the Renewable Energy Strategy should not be seen as a sector or technology target.

42 DUKES 2010 (p.184)

43 Innovas, Low Carbon and Environmental Goods and Services: an industry analysis, 2009

44 CCC (May 2011) "The Renewable Energy Review".

- *Biomass* – biomass is a significant source of renewable and low carbon energy. It involves the combustion of fuel, such as wood, which is renewable because, through replanting and regrowth, the biomass can be replaced in a matter of decades and this cycle can be continuously repeated. Whilst energy is required to grow, harvest and transport it, biomass is considered to be low carbon, providing that the biomass has been cultivated, processed and transported with due consideration of sustainability. Its combustion also displaces emissions of carbon dioxide ordinarily released using fossil fuels;
- *Energy from Waste* (EfW) – the principal purpose of the combustion of waste, or similar processes (for example pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy[45] and to recover energy from that waste as electricity or heat. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery. The energy produced from the biomass fraction of waste is renewable and is in some circumstances eligible for Renewables Obligation Certificates, although the arrangements vary from plant to plant; and
- *Wave and Tidal* – the UK has the potential for wave and tidal energy and there are now full scale prototypes working towards array scale and pre-commercial deployment. However many of the technologies for making use of the wave resource and tidal currents are still developing. Proven technology exists for tidal range generation but proposed projects are still some time from commencement. Paragraph 1.4.5 explains how this NPS relates to wave and tidal generation.

3.4.4 Biomass and EfW can be used to generate 'dispatchable' power, providing peak load and base load electricity on demand. As more intermittent renewable electricity comes onto the UK grid, the ability of biomass and EfW to deliver predictable, controllable electricity is increasingly important in ensuring the security of UK supplies.

The urgency of need for new renewable electricity generation

3.4.5 Paragraph 3.4.1 above sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent.

3.5 The role of nuclear electricity generation

3.5.1 For the UK to meet its energy and climate change objectives, the Government believes that there is an urgent need for new electricity generation plant, including new nuclear power. Nuclear power generation is a low carbon, proven technology, which is anticipated to play an increasingly

45 Waste Hierarchy as set out in Article 4 of the revised Waste Framework Directive and the Waste (England and Wales) Regulations 2011.

important role as we move to diversify and decarbonise our sources of electricity.

3.5.2 It is Government policy that new nuclear power should be able to contribute as much as possible to the UK's need for new capacity. Although it is not possible to predict whether or not there will be a reactor or more than one reactor at each of the eight sites included in EN-6, a single reactor at each of the eight sites would result in 10-14 GW of nuclear capacity, depending on the reactor technology chosen.

Nuclear power as part of a diverse and secure energy mix

3.5.3 New nuclear power stations will help to ensure a diverse mix of technology and fuel sources, which will increase the resilience of the UK's energy system. It will reduce exposure to the risks of supply interruptions and of sudden and large spikes in electricity prices that can arise when a single technology or fuel dominates electricity generation.

3.5.4 The characteristics of nuclear power are quite different to those of conventional fossil fuel or renewable forms and provide specific advantages with regards to energy security.

- Nuclear fuel fabrication is a stable and mature industry with a range of uranium sources. Uranium deposits are predicted to last much longer than oil and gas reserves[46]. Following the review of publications from the Organisation for Economic Co-operation and Development (OECD)/ International Atomic Energy Agency (IAEA)[47] and the Euratom Supply Agency (ESA)[48] the Government believes that adequate uranium resources exist to fuel a global expansion of nuclear power, including any new nuclear power stations constructed in the UK.
- The supply chains of nuclear fuel, gas and coal are not interdependent. An interruption in the supply of gas or coal is unlikely to affect the supply of uranium. Consequently, including new nuclear power stations in the generating mix increases the diversity of fuels that we rely on and reduces the risks of interruptions to fuel supply.
- Unlike some other generation technologies (for example gas fired generation), fluctuations in fuel prices do not significantly affect the cost of electricity from nuclear power stations[49].
- In situations where gas prices are high, the relatively low generation costs of nuclear power means that it can place downward pressure on long-run

46 Europe's Energy Portal. Estimated dates of exhaustion: natural gas 2068; oil 2047; uranium 2144. http://www.energy.eu/

47 OECD, IAEA. Uranium 2009: Resources, Production and Demand. July 2010. http://www.nea.fr/press/2010/2010-03.html

48 Euratom Supply Agency. Annual Report 2009. July 2010. http://ec.europa.eu/euratom/ar/ar2009.pdf

49 Tarjanne & Rissanen. Least-Cost Option for Baseload Electricity in Finland. The Uranium Institute 25th Annual Symposium, 30 August-1 September 2000: London. Tarjanne and Rissanen's paper found that an increase in the uranium price causes only a slight increase in nuclear electricity costs, whereas for the natural gas alternative a rising trend of gas prices causes a major cost increase. http://www.world-nuclear.org/sym/2000/pdfs/tarjanne.pdf

wholesale prices. This might help reduce the UK's exposure to higher fossil fuel prices.

- Nuclear power stations can continue to operate for long periods of time without refuelling.

Nuclear power as part of a low carbon electricity mix

3.5.5 Having examined a range of independent life cycle analyses[50], the Government believes that carbon emissions from a new nuclear power station are likely to be within the range of 7-22g/kWh. This is in line with research published by the Sustainable Development Commission[51] and the IAEA[52]. It is similar to the lifecycle CO2 emissions from wind power and much less than fossil fuelled plant.

3.5.6 New nuclear power therefore forms one of the three key elements of the Government's strategy for moving towards a decarbonised, diverse electricity sector by 2050: (i) renewables; (ii) fossil fuels with CCS; and (iii) new nuclear.

3.5.7 To ensure our future energy is secure, clean and affordable, the UK needs a mix consisting of each of these forms of electricity generation. The Government believes that new nuclear generation would complement renewables and fossil fuels with CCS in ensuring that we meet our legal obligations as it can provide dependable supplies of low carbon electricity. Nuclear is also the only non-renewable low carbon technology that is currently proven and can be deployed on a large scale[53].

3.5.8 The Government believes that nuclear power is economically competitive with other forms of generating technology (including the lowest cost renewable technologies) and new nuclear is likely to become the least expensive form of low carbon electricity generation[54]. It is therefore anticipated that industry will want to bring forward applications for new nuclear power stations and to date energy companies have announced that

50 Life cycle analyses examine the emissions for the complete nuclear fuel cycle (including CO_2 emitted during construction, operation and decommissioning of the power station, mining, transport of fuel and disposal of waste). For a review of life cycle analyses see Chapter 4 of the decisions by the Secretary of State for Energy and Climate Change on the Regulatory Justification of the AP1000 and EPR nuclear power station designs, at http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx

51 Szustainable Development Commission (2006). The role of nuclear power in a low carbon economy. Paper 2: Reducing CO_2 emissions – nuclear and the alternatives. p. 21. http://www.sd-commission.org.uk/publications/downloads/Nuclear-paper2-reducingCO2emissions.pdf

52 Spadaro, Joseph V. et al. (2000). Greenhouse gas emissions of electricity generation chains: assessing the difference. IAEA Bulletin, 42/2/2000. pp. 19 – 24. http://www.iaea.org/Publications/Magazines/Bulletin/Bull422/article4.pdf

53 16% of the UK's electricity supply came from nuclear power stations in 2010.

54 Electricity Generation Cost Model 2011 Update – Parsons Brinckerhoff, 2011 available at www.decc.gov.uk.

they intend to put forward proposals to develop 16 GW of new nuclear power generation capacity by the end of 2025[55].

The urgency of the need for new nuclear power

3.5.9 Given the urgent need for low carbon forms of electricity to contribute to the UK's energy mix and enhance the UK's energy security and diversity of supply, it is important that new nuclear power stations are constructed and start generating as soon as possible and significantly earlier than 2025 (see Section 2.2 of EN-6, which sets out policy in respect of the IPC's consideration of early deployment of new nuclear power stations). Based on the availability of – amongst other things – construction materials, skills, investment, the timescale for licensing, and related investment in transmission and distribution infrastructure, the Government believes that it is realistic for new nuclear power stations to be operational in the UK from 2018, with deployment increasing as we move towards 2025.

3.5.10 For these reasons, the Government's assessment of sites potentially suitable for new nuclear development (see Part 4 of EN-6) only included sites that were shown to be capable of deployment by the end of 2025; 2025 also represents a realistic timeframe for the construction of new nuclear power stations and avoids an unnecessarily long list of potential sites which may not come on stream for some years. Nuclear power stations have an estimated design lifetime of 60 years so any new nuclear power stations operational by the end of 2025 will play a vitally important role in the decarbonisation of the electricity system and will therefore directly contribute towards our 2050 targets and objectives.

3.5.11 France has already demonstrated that it is technically feasible to build nuclear power stations at the rate that would be needed in the UK if new nuclear power stations were to be constructed on all of the sites listed in this NPS before the end of 2025[56].

3.6 The role of fossil fuel electricity generation

3.6.1 Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and Government policy is that they must be constructed, and operate, in line with increasingly demanding climate change goals.

3.6.2 Fossil fuel generating stations contribute to security of energy supply by using fuel from a variety of suppliers and operating flexibly. Gas will continue to play an important role in the electricity sector – providing vital flexibility to support an increasing amount of low-carbon generation and to maintain

55 http://www.centrica.co.uk/index.asp?pageid=217&newsid=1783 http://www.edfenergy.com/media-centre/press-news/EDF_Energy_welcomes_Government_announcement_on_nuclear_sites.shtml http://www.rwe.com/web/cms/en/216362/rwe-npower/more-/our-business/nuclear-power/, http://pressreleases.eon-uk.com/blogs/eonukpressreleases/archive/2009/04/29/1382.aspx http://www.scottishpower.com/PressReleases_1948.htm

56 Nuclear Energy Association, Nuclear Energy outlook 2008, NEA No. 6348, p.318.

security of supply. The UK gas market has diversified its sources of supply of gas in recent years, so that as the UK becomes more import dependent, companies supplying the market are not reliant on one source of supply. This protects the UK market from disruptions to supply. UK natural gas supplies come from the producing fields on the UK Continental Shelf, by pipeline direct from Norway, and from continental Europe through links to Belgium and the Netherlands. Liquefied natural gas (LNG) is imported by tanker, supported by ongoing investment in LNG facilities such as those on the Isle of Grain and at Milford Haven. Similarly, although a proportion of coal used in British generating stations is imported, the UK still has its own reserves. Further, coal is available globally and most generating station operators will already have alternative suppliers depending on prevailing market conditions. This ability to source fuel from alternative suppliers helps to give stability to the UK's generating capacity. In addition, unlike some renewable energy sources such as wind power, fossil fuels may be stockpiled in anticipation of future energy demands.

3.6.3 Some of the new conventional generating capacity needed is likely to come from new fossil fuel generating capacity in order to maintain security of supply, and to provide flexible back-up for intermittent renewable energy from wind. The use of fossil fuels to generate electricity produces atmospheric emissions of carbon dioxide. The amount of carbon dioxide produced depends, amongst other things, on the type of fuel and the design and age of the power station. At present coal typically produces about twice as much carbon dioxide as gas, per unit of electricity generated. However, as explained further below, new technology offers the prospect of reducing the carbon dioxide emissions of both fuels to a level where, whilst retaining many of their existing advantages, they also can be regarded as low carbon energy sources.

Carbon Capture and Storage

3.6.4 As explained in paragraph 2.2.23 above, to meet emissions targets, dependency on unabated fossil fuel generating stations must be reduced. To help achieve this reduction but maintain security of supply, it is necessary to reduce carbon emissions particularly from coal-fired generating stations. Carbon Capture and Storage (CCS) has the potential to reduce carbon emissions by up to 90%, although the process of capturing, transporting and storing carbon dioxide also means that more fuel is used in producing a given amount of electricity than would be the case without CCS. The complete chain of CCS has yet to be demonstrated at commercial scale on a power station. Whilst there is a high level of confidence that the technology involved in CCS will be effective, less is known about the impact of CCS on the economics of power station operation. There is therefore uncertainty about the future deployment of CCS in the economy, which in the Government's view cannot be resolved without first demonstrating CCS at commercial scale.

3.6.5 The Government is leading international efforts to develop CCS. This includes supporting the cost of four commercial scale demonstration projects at UK power stations. The intention is that each of the projects will demonstrate the full chain of CCS involving the capture, transport and

storage of carbon dioxide in the UK. These demonstration projects are therefore a priority for UK energy policy. The demonstration programme will also require the construction of essential infrastructure (such as pipelines and storage sites) that are sized and located both for the purpose of the demonstration programme and to take account of future demand beyond the demonstration phase. The IPC should take account of the importance the Government places on demonstrating CCS, and the potential deployment of this technology beyond the demonstration stage, in considering applications for consent of CCS projects and associated infrastructure.

3.6.6 The Government has placed two conditions on the consenting of fossil fuelled power stations (including gas and coal-fired) to require the development and facilitate the adoption of CCS once it is available. These conditions are:

- all commercial scale (at or over 300 MW) combustion power stations (including gas, coal, oil or biomass) have to be constructed Carbon Capture Ready (CCR); and
- new coal-fired power stations are required to demonstrate CCS on at least 300 MW of the proposed generating capacity[57].

3.6.7 More information on Government policy on CCR and the CCS requirement is set out in Section 4.7.

The need for fossil fuel generation

3.6.8 As set out in paragraph 3.3.8 above, a number of fossil fuel generating stations will have to close by the end of 2015. Although this capacity may be replaced by new nuclear and renewable generating capacity in due course, it is clear that there must be some fossil fuel generating capacity to provide back-up for when generation from intermittent renewable generating capacity is low and to help with the transition to low carbon electricity generation. It is important that such fossil fuel generating capacity should become low carbon, through development of CCS, in line with carbon reduction targets. Therefore there is a need for CCR fossil fuel generating stations and the need for the CCS demonstration projects is urgent.

3.7 The need for new electricity network infrastructure

3.7.1 Much of the new electricity infrastructure that is needed will be located in places where there is no existing network infrastructure. This is likely to be the case for many wind farms[58], or where there may be technical reasons

57 CCS has yet to be demonstrated on commercial-scale on a power station. The minimum level for CCS therefore needs to be set at a realistic level that will allow CCS projects to come forward whilst still being affordable and delivering value for money. 300MW is based on technical considerations of the different capture technologies that are likely to be used and the relationship with the size of generating units likely to be deployed in coal-fired power stations.

58 The UK has historically had a centralised electricity generation network relying on large scale generation from conventional power stations, some clustered in specific parts of the country and close to centres of demand. However, new renewable generation, e.g. wind is likely to be developed in locations much further from demand, such as in rural Scotland and offshore, while other low carbon generation is also likely to be sited in more peripheral areas.

why existing network infrastructure is not suitable for connecting the new generation infrastructure.

3.7.2 The need to connect to new sources of electricity generation is not the only driver of need for new electricity network infrastructure. As noted in Parts 2 and 3 of this NPS, it is likely that demand for electricity will increase significantly over the coming decades. Factors contributing to such growth include the development of new housing and business premises (the number of households in England is projected to grow to 27.8 million by 2031[59]) and the increased use of electricity in domestic and industrial heat and transport. Lack of sufficiently robust electricity networks can cause, or contribute to, large scale interruptions. Existing transmission and distribution networks will have to evolve and adapt in various ways to handle increases in demand, but construction of new lines of 132 kV and above[60] will also be needed to meet the significant national need for expansion and reinforcement of the UK's transmission and distribution networks.

3.7.3 It is important to note that new electricity network infrastructure projects, which will add to the reliability of the national energy supply, provide crucial national benefits, which are shared by all users of the system.

3.7.4 An idea of the scale and urgency of need for new electricity network infrastructure is conveyed by the work of the Electricity Networks Strategy Group (ENSG), an industry group jointly chaired by Government and Ofgem, which was set the task of:

- developing electricity generation and demand scenarios consistent with the EU target for 15% of the UK's energy to be produced from renewable sources by 2020; and
- identifying and evaluating a range of possible electricity transmission networks solutions that would be required to accommodate these scenarios.

3.7.5 The group's full report[61] illustrates the scale of potential need for new transmission infrastructure and the kind of locations where it needs to be constructed if low carbon sources are to play their part in the generating mix, as we want them to, over the coming years. The report is based on a range of scenarios that take into account the significant changes anticipated in the generation mix to 2020. In particular, the scenarios examined the potential new transmission infrastructure needed to connect the large volumes of onshore and offshore wind generation required to meet the 2020 renewables target and other essential new generation, such as new nuclear. An addendum published in July 2009[62] examined whether likely reinforcements required to 2030 under a range of scenarios impacted on the potential reinforcements identified to meet the 2020 vision. The work of the

59 http://www.communities.gov.uk/publications/corporate/statistics/2031households0309
60 Large-scale conventional power stations generally require a 275 kV or 400 kV connection, but the lower output of many wind farms (both onshore and offshore) and other smaller-scale renewable projects, such as energy from waste plants in the range of 50-100 MW, means that a 132 kV connection will often be sufficient for them.
61 http://www.ensg.gov.uk/assets/ensg_transmission_pwg_full_report_final_issue_1.pdf
62 http://www.ensg.gov.uk/assets/ensg__2030_transmission_addendum_final_issue_1.pdf

ENSG is ongoing and it may update its reports in the light of developments in generation, demand, policy and technology.

3.7.6 Under the scenarios considered by the ENSG significant potential increases in generation and changes in direction of net electricity flows to 2020 were considered likely to be:

- from north to south, with between 6.6 GW and 11.4 GW of renewables in Scotland;
- from Eastern England to centres of demand in the Midlands and South East England, accommodating around 8 GW of offshore wind, along with 3.3 GW of nuclear;
- from South West England and South Wales eastwards to centres of demand in the Midlands and South East England, with up to 2-3 GW of wind along with 3.3 GW of new nuclear; and
- from the North West and North Wales, to accommodate some 5-7 GW of wind, along with 3.3 GW of nuclear.

3.7.7 As the full report makes clear, these kinds of flows of power cannot be accommodated by the existing network. Accordingly, new lines will have to be built, and the location of renewable energy sources and designated sites for new nuclear power stations makes it inevitable that a significant proportion of those new lines will have to cross areas where there is little or no transmission infrastructure at present, or which it may be claimed should be protected from such intrusions. The urgency of need for new generating capacity means that the need for new transmission infrastructure that is required to connect that capacity will be similar.

3.7.8 The Government believes that the ENSG work represents the best available overview of where the electricity networks will need to be reinforced and augmented in order to achieve the UK's renewable energy and security of supply targets, and will therefore be relevant to the IPC's consideration of electricity network proposals. However, ENSG reports are not exhaustive and only include scenarios for network investment needed in advance of the generation plant so other applications will come forward. Inevitably, reports are largely based around new generating stations, which developers have expressed an intention of constructing, but which in many cases have not yet been consented, or even been made the subject of a consent application. Also, while the reports do include small scale maps and other generic indications of where new lines might be located, they do so only by way of illustration. The fact that an application for development consent relates to a project which corresponds to a scheme in an ENSG report should not prejudice the outcome of applications, nor should ENSG reports be seen as limiting the scope of schemes that may be proposed, considered or granted development consent under the Planning Act 2008.

3.7.9 Other information which shows the scale and possible nature of need for new electricity transmission and distribution infrastructure includes the

following, published by National Grid in its role as National Electricity System Operator (NETSO):

- an annual Seven Year Statement, which presents a wide range of information relating to the transmission system in GB, including forward investment plans under a range of scenarios showing both the amount of infrastructure that is likely to be needed and its location; and
- an annual Offshore Development Information Statement, which presents potential scenarios and NETSO's best view of the development of the transmission network offshore to help ensure a coordinated and informed approach to the offshore transmission network.

3.7.10 In the light of the above, there is an urgent need for new electricity transmission and distribution infrastructure (and in particular for new lines of 132 kV and above) to be provided. The IPC should consider that the need for any given proposed new connection or reinforcement has been demonstrated if it represents an efficient and economical means of connecting a new generating station to the transmission or distribution network, or reinforcing the network to ensure that it is sufficiently resilient and has sufficient capacity (in the light of any performance standards set by Ofgem) to supply current or anticipated future levels of demand. However, in most cases, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example, by overhead line or underground cable) and the costs and benefits of these alternatives should be properly considered as set out in EN-5 (in particular section 2.8) before any overhead line proposal is consented.

3.8 The need for nationally significant gas infrastructure

Introduction

3.8.1 The UK is highly dependent on natural gas, which is used in roughly equal quantities in domestic households (largely for space heating purposes), for electricity generation (generating just over two fifths of electricity in 2010) and across a range of businesses (both as a fuel and as a feedstock). Although our reliance on fossil fuels will fall, the transition will take some time, and gas will continue to play an important part in the UK's fuel mix for many years to come. The share of natural gas in UK primary energy demand (including electricity generation) is expected to fall from 41% in 2010 to around 33% by 2020, and then could rise again to around 36% by 2025 as the use of coal for electricity generation declines[63].

3.8.2 The UK is one of the largest gas consumers in Europe, with demand representing close to a fifth of the EU total and 3% of the global total. In addition to meeting domestic gas demand and associated infrastructure, supplies to Great Britain are also needed to meet demand from Northern Ireland and the Republic of Ireland and for (gross) exports to the Continent through the Bacton-Zeebrugge Interconnector. Irish gas import demand is currently partially met through pipelines from Scotland; in future some Irish

63 DECC (2010) Demand Projections, see: http://www.decc.gov.uk/en/content/cms/statistics/projections/projections.aspx

import demand might be met by direct importation of Liquefied Natural Gas (LNG).

3.8.3 Domestic (household) demand for gas for heating purposes underpins strong seasonal variation in demand for gas – winter average daily demand is around 350-400 million cubic metres of gas per day (mcm/d), compared with annual average demand of 250-300 mcm/d. Peak demand in winter can be much higher; for example National Grid estimate that "1 in 20" diversified winter demand, used for operational planning purposes, equates to a demand of 506 mcm/d for winter 2011/12[64].

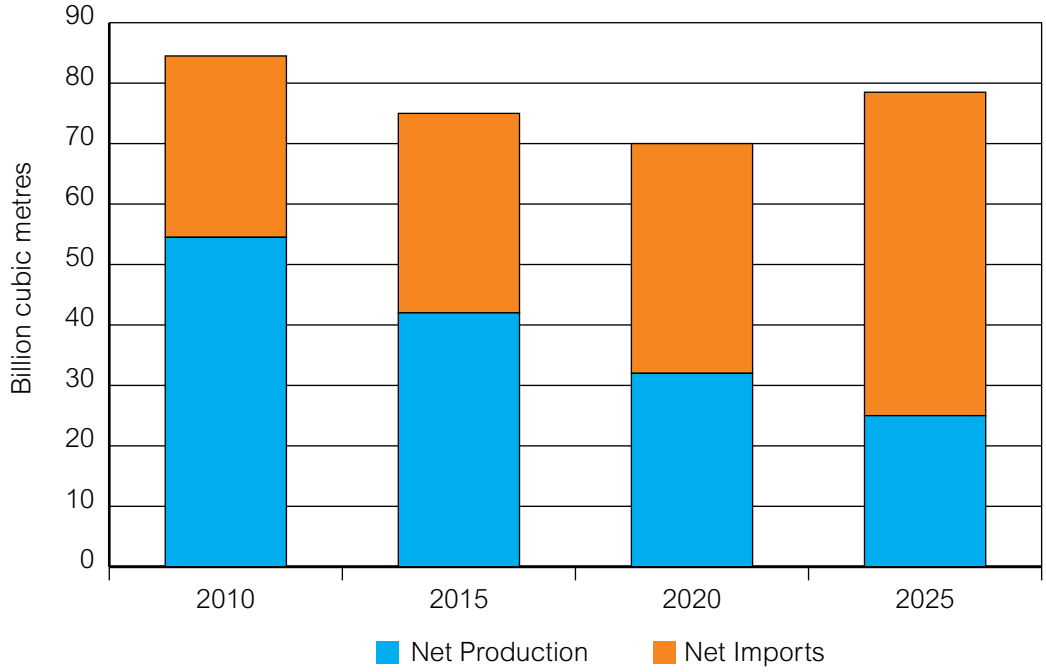
The UK Gas Market

3.8.4 Secure gas supplies have been assured over the last thirty or so years largely from indigenous supplies from the UK Continental Shelf (UKCS). Production of gas from the UKCS is now in decline. In 2004, the UK again became a net importer of gas and in 2011 around 40% of the UK's net demand for gas was expected to be met by net imports. Whilst there are large uncertainties when looking so far into the future, DECC's latest central projections indicate that the UK's demand for gas will fall by around 17% between 2010 and 2020 but then rise by 12% by 2025[65]. DECC's central projections, which assume the full and timely success of the Government's demand reduction policies, included in the UK Low Carbon Transition Plan, indicate UK gas demand of 70 billion cubic metres (bcm) in 2020, within a range of 65-75 bcm depending on energy prices. On central assumptions, net import demand for gas is now estimated to rise from around 30 bcm in 2010 to 38 bcm in 2020 and 53 bcm in 2025. The latest DECC demand projections (comprising net production plus net imports) are shown in figure 3.1 below.

64 National Grid Ten Year Statement TABLE A2.1.5 – Slow Progression 1 in 20 Peak Day Diversified Demand (GWh/day), Total Throughput http://www.nationalgrid.com/uk/Gas/TYS/current/TYS2009.htm

65 DECC (2010) Demand Projections (http://www.decc.gov.uk/en/content/cms/statistics/projections/projections.aspx)and September 2010 UKCS production projections (https://www.og.decc.gov.uk/information/bb_updates/chapters/Section4_17.htm).

Figure 3.1: Projected net annual UK Gas Production and Imports, 2010 to 2025



3.8.5 Great Britain's[66] gas supply infrastructure must, amongst other things, be sufficient to:

- meet 'peak' demand. This is a much more demanding requirement than meeting annual demand. Gas market participants may aim to have some "redundancy" in their supply arrangements, above the minimum amount to meet peaks, to manage the risk that other capacity may not be available (for example, if undergoing maintenance);
- allow for a sustained delivery of large volumes of gas, for example, due to the need to be prepared to meet demand over a particularly cold winter;
- provide access to the most competitive gas supplies. Because price relativities will vary through time, this also implies some redundancy in gas supply infrastructure. Market participants may therefore see distinct value in having access to gas from different sources – imports by pipeline, imports as LNG, and gas from storage (especially close-to-market storage that can be accessed rapienable market participants to manage the large uncertainties around the evolution of Great Britain's demand for gas, in annual and in peak terms, as well as the other supply and demand risks that they identify.

3.8.6 The importance of having sufficiently large and diverse infrastructure was demonstrated in the winter of 2009/2010. Whilst usual demand for gas on a day might be around 250 mcm, the highest demand for gas ever recorded on a day, 465 mcm, occurred in January 2010 due to low temperatures at a time of supply problems from an external provider of gas. The UK gas market

66 This section now focuses on Great Britain, as opposed to the UK, because there are separate regulatory arrangements for the gas market in Northern Ireland.

remained well supplied despite the winter being one of the coldest for around 30 years.

3.8.7 In the past, and in the winter of 2009/2010 as described above, so-called 'swing supply' to meet seasonal changes in demand has been provided by highly responsive gas fields in the North Sea and Eastern Irish Sea. However, as these fields age and become depleted, and even though they may still contain considerable gas reserves, they react more sluggishly, and cannot release gas at the rate they previously did. Great Britain needs a diverse mix of gas storage and supply infrastructure (including gas import pipelines and terminals) to respond effectively in future to the large daily and seasonal changes in demand, and to provide endurance capacity during a cold winter.

Need for more gas infrastructure

3.8.8 DECC has commissioned and published analysis, from Pöyry Energy Consulting, on the future risks to Great Britain's security of gas supplies over the medium term, until around 2025[67].This assessment considered the impacts if various adverse events should occur – such as a particularly cold winter, an interruption to a major source of supply, a failure of a major piece of infrastructure, or a combination of these events. Using cautious assumptions about the build-up of gas supply infrastructure, the assessment showed that, whilst the gas market is largely robust to a range of adverse events, the risk of shortfalls in supply cannot be ruled out, nor the risk that there may need to be significant rises in wholesale gas prices in order to balance the market. Further infrastructure – beyond that which exists or is under construction at present – will be needed in future in order to reduce supply or price risks to consumers[68].

3.8.9 As UKCS production declines, a range of infrastructure is likely to be required:

- new import infrastructure, both in terms of conventional import pipelines, gas reception facilities and LNG import facilities. These will be necessary in order to provide import capacity for the increasingly import-dependent UK gas market; and
- increased gas storage capacity, whether for gaseous gas in underground storage facilities, or as LNG in tanks above ground, is required to provide close-to-market 'swing supply' to help meet peak demand. Demand varies considerably throughout the day and it is necessary for some sources to be close to the market so that gas is quickly available. Gas supply infrastructure will also need to keep pace with any changes in the regional demand for gas across the UK – which may change due to changes in location of population and/or commercial or industrial demand.

67 http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/markets/gas_markets/gas_markets.aspx

68 The Government is responding by bringing forward legislation to confer powers for Ofgem to strengthen the market incentive mechanism for ensuring that sufficient gas (and therefore sufficient gas supply infrastructure) is available (see the Energy Bill, clause 77). The policy is summarised at: http://www.decc.gov.uk/assets/decc/legislation/energybill/542-energy-security-bill-brief-gas-measures.pdf.

3.8.10 These different kinds of gas supply infrastructure are not fully interchangeable.

3.8.11 Gas import capacity gives access to annual flows of gas (substituting for the declining annual production of indigenous gas), while over-sized gas import capacity can also help to provide supply-side flexibility (substituting for the reducing "swing-capability" of indigenous production).

3.8.12 Close-to-market gas storage capacity has advantages complementary to import capacity. "Long range" (or seasonal) storage, typically partially depleted hydrocarbon fields holding large quantities of gas, provides "endurance" to help gas supply companies meet high winter demand by purchasing and storing gas in the summer (when prices are typically lower) which can then be withdrawn in winter. Long-range storage also provides some robustness against gas supply shocks. "Medium range storage", typically gas stored in caverns in salt strata deep underground, has faster withdrawal and refill rates helping gas supply companies to respond to changing market conditions from day to day ("diurnal") and week to week. "Short-range storage", gas stored in small quantities as LNG very close to some main centres of demand, helps to respond to sudden peaks in demand. Gas travels slowly through pipelines, at around 40 kph, and LNG at the speed of the tanker. Close-to-market gas storage also provides a prompt supply capability, which is particularly valuable when there is a delay before gas imports can respond to a market signal for increased supplies.

3.8.13 There is no "right" way to balance the GB gas market – there are indigenous supplies, imports by pipe-line, imports by LNG, or storage (whether long, medium or short range). The appropriate portfolio of supply sources, and the implications for gas supply infrastructure, are quintessentially commercial decisions for the various gas market participants (and potentially a source of commercial advantage for them). A great strength of the British gas market is the way that separate commercial decisions, by a number of separate companies, contribute to the overall diversity of our gas supply, promoting secure supplies at competitive prices.

Alternatives to additional gas supply capacity

3.8.14 The GB market arrangements already encourage "demand-side response" from the industrial and powers sectors:

- industrial customers and power stations can reduce their demand voluntarily in response to price (perhaps switching to back-up energy supplies); and
- these consumers can also agree informal arrangements to sell back gas to suppliers at times of high prices.

3.8.15 These arrangements provide domestic consumers and small businesses with a high degree of security of supply, because industry and power stations are able to reduce their demand in response to market conditions. This helps to shield domestic consumers from short term wholesale price impacts.

3.8.16 Gas is a primary fuel – an internationally traded commodity, with an unavoidable need to be transported from the geological strata where it is found, to the markets where it is consumed. "Biomethane" – i.e. biogas

(sourced from organic material) that has been upgraded for supply through the gas pipeline system – may change this, but there are large uncertainties about the size of the potential contribution from this source.

3.8.17 There has been progress towards open, liquid and competitive gas markets. Increased international trade in LNG is helping to create a global market in gas, through the ability of LNG supplies to arbitrage[69] within the Atlantic Basin and between the Atlantic and Pacific Basins. However, because of the cost and time required to transport physical gas, arbitrage will remain imperfect. Furthermore, increasing globalisation of the gas market exposes EU consumers, including British consumers, to gas market shocks arising in other continents; for example to the impact of hurricanes in the USA.

3.8.18 A competitive gas market across the European Union, which may include potential gas sources such as shale gas or gas from coal gasification, will have an increasingly important part to play in meeting the needs of UK and other European gas consumers. Such a market needs to be supported by adequate investment in essential infrastructure including gas storage, transportation and import facilities. There has been good progress towards a single European energy market. This progress is being reinforced through the transposition into national legislations, in 2011, of the EU Third Internal Energy Package as well as implementation of the Regulation on Gas Security of Supply. Increasing inter-operability within the EU will help to spread the risk of supply shocks, to the benefit of UK and other EU consumers[70]. However it could also increase our exposure to supply shocks affecting eastern and southern Europe.

Need for a diverse range of gas supply capacity

3.8.19 Gas is the cleanest and most reliable fossil fuel. It is likely to continue to be a central part of GB's energy mix during the transition to a low carbon economy:

- in the domestic (household) sector, where it remains the fuel of choice for cooking and heating;
- in the industrial sector, as a source of energy and as a feedstock;
- in the power generation sector, as a reliable source of flexible power generating capacity, to back-up intermittent renewables, so underpinning security of supply and price stability in the electricity market;
- gas demand for power generation could increase substantially due to the greater use of electricity for heat and transport;

69 Arbitrage is the activity of trading between markets, to take advantage of price differences between those markets. The rapid growth in international trade in LNG during the past 10 years has enabled arbitrage between what previously were distinct gas markets in Europe, North America and East Asia.

70 The directives and regulations comprising the 3rd Package are at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:211:SOM:EN:HTML. The Gas Security of Supply Regulation is at: http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:295:SOM:EN:HTML

- if carbon capture and storage (CCS) technologies, in development for both the power and industrial sectors, prove technically and commercially viable, that could underpin gas demand from these sectors; and
- the requirement for gas supply infrastructure is determined by the level of peak demand. Even if annual gas demand reduces, peak gas demand, driven by demand for power generation, could drive a requirement for additional gas supply infrastructure.

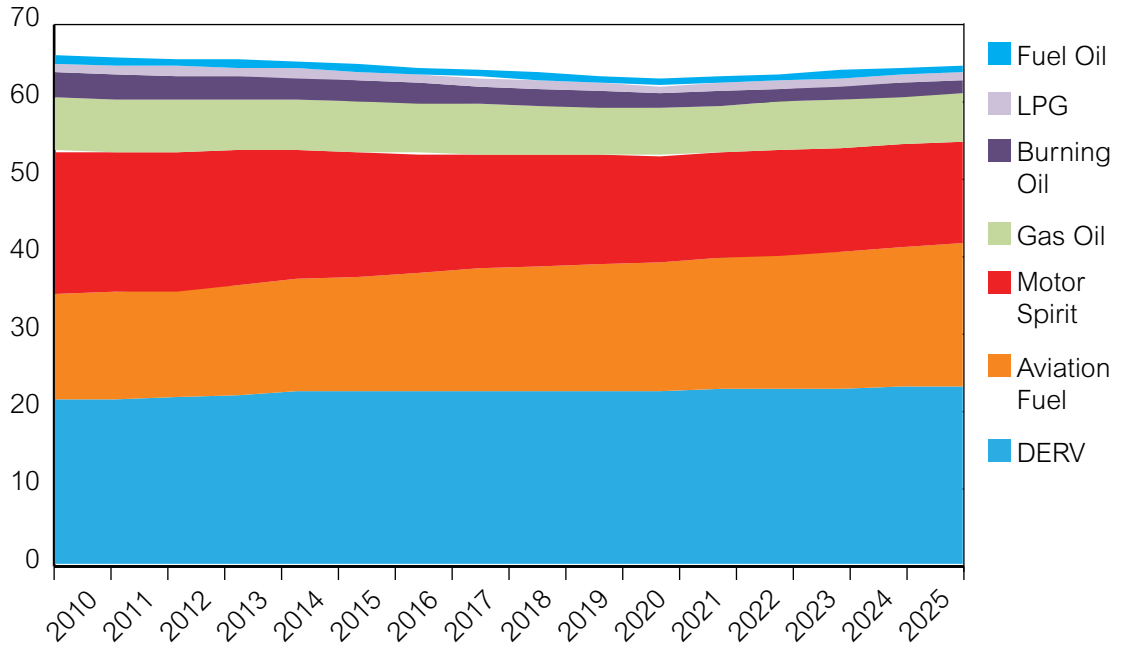
3.8.20 Decisions on gas supply infrastructure are initially a commercial matter for gas market participants (and subject to regulatory requirements). They will take into account the continuing central role for gas, during the transition to a low carbon economy and against that background their requirement for additional gas supply capacity. The nature of that capacity (as between indigenous production, imports and storage) and the technical specification of gas storage capacity that might be proposed (for example the "range" of a proposed storage facility), are all commercial matters. Market participants will also take into account the various risks summarised above. There is no one "right" answer. However, the strong expectation is that they will wish to bring forward proposals for additional gas supply infrastructure, i.e. import and storage capacity. Some market participants may judge that their requirement for additional gas supply capacity is urgent. The UK markets and consumers (in Northern Ireland as well as Great Britain) benefit from the diversity of sourcing strategies developed by gas supply companies, and the way that this translates into a diversity of instruments for balancing the market.

3.9 The need for new nationally significant oil infrastructure projects

3.9.1 Oil products play an important role in the UK economy, providing around 33% of the primary energy used. We currently rely on oil for almost all of our motorised transport needs. Transport accounted for around 75% of final consumption of oil products in the UK in 2009, amounting to 49.6 million tonnes of oil. In the longer term we need to reduce our dependence on oil by improving vehicle efficiency and using new alternative fuelled vehicles. However, demand is projected to increase in the short to medium term, because although consumption of petrol in the UK is forecast to fall, demand for diesel and aviation fuel is expected to continue to rise.

3.9.2 Over time technology changes, including electric vehicles and the generation of more heat from renewables, together with energy efficiency policies such as seeking to encourage greater use of public transport will reduce demand for oil. But as Figure 3.2 illustrates, significant reductions are not expected over the next 10-15 years. This is primarily because the transport sector is the main consumer of oil and will continue to be heavily dependent on it over this period.

Figure 3.2: Forecast UK oil demand by petroleum product type



Source: DECC Updated Energy Projections, June 2010

3.9.3 The UK needs to ensure it has safe and secure supplies of the oil products it requires. Sufficient fuel and infrastructure capacity are necessary to avoid socially unacceptable levels of interruption to physical supply and excessive costs to the economy from unexpectedly high or volatile prices. These requirements can be met by sufficient, diverse and reliable supplies of fuel, with adequate capacity to import, produce, store and distribute these supplies to customers. This in turn highlights the need for reliable infrastructure including refineries, pipelines and import terminals and the need for flexibility in the supply chain to accommodate the inevitable risk of physical outages.

Petroleum product distribution

3.9.4 Finished petroleum products are distributed from the refineries to around 50 major distribution terminals in the UK by pipeline (51%) and by sea via coastal tankers (34%) or rail (15%). Some of the coastal terminals also import finished products from abroad. Onward distribution to customers is mostly by road tanker, but some of the larger customers have pipeline connections.

3.9.5 There is an extensive network of private and Government owned pipelines in the UK, with around 4,800km of pipeline currently in use. The 2,400km of privately owned UK pipeline network carries a variety of oil products from road transport fuels to heating oil and aviation fuel. The network provides an efficient and robust distribution system across the UK and directly provides jet fuel for some of the UK's main airports. The Government also operates a separate oil pipeline system – the Government Pipeline and Storage System (GPSS), supplying a number of MoD airfields and with connections to some non-MoD sites (for example, Stansted Airport).

3.9.6 The drivers for new downstream oil infrastructure such as pipelines include:

- meeting increasing demand by end users, particularly for diesel and aviation fuel;
- compliance with EU and International Energy Agency obligations for compulsory oil stocking, which are set to increase as North Sea resources decline;
- meeting requirements for sulphur-free diesel and petrol blended with biofuels (including ethanol distribution), which are set to increase;
- increasing imports of refined products (due to changing demand patterns);
- emerging planning, safety and environmental protection requirements; and
- market requirements to improve supply resilience in order to meet demand in full in a timely fashion under credible emergency scenarios.

3.9.7 New pipeline infrastructure could require associated works including oil processing plant to pump or filter blend products, storage tanks for bulk storage and product settling, road handling facilities for discharge into road tankers and jetties for loading and offloading sea tankers.

3.9.8 In the light of the above, the IPC should expect to receive a small number of significant applications for oil pipelines and start its assessment from the basis that there is a significant need for this infrastructure to be provided[71].

71 Wood Mackenzie note the need for "investment in new pipeline capacity to both Heathrow and Stansted and regional airports to transfer fuel inland from import points" in a report for DECC that can be found at: http://decc.gov.uk/en/content/cms/what_we_do/uk_supply/resilience/downstream_oil/improving/improving.aspx.

Part 4 Assessment Principles

4.1 General points

4.1.1 The statutory framework for deciding applications for development consent under the Planning Act is summarised in Section 1.1 of this NPS. This Part of the NPS sets out certain general policies in accordance with which applications relating to energy infrastructure are to be decided that do not relate only to the need for new energy infrastructure (covered in Part 3) or to particular physical impacts of its construction or operation (covered in Part 5 and the technology-specific NPSs).

4.1.2 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.

4.1.3 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the IPC should take into account:

- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
- its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

4.1.4 In this context, the IPC should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology-specific NPS, in the application or elsewhere (including in local impact reports).

4.1.5 The policy set out in this NPS and the technology-specific energy NPSs is, for the most part, intended to make existing policy and practice of the Secretary of State in consenting nationally significant energy infrastructure clearer and more transparent, rather than to change the underlying policies against which applications are assessed (or therefore the “benchmark” for what is, or is not, an acceptable nationally significant energy development). Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken account of relevant Planning Policy Statements (PPSs) and older-style Planning Policy Guidance Notes

(PPGs) in England and Technical Advice Notes (TANs) in Wales where appropriate.

4.1.6 The Marine and Coastal Access Act 2009 provides for the preparation of a Marine Policy Statement (MPS) and a number of marine plans. The IPC must have regard to the MPS and applicable marine plans in taking any decision which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area. In the event of a conflict between any of these marine planning documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure.

4.1.7 The IPC should only impose requirements[72] in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. The IPC should take into account the guidance in Circular 11/95, as revised, on "The Use of Conditions in Planning Permissions" or any successor to it.

4.1.8 The IPC may take into account any development consent obligations[73] that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects.

4.1.9 In deciding to bring forward a proposal for infrastructure development, the applicant will have made a judgement on the financial and technical viability of the proposed development, within the market framework and taking account of Government interventions. Where the IPC considers, on information provided in an application, that the financial viability and technical feasibility of the proposal has been properly assessed by the applicant it is unlikely to be of relevance in IPC decision making (any exceptions to this principle are dealt with where they arise in this or other energy NPSs and the reasons why financial viability or technical feasibility is likely to be of relevance explained).

72 As defined in section 120 of the Planning Act 2008.

73 Where the words "planning obligations" are used in this NPS they refer to "development consent obligations" under section 106 of the Town & Country Planning Act 1990 as amended by section 174 of the Planning Act 2008.

4.2 Environmental Statement

4.2.1 All proposals for projects that are subject to the European Environmental Impact Assessment Directive[74] must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project[75]. The Directive specifically refers to effects on human beings[76], fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them. The Directive requires an assessment of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects at all stages of the project, and also of the measures envisaged for avoiding or mitigating significant advers effects.

4.2.2 To consider the potential effects, including benefits, of a proposal for a project, the IPC will find it helpful if the applicant sets out information on the likely significant social and economic effects of the development, and shows how any likely significant negative effects would be avoided or mitigated. This information could include matters such as employment, equality, community cohesion and well-being.

4.2.3 For the purposes of this NPS and the technology-specific NPSs the ES should cover the environmental, social and economic effects arising from pre-construction, construction, operation and decommissioning of the project. In some circumstances (for example, gas pipe-lines) it may be appropriate to assess effects arising from commissioning infrastructure once it is completed but before it comes into operation. Details of this and any other additional assessments are set out where necessary in sections on individual impacts in this NPS and in the technology-specific NPSs. In the absence of any additional information on additional assessments, the principles set out in this Section will apply to all assessments.

4.2.4 When considering a proposal the IPC should satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed. In doing so the IPC should also examine whether the assessment distinguishes between the project stages and identifies any mitigation measures at those stages. The IPC should request further information where necessary to ensure compliance with the EIA Directive.

74 Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, amended by Directives 97/11/EC and 2003/35/EC. In respect of energy NSIPs, Annex 1 of the directive applies to thermal power stations, nuclear power stations, waste-disposal installations for the incineration, chemical treatment or land fill of toxic and dangerous wastes. Under Annex 2 it applies to industrial installations for the production of electricity, steam and hot water (i.e. CHP), industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables, surface storage of natural gas, underground storage of combustible gases and installations for hydroelectric energy production.

75 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2009/2263).

76 The effects on human beings includes effects on health.

4.2.5 When considering cumulative effects, the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence)[77]. The IPC may also have other evidence before it, for example from appraisals of sustainability of relevant NPSs or development plans, on such effects and potential interactions. Any such information may assist the IPC in reaching decisions on proposals and on mitigation measures that may be required.

4.2.6 The IPC should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

4.2.7 In some instances it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, the applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why this is the case.

4.2.8 Where some details are still to be finalised the ES should set out, to the best of the applicant's knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have to ensure that the impacts of the project as it may be constructed have been properly assessed[78].

4.2.9 Should the IPC determine to grant development consent for an application where details are still to be finalised, it will need to reflect this in appropriate development consent requirements. Clearly, if development consent is granted for a proposal and at a later stage the developer wishes for technical or commercial reasons to construct it in such a way that its extent will be greater than has been provided for in the terms of the consent, it may be necessary to apply for a change to be made to the development consent, and the application to change the consent may need to be accompanied by further environmental information to supplement the original ES.

4.2.10 To help the IPC consider thoroughly the potential effects of a proposed project in cases where the EIA Directive does not apply and an ES is not therefore required, the applicant should instead provide information proportionate to the scale of the project on the likely significant environmental, social and economic effects. References to an Environmental Statement in this NPS should be taken as including a statement which provides this information, even if the EIA Directive does not apply.

77 For guidance on the assessment of cumulative effects, see, for example, Circular 02/99, Environmental impact assessment, or *Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions* (http://ec.europa.eu/environment/eia/eia-studies-and-reports/guidel.pdf).

78 Case law (for example Rochdale MBC Ex. Parte C Tew 1999) provides a legal principle that indicative sketches and layouts cannot provide the basis for determining applications for EIA development. The "Rochdale Envelope" is a series of maximum extents of a project for which the significant effects are established. The detailed design of the project can then vary within this 'envelope' without rendering the ES inadequate.

4.2.11 In this NPS and the technology-specific NPSs, the terms 'effects', 'impacts' or 'benefits' should be understood to mean likely significant effects, impacts or benefits.

4.3 Habitats and Species Regulations

4.3.1 Prior to granting a development consent order, the IPC must, under the Habitats and Species Regulations[79], (which implement the relevant parts of the Habitats Directive and the Birds Directive[80] in England and Wales) consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Further information on the requirements of the Habitats and Species Regulations can be found in a Government Circular[81]. Applicants should also refer to Section 5.3 of this NPS on biodiversity and geological conservation. The applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.

4.4 Alternatives

4.4.1 As in any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of this NPS. From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option.

4.4.2 However:

- applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility;
- in some circumstances there are specific legislative requirements, notably under the Habitats Directive, for the IPC to consider alternatives. These should also be identified in the ES by the applicant; and

79 The Conservation of Habitats and Species Regulations 2010 (SI2010/490).
80 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Council Directive 2009/147/EC on the conservation of wild birds.
81 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website www.tso.co.uk/bookshop. It should be noted that this document does not cover more recent legislative requirements. Where this circular has been superseded, reference should be made to the latest successor document.

- in some circumstances, the relevant energy NPSs may impose a policy requirement to consider alternatives (as this NPS does in Sections 5.3, 5.7 and 5.9).

4.4.3 Where there is a policy or legal requirement to consider alternatives the applicant should describe the alternatives considered in compliance with these requirements. Given the level and urgency of need for new energy infrastructure, the IPC should, subject to any relevant legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

- the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;
- the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development;
- where (as in the case of renewables) legislation imposes a specific quantitative target for particular technologies or (as in the case of nuclear) there is reason to suppose that the number of sites suitable for deployment of a technology on the scale and within the period of time envisaged by the relevant NPSs is constrained, the IPC should not reject an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and it should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals;
- alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the IPC thinks they are both important and relevant to its decision;
- as the IPC must decide an application in accordance with the relevant NPS (subject to the exceptions set out in the Planning Act 2008), if the IPC concludes that a decision to grant consent to a hypothetical alternative proposal would not be in accordance with the policies set out in the relevant NPS, the existence of that alternative is unlikely to be important and relevant to the IPC's decision;
- alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the IPC's decision;
- alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision; and
- it is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the IPC in respect of it (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives

which are particularly relevant). Therefore where an alternative is first put forward by a third party after an application has been made, the IPC may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the IPC should not necessarily expect the applicant to have assessed it.

4.5 Criteria for "good design" for energy infrastructure

4.5.1 The visual appearance of a building is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object — be it a building or other type of infrastructure — including fitness for purpose and sustainability, is equally important. Applying "good design" to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.

4.5.2 Good design is also a means by which many policy objectives in the NPS can be met, for example the impact sections show how good design, in terms of siting and use of appropriate technologies can help mitigate adverse impacts such as noise.

4.5.3 In the light of the above, and given the importance which the Planning Act 2008 places on good design and sustainability, the IPC needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the IPC should satisfy itself that the applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation. Furthermore, the design and sensitive use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the quality of the area.

4.5.4 For the IPC to consider the proposal for a project, applicants should be able to demonstrate in their application documents how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected. In considering applications the IPC should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.

4.5.5 Applicants and the IPC should consider taking independent professional advice on the design aspects of a proposal. In particular, Design Council

CABE can be asked to provide design review for nationally significant infrastructure projects and applicants are encouraged to use this service[82].

4.5.6 Further advice on what the IPC should expect applicants to demonstrate by way of good design is provided in the technology-specific NPSs where relevant.

4.6 Consideration of Combined Heat and Power (CHP)

4.6.1 Combined Heat and Power (CHP) is the generation of usable heat and electricity in a single process. A CHP station may either supply steam direct to customers or capture waste heat for low-pressure steam, hot water or space heating purposes after it has been used to drive electricity generating turbines. The heat can also be used to drive absorption chillers, thereby providing cooling.

4.6.2 In conventional thermal generating stations, the heat that is raised to drive electricity generation is subsequently emitted to the environment as waste. Supplying steam direct to industrial customers or using lower grade heat, such as in district heating networks, can reduce the amount of fuel otherwise needed to generate the same amount of heat and power separately. CHP is technically feasible for all types of thermal generating stations, including nuclear, energy from waste and biomass, although the majority of CHP plants in the UK are fuelled by gas.

4.6.3 Using less fuel to generate the same amount of heat and power reduces emissions, particularly CO_2. The Government has therefore committed to promoting Good Quality CHP, which denotes CHP that has been certified as highly efficient under the CHP Quality Assurance programme. In accordance with the EU Cogeneration Directive, schemes need to achieve at least 10% primary energy savings compared to the separate generation of heat and power in order to qualify for Government support associated with the programme.

4.6.4 In 2009, there was 5.6 GW of Good Quality CHP in the UK, providing over 7% of electricity and saving an estimated 9.5 $MtCO_2$ per annum. There is a recognised cost-effective potential for a further 10 GW of Good Quality CHP, estimated to offer a further saving of 175 $MtCO_2$ by 2015[83].

4.6.5 To be economically viable as a CHP plant, a generating station needs to be located close to industrial or domestic customers with heat demands. The distance will vary according to the size of the generating station and the nature of the heat demand. For industrial purposes, customers are likely to be intensive heat users such as chemical plants, refineries or paper mills. CHP can also be used to provide lower grade heat for light industrial users such as commercial greenhouses, or more commonly for hot water and space heating, including supply through district heating networks. A 2009 report for DECC[84] on district heating networks suggested that, for example, a district heating network using waste heat from a generating station would

82 http://www.communities.gov.uk/publications/planningandbuilding/letterdesignplanning
83 http://www.defra.gov.uk/environment/climatechange/uk/energy/chp/pdf/potential-report.pdf
84 "The Potential and Costs of District Heating Networks", Pöyry and Faber Maunsell, April 2009.

be cost-effective where there was a demand for 200 MWth of heat within 15 km. Additionally, the provision of CHP is most likely to be cost-effective and practical where it is included as part of the initial design and is part of a mixed-use development. For example, retrofitting a district heating network to an existing housing estate may not be efficient.

4.6.6 Under guidelines issued by DECC (then DTI) in 2006[85], any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the IPC's consideration of the application. This should be through an audit trail of dialogue between the applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008. The IPC should have regard to DECC's guidance, or any successor to it, when considering the CHP aspects of applications for thermal generating stations.

4.6.7 In developing proposals for new thermal generating stations, developers should consider the opportunities for CHP from the very earliest point and it should be adopted as a criterion when considering locations for a project. Given how important liaison with potential customers for heat is, applicants should not only consult those potential customers they have identified themselves but also bodies such as the Homes and Communities Agency (HCA), Local Enterprise Partnerships (LEPs) and Local Authorities and obtain their advice on opportunities for CHP. Further advice is contained in the 2006 DECC guidelines and applicants should also consider relevant information in regional and local energy and heat demand mapping.

4.6.8 Utilisation of useful heat that displaces conventional heat generation from fossil fuel sources is to be encouraged where, as will often be the case, it is more efficient than the alternative electricity/heat generation mix. To encourage proper consideration of CHP, substantial additional positive weight should therefore be given by the IPC to applications incorporating CHP. If the proposal is for thermal generation without CHP, the applicant should:

- explain why CHP is not economically or practically feasible for example if there is a more energy efficient means of satisfying a nearby domestic heat demand;
- provide details of any potential future heat requirements in the area that the station could meet; and
- detail the provisions in the proposed scheme for ensuring any potential heat demand in the future can be exploited.

4.6.9 CHP may require additional space than for a non-CHP generating station. It is possible that this might conflict with space required for a generating station to be Carbon Capture Ready, as set out in Section 4.7. The material provided by applicants should therefore explain how the development can both be ready to provide CHP in the future and also be Carbon Capture

85 Guidance on background information to accompany notifications under Section 14(1) of the Energy Act 1976 and applications under Section 36 of the Electricity Act 1989.

Ready or set out any constraints (for example space restrictions) which would prevent this.

4.6.10 If the IPC is not satisfied with the evidence that has been provided, it may wish to investigate this with one or more of the bodies such as the HCA, LEPs and Local Authorities.

4.6.11 Furthermore, if the IPC, when considering an application for a thermal generating station, identifies a potential heat customer that is not explored in the application (for instance, on the advice of the HCA or Local Authorities), it should request that the applicant pursues this. Should the applicant not be able to reach an agreement with a potential customer, it should provide evidence demonstrating why it was not possible.

4.6.12 The IPC may be aware of potential developments (for example from the applicant or a third party) which could utilise heat from the plant in the future, for example planned housing, and which is due to be built within a timeframe that would make the supply of heat cost-effective. If so, the IPC may wish to impose requirements to ensure that the generating station is CHP-ready unless the IPC is satisfied that the applicant has demonstrated that the need to comply with the requirement to be Carbon Capture Ready will preclude any provision for CHP.

4.7 Carbon Capture and Storage (CCS) and Carbon Capture Readiness (CCR)

CCS

4.7.1 Carbon Capture and Storage (CCS) is an emerging technology that enables carbon dioxide that would otherwise be released to the atmosphere to be captured and permanently stored. It can be applied to any large point source of carbon dioxide, such as fossil fuel power stations or other industrial processes that are high emitters. Carbon capture technologies are able to remove up to 90% of the carbon dioxide that would otherwise be released to the atmosphere and offers the opportunity for fossil fuels to continue to be an important element of a secure and diverse low carbon energy mix.

4.7.2 The chain of CCS has three links: capture of carbon, transport, and storage. There are three types of capture technology:

- *Pre-combustion capture*: this method involves reacting fuel with oxygen or air, and in some cases steam, to produce a gas consisting mainly of carbon monoxide and hydrogen. The carbon monoxide is reacted with more steam in a catalytic shift converter to produce more hydrogen and CO_2. The CO_2 is then separated and the hydrogen is used as fuel in a combined cycle gas turbine generating station. For coal, this method is based on integrated coal gasification combined cycle (ICGCC) technology.
- *Post-combustion capture*: this uses solvents to scrub CO_2 out of flue gases. The CO_2 is then released as a concentrated gas stream by a regeneration process. Post-combustion capture is applicable to pulverised coal generating stations.

- *Oxy-fuel combustion*: in this process, fuel is burnt in an oxygen/CO_2 mixture rather than air to produce a flue gas that is predominantly CO_2. With coal the technology would be deployed with a suitably modified pulverised coal combustion system, whilst with gas it could be used with a combined cycle system.

4.7.3 Once carbon dioxide has been captured, it is then compressed and transported, before being permanently stored in deep geological formations, such as depleted oil and gas fields and saline aquifers. In the UK, the majority of locations thought to be best suited to storage of CO_2 are located offshore.

4.7.4 The Government has taken a number of steps to facilitate and encourage the demonstration of CCS technology. The demonstration programme described in 3.6.5 focused initially on coal-fired power stations. This is because the emissions from coal generation are substantially higher than from other fuels, including gas; the projected increase in coal use globally creates a greater urgency to tackling emissions from coal; tackling emissions from coal first makes most economic sense because of the greater emissions intensity; and new coal generating stations would contribute to the diversity and security of UK energy supplies as we make the transition to a low carbon mix. However, CCS will also be required for other combustion generating stations in future and the Government has therefore extended the demonstration programme to include gas-fired generating stations.

4.7.5 All commercial scale fossil fuelled generating stations have to be carbon capture ready (see CCR Section below). In addition to satisfying the CCR criteria, to reduce CO_2 emissions new coal-fired generating stations, or significant extensions to existing stations, in England or Wales must have CCS on at least 300 MW net of the proposed generating capacity and secure arrangements for the transport and permanent storage of carbon dioxide. Coal-fired generating stations of less than 300 MW net capacity should show that the proposed generating station will be able to capture CO_2 from their full capacity. Operators of fossil fuel generating stations will also be required to comply with any Emission Performance Standards (EPS) that might be applicable, but this is not part of the consents process.

4.7.6 Given this requirement to fit a technology which is at a relatively early stage of development, and therefore very costly, it is unlikely that any coal-fired plants will be built in the foreseeable future without financial support for CCS demonstration. However it is possible that developers may wish to submit applications in advance of securing funding. Any decision on a planning application for a new coal-fired generating station should be made independently of any decision on allocation of funding for CCS demonstration. This may mean, therefore, that planning consent could be given to more applications than will be able to secure financial support for CCS demonstration.

4.7.7 The most likely method for transporting the captured carbon dioxide is through pipelines. These will be located both onshore and offshore. There are currently no carbon dioxide pipelines in the UK and considerable future investment in pipelines will be required for the purpose of the demonstration programme. If CCS is deployed more widely, it is likely that these initial

investments could form the basis of a wider carbon dioxide pipeline network, which is likely to require greater capacity pipelines. In considering applications the IPC should therefore take into account that the Government wants developers to bear in mind foreseeable future demand when considering the size and route of their investments and may therefore propose pipelines with a greater capacity than necessary for the project alone. Existing legislation already provides powers to require modification of pipelines where this would reduce the need for additional pipelines to be constructed in the future.

4.7.8 To construct a coal power station with the full CCS chain, applicants will need a range of consents from different bodies. These include a CO_2 storage licence and (if appropriate) consent for both on and offshore pipeline construction. An environmental permit will be required from the Environment Agency (EA) which incorporates conditions for operation of the CCS chain.

4.7.9 Further information on the CCS obligations to be imposed on new coal-fired power stations will be available in guidance issued by DECC[86]. The IPC must follow this CCS guidance, or any successor to it, when considering applications for combustion generating stations.

CCR

4.7.10 To ensure that no foreseeable barriers exist to retrofitting carbon capture and storage (CCS) equipment on combustion generating stations, all applications for new combustion plant which are of generating capacity at or over 300 MW[87] and of a type covered by the EU's Large Combustion Plant Directive (LCPD)[88] should demonstrate that the plant is "Carbon Capture Ready" (CCR) before consent may be given. The IPC must not grant consent unless this is the case. In order to assure the IPC that a proposed development is CCR, applicants will need to demonstrate that their proposal complies with guidance issued by the Secretary of State in November 2009[89] or any successor to it. The guidance requires:

- that sufficient space is available on or near the site to accommodate carbon capture equipment in the future;
- the technical feasibility of retrofitting their chosen carbon capture technology;
- that a suitable area of deep geological storage offshore exists for the storage of captured CO_2 from the proposed combustion station;

86 Draft Guidance was issued for consultation in November 2009.

87 The threshold set for this CCR requirement is capacity measured in MW electricity (MWe) for combustion plants which are covered by the LCPD, consistent with the requirements of Article 9a of the LCPD, as inserted by Article 33 of the EU Directive on the Geological Storage of Carbon Dioxide (2009/31/EC). This article requires applicants to carry out CCR assessments, and it requires Member State authorities (in this case, the IPC) to ensure that suitable space for the capture equipment is set aside. The policy set out here represents the implementation of Article 9a as regards Great Britain, but it also goes beyond what the Directive requires, as explained in DECC guidance.

88 2001/80/EC. Energy from waste plants are not covered by the LCPD.

89 Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810 http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/consents_planning/guidance.aspx

- the technical feasibility of transporting the captured CO_2 to the proposed storage area; and
- the economic feasibility within the combustion station's lifetime of the full CCS chain, covering retrofitting, transport and storage.

4.7.11 Government envisages that the technical feasibility study for retrofitting CCS equipment will take the form of a written report and accompanying plant designs which:

- make clear which capture technology is currently considered most appropriate for retrofit in the future to the power station; and
- provide sufficient detail to enable the EA to advise the Secretary of State on whether the applicant has sufficiently demonstrated there are no currently known technical barriers to subsequent retrofit of the declared capture technology.

4.7.12 The assessment of technological feasibility could be against either:

- an appropriate reference document; or
- by the provision of sufficient technical detail by the applicant in their submitted plans and discussions with the advisory body.

4.7.13 Applicants should conduct a single economic assessment which encompasses retrofitting of capture equipment, CO_2 transport and the storage of CO_2. Applicants should provide evidence of reasonable scenarios, taking into account the cost of the capture technology and transport option chosen for the technical CCR assessments and the estimated costs of CO_2 storage, which make operational CCS economically feasible for the proposed development.

4.7.14 The preparation of an economic assessment will involve a wide range of assumptions on each of a number of factors, and Government recognises the inherent uncertainties about each of these factors. There can be no guarantee that an assessment which is carried out now will predict with complete accuracy either in what circumstances it will be feasible to fit CCS to a proposed power station or when those circumstances will arise, but it can indicate the circumstances which would need to be the case to allow operational CCS to be economically feasible during the lifetime of the proposed new station.

4.7.15 A model assessment structure is suggested in DECC's CCR guidance, although this is not the only way which the assessment could be addressed. It is the responsibility of applicants to justify the capture, transport and storage options chosen for their proposed development.

4.7.16 The IPC should consult EA on the technical and economic feasibility assessments. The IPC should also have regard to advice from EA as to the suitability of the space set aside on or near the site for CCS equipment. If the IPC, having considered these assessments and other available information including comments by EA, concludes that it will not be technically and economically feasible to retrofit CCS to a proposed plant during its expected lifetime, then the proposed development cannot be judged to be CCR and therefore cannot receive consent.

4.7.17 If granted consent, operators of the power station will be required to:

- retain control over sufficient additional space on or near the site on which to install the carbon capture equipment and the ability to use it for that purpose;
- submit update reports on the technical aspects of its CCR status to the Secretary of State for DECC. These reports will be required within 3 months of the commercial operation date of the power station (so avoiding any burden on the operator with an unimplemented consent) and every two years thereafter. Should CCS equipment be retrofitted to the full capacity of the plant, the obligation to provide such reports will lapse.

4.8 Climate change adaptation

4.8.1 Part 2 of this NPS covers the Government's energy and climate change strategy, including policies for mitigating climate change. This part of the NPS sets out how applicants and the IPC should take the effects of climate change into account when developing and consenting infrastructure. While climate change mitigation is essential to minimise the most dangerous impacts of climate change, previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. If new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in Part 3 of this NPS.

4.8.2 Climate change is likely to mean that the UK will experience hotter, drier summers and warmer, wetter winters. There is a likelihood of increased flooding, drought, heatwaves and intense rainfall events, as well as rising sea levels. Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening.

4.8.3 To support planning decisions, the Government produces a set of UK Climate Projections and is developing a statutory National Adaptation Programme[90]. In addition, the Government's Adaptation Reporting Power[91] will ensure that reporting authorities (a defined list of public bodies and statutory undertakers, including energy utilities) assess the risks to their organisation presented by climate change. The IPC may take into account energy utilities' reports to the Secretary of State when considering adaptation measures proposed by an applicant for new energy infrastructure.

4.8.4 In certain circumstances, measures implemented to ensure a scheme can adapt to climate change may give rise to additional impacts, for example as a result of protecting against flood risk, there may be consequential impacts on coastal change (see Section 5.5).

4.8.5 New energy infrastructure will typically be a long-term investment and will need to remain operational over many decades, in the face of a changing climate. Consequently, applicants must consider the impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure. The ES should

90 s.58 of the Climate Change Act 2008.
91 s.62 of the Climate Change Act 2008.

set out how the proposal will take account of the projected impacts of climate change. While not required by the EIA Directive, this information will be needed by the IPC.

4.8.6 The IPC should be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections available at the time the ES was prepared to ensure they have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections become available after the preparation of the ES, the IPC should consider whether they need to request further information from the applicant.

4.8.7 Applicants should apply as a minimum, the emissions scenario that the Independent Committee on Climate Change suggests the world is currently most closely following – and the 10%, 50% and 90% estimate ranges. These results should be considered alongside relevant research which is based on the climate change projections.

4.8.8 The IPC should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections, taking account of the latest credible scientific evidence on, for example, sea level rise (for example by referring to additional maximum credible scenarios – i.e. from the Intergovernmental Panel on Climate Change or EA) and that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime.

4.8.9 Where energy infrastructure has safety critical elements (for example parts of new fossil fuel power stations or some electricity sub-stations), the applicant should apply the high emissions scenario (high impact, low likelihood) to those elements. Although the likelihood of this scenario is thought to be low, it is appropriate to take a more risk-averse approach with elements of infrastructure which are critical to the safety of its operation.

4.8.10 If any adaptation measures give rise to consequential impacts (for example on flooding, water resources or coastal change) the IPC should consider the impact of the latter in relation to the application as a whole and the impacts guidance set out in Part 5 of this NPS.

4.8.11 Any adaptation measures should be based on the latest set of UK Climate Projections, the Government's latest UK Climate Change Risk Assessment, when available[92] and in consultation with the EA.

4.8.12 Adaptation measures can be required to be implemented at the time of construction where necessary and appropriate to do so. However, where they are necessary to deal with the impact of climate change, and that measure would have an adverse effect on other aspects of the project and/or surrounding environment (for example coastal processes), the IPC may consider requiring the applicant to ensure that the adaptation measure could be implemented should the need arise, rather than at the outset of the

92 s.56 of the Climate Change Act 2008.

development (for example increasing height of existing, or requiring new, sea walls).

4.8.13 The generic impacts advice in this NPS and the technology specific advice on impacts in the other NPSs provide additional information on climate change adaptation.

4.9 Grid connection

4.9.1 The connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend generation plant. In the market system, it is for the applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The applicant will liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional Distribution Network Operator (DNO) to secure a grid connection. It may be the case that the applicant has not received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application, although it is likely to have applied for one and discussed it with them. This is a commercial risk the applicant may wish to take for a variety of reasons, although the IPC will want to be satisfied that there is no obvious reason why a grid connection would not be possible.

4.9.2 The Planning Act 2008 aims to create a holistic planning regime so that the cumulative effect of different elements of the same project can be considered together. The Government therefore envisages that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application to the IPC or in separate applications submitted in tandem which have been prepared in an integrated way. However this may not always be possible, nor the best course in terms of delivery of the project in a timely way, as different aspects may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls). So the level of information available on the different elements may vary. In some cases applicant(s) may therefore decide to put in an application that seeks consent only for one element but contains some information on the second. Where this is the case, the applicant should explain the reasons for the separate application.

4.9.3 If this option is pursued, the applicant(s) accept the implicit risks involved in doing so, and must ensure they provide sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections. The IPC must be satisfied that there are no obvious reasons why the necessary approvals for the other element are likely to be refused. The fact that the IPC has decided to consent one project should not in any way fetter its subsequent decisions on any related projects.

4.9.4 Further guidance on the considerations for the IPC is contained in EN-5.

4.10 Pollution control and other environmental regulatory regimes

4.10.1 Issues relating to discharges or emissions from a proposed project which affect air quality, water quality, land quality and the marine environment, or which include noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes.

4.10.2 The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching conditions to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through conditions. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment or human health.

4.10.3 In considering an application for development consent, the IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them.

4.10.4 Applicants should consult the Marine Management Organisation (MMO) on nationally significant projects which would affect, or would be likely to affect, any relevant marine areas as defined in the Planning Act 2008 (as amended by s.23 of the Marine and Coastal Access Act 2009). The IPC consent may include a deemed marine licence and the MMO will advise on what conditions should apply to the deemed marine licence. The IPC and MMO should cooperate closely to ensure that energy NSIPs are licensed in accordance with environmental legislation, including European directives.

4.10.5 Many projects covered by this NPS will be subject to the Environmental Permitting (EP) regime, which also incorporates operational waste management requirements for certain activities. When a developer applies for an Environmental Permit, the relevant regulator (usually EA but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant EP requirements. In considering the impacts of the project, the IPC may wish to consult the regulator on any management plans that would be included in an Environmental Permit application.

4.10.6 Applicants are advised to make early contact with relevant regulators, including EA and the MMO, to discuss their requirements for environmental permits and other consents. This will help ensure that applications take

account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the IPC. Wherever possible, applicants are encouraged to submit applications for Environmental Permits and other necessary consents at the same time as applying to the IPC for development consent.

4.10.7 The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. Working in close cooperation with EA and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, the IPC should be satisfied, before consenting any potentially polluting developments, that:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.

4.10.8 The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

4.11 Safety

4.11.1 HSE is responsible for enforcing a range of occupational health and safety legislation some of which is relevant to the construction, operation and decommissioning of energy infrastructure. Applicants should consult with the Health and Safety Executive (HSE) on matters relating to safety.

4.11.2 Some technologies, for example the use of salt caverns for underground gas storage, will be regulated by specific health and safety legislation. The application of these regulations is set out in the technology-specific NPSs where relevant.

4.11.3 Some energy infrastructure will be subject to the Control of Major Accident Hazards (COMAH) Regulations 1999. These Regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. COMAH regulations apply throughout the life cycle of the facility, i.e. from the design and build stage through to decommissioning. They are enforced by the Competent Authority comprising HSE and the EA acting jointly in England and Wales (and by the HSE and Scottish Environment Protection Agency acting jointly in Scotland). The same principles apply here as for those set out in the previous section on pollution control and other environmental permitting regimes.

4.11.4 Applicants seeking to develop infrastructure subject to the COMAH regulations should make early contact with the Competent Authority. If a safety report is required it is important to discuss with the Competent Authority the type of information that should be provided at the design and development stage, and what form this should take. This will enable the

Competent Authority to review as much information as possible before construction begins, in order to assess whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents. The IPC should be satisfied that an assessment has been done where required and that the Competent Authority has assessed that it meets the safety objectives described above.

4.12 Hazardous Substances

4.12.1 All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent. Applicants should consult the HSE at pre-application stage[93] if the project is likely to need hazardous substances consent. Where hazardous substances consent is applied for, the IPC will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent[94]. The IPC should consult HSE about this.

4.12.2 HSE will assess the risks based on the development consent application. Where HSE does not advise against the IPC granting the consent, it will also recommend whether the consent should be granted subject to any requirements.

4.12.3 HSE sets a consultation distance around every site with hazardous substances consent and notifies the relevant local planning authorities. The applicant should therefore consult the local planning authority at pre-application stage to identify whether its proposed site is within the consultation distance of any site with hazardous substances consent and, if so, should consult the HSE for its advice on locating the particular development on that site.

4.13 Health

4.13.1 Energy production has the potential to impact on the health and well-being ("health") of the population. Access to energy is clearly beneficial to society and to our health as a whole. However, the production, distribution and use of energy may have negative impacts on some people's health.

4.13.2 As described in the relevant sections of this NPS and in the technology-specific NPSs, where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development may affect people simultaneously, so the applicant and the IPC should consider the cumulative impact on health.

93 Further information is available at the HSE's website: http://www.hse.gov.uk/landuseplanning/nsip- applications.htm

94 Hazardous substances consent can also be applied for subsequent to a DCO application. However, the guidance in 4.12.1 still applies i.e. the application should consult with HSE at the pre-application stage and include details in their DCO

4.13.3 The direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests.

4.13.4 New energy infrastructure may also affect the composition, size and proximity of the local population, and in doing so have indirect health impacts, for example if it in some way affects access to key public services, transport or the use of open space for recreation and physical activity.

4.13.5 Generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will either constitute a reason to refused consents or require specific mitigation under the Planning Act 2008. However, the IPC will want to take account of health concerns when setting requirements relating to a range of impacts such as noise.

4.14 Common law nuisance and statutory nuisance

4.14.1 Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority's duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is "prejudicial to health" and not a nuisance.

4.14.2 It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent. (See Section 5.6 on Dust, odour, artificial light etc. and Section 5.11 on Noise and vibration.)

4.14.3 The IPC should note that the defence of statutory authority is subject to any contrary provision made by the IPC in any particular case in a development consent order (section 158(3)). Therefore, subject to Section 5.6, the IPC can disapply the defence of statutory authority, in whole or in part, in any particular case but in so doing should have regard to whether any particular nuisance is an inevitable consequence of the development.

4.15 Security considerations

4.15.1 National security considerations apply across all national infrastructure sectors. Overall responsibility for security of the energy sector lies with DECC. It works closely with Government security agencies including the Centre for the Protection of National Infrastructure (CPNI) to reduce the vulnerability of the most 'critical' infrastructure assets in the sector to terrorism and other national security threats. The Office for Civil Nuclear Security (OCNS) is the security regulator for the UK's civil nuclear industry.

4.15.2 Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. Where applications for development consent for infrastructure covered by this NPS relate to potentially 'critical' infrastructure, there may be national security considerations.

4.15.3 DECC will be notified at pre-application stage about every likely future application for energy NSIPs, so that any national security implications can be identified. Where national security implications have been identified, the applicant should consult with relevant security experts from CPNI, OCNS and DECC to ensure that physical, procedural and personnel security measures have been adequately considered in the design process and that adequate consideration has been given to the management of security risks. If CPNI, OCNS and/or DECC are satisfied that security issues have been adequately addressed in the project when the application is submitted to the IPC, it will provide confirmation of this to the IPC. The IPC should not need to give any further consideration to the details of the security measures in its examination.

4.15.4 The applicant should only include sufficient information in the application as is necessary to enable the IPC to examine the development consent issues and make a properly informed decision on the application.

4.15.5 In exceptional cases, where examination of an application would involve public disclosure of information about defence or national security which would not be in the national interest, the Secretary of State can intervene and examine a part or the whole of the application. In that case, the Secretary of State may appoint an examiner to consider evidence in closed session, and the Secretary of State would be the decision maker for the application.

Part 5 Generic Impacts

5.1 Introduction

5.1.1 Some impacts (such as landscape and visual impacts) arise from the development of any of the types of energy infrastructure covered by the energy NPSs. Others (such as air quality impacts) are relevant to all types of energy infrastructure but nevertheless arise in similar ways from the development of types of energy infrastructure covered in at least two of the energy NPSs. Both these classes of impacts are considered in this Part and are referred to as "generic impacts". However, in some cases the technology-specific NPSs provide detail on the way these impacts arise or are to be considered in the context of applications which is specific to the technology in question. Impacts which are more or less limited to one particular technology are only covered in the relevant technology-specific NPS.

5.1.2 The list of impacts (generic and technology-specific) and the policy in respect of the consideration of impacts in this Part and in the impact section of the technology-specific NPSs is not exhaustive. The NPSs address those impacts and means of mitigation that are anticipated to arise most frequently; they are not intended to provide a list of all possible effects or ways to mitigate such effects. The IPC should therefore consider other impacts and means of mitigation where it determines that the impact is relevant and important to its decision. The technology-specific NPSs may state that certain impacts should be given a particular weight. Where they do not do so, the IPC should follow any policy set out on the level of weight to be given to such impact set out in this NPS. Applicants should identify the impacts of their proposals in the ES in terms of those covered in this NPS and any others that may be relevant to their application.

5.1.3 Some of the impact sections in this NPS and the technology-specific NPSs refer to development consent requirements or obligations being a means of securing appropriate mitigation. The fact that the possible use of requirements or obligations are not mentioned in relation to other impacts does not mean that they may not be relevant.

5.1.4 Some of the impact sections in this NPS and the technology-specific NPSs also refer to bodies whom the applicant or IPC should consult. The references to specific bodies are not intended to be exhaustive. The fact that in other impact sections no mention is made of such consultation does not mean that the applicant or IPC should not, where appropriate, engage in it. Applicants must also ensure they consult the relevant bodies about their proposed applications in accordance with section 42 to 44 of the Planning Act 2008 and the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

5.2 Air quality and emissions

Introduction

5.2.1 Infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. Impacts on protected species and habitats are covered in Section 5.3. Air emissions include particulate matter (for example dust) up to a diameter of ten microns (PM_{10}) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx). Levels for pollutants in ambient air are set out in the Air Quality Strategy which in turn embodies EU legal requirements. The Secretary of State for the Environment Food and Rural Affairs is required to make available up to date information on air quality to any relevant interested party[95].

5.2.2 CO_2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO_2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO_2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The IPC does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO_2 emissions or any Emissions Performance Standard that may apply to plant.

5.2.3 A particular effect of air emissions from some energy infrastructure may be eutrophication, which is the excessive enrichment of nutrients in the environment. Eutrophication from air pollution results mainly from emissions of NOx and ammonia. The main emissions from energy infrastructure are from generating stations. Eutrophication can affect plant growth and functioning, altering the competitive balance of species and thereby damaging biodiversity. In aquatic ecosystems it can cause changes to algal composition and lead to algal blooms, which remove oxygen from the water, adversely affecting plants and fish. The effects on ecosystems can be short-term or irreversible, and can have a large impact on ecosystem services such as pollination, aesthetic services and water supply.

95 Air Quality Standards Regulations 2010, No.2010/1001.

5.2.4 Emissions from combustion plants are generally released through exhaust stacks. Design of exhaust stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions and is often determined by statutory requirements. The optimal stack height is dependent upon the local terrain and meteorological conditions, in combination with the emission characteristics of the plant. The EA will require the exhaust stack height of a thermal combustion generating plant, including fossil fuel generating stations and waste or biomass plant, to be optimised in relation to impact on air quality. The IPC need not, therefore, be concerned with the exhaust stack height optimisation process in relation to air emissions, though the impact of stack heights on landscape and visual amenity will be a consideration (see Section 5.9).

5.2.5 Impacts of thermal combustion generating stations with respect to air emissions are set out in the technology-specific NPSs.

Applicant's assessment

5.2.6 Where the project is likely to have adverse effects on air quality the applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES).

5.2.7 The ES should describe:

- any significant air emissions, their mitigation and any residual effects distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project;
- the predicted absolute emission levels of the proposed project, after mitigation methods have been applied;
- existing air quality levels and the relative change in air quality from existing levels; and
- any potential eutrophication impacts.

IPC decision making

5.2.8 Many activities involving air emissions are subject to pollution control. The considerations set out in Section 4.10 on the interface between planning and pollution control therefore apply.

5.2.9 The IPC should generally give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, or leads to a new area where air quality breaches any national air quality limits. However air quality considerations will also be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of national air quality limits.

5.2.10 In all cases the IPC must take account of any relevant statutory air quality limits. Where a project is likely to lead to a breach of such limits the developers should work with the relevant authorities to secure appropriate mitigation measures to allow the proposal to proceed. In the event that a project will lead to non-compliance with a statutory limit the IPC should refuse consent.

Mitigation

5.2.11 The IPC should consider whether mitigation measures are needed both for operational and construction emissions over and above any which may form part of the project application. A construction management plan may help codify mitigation at this stage.

5.2.12 In doing so the IPC may refer to the conditions and advice in the Air Quality Strategy[96] or any successor to it.

5.2.13 The mitigations identified in Section 5.13 on traffic and transport impacts will help mitigate the effects of air emissions from transport.

96 http://www.defra.gov.uk/environment/quality/air/airquality/strategy/index.htm

5.3 Biodiversity and geological conservation

Introduction

5.3.1 Biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Geological conservation relates to the sites that are designated for their geology and/or their geomorphological importance.

5.3.2 The wide range of legislative provisions at the international and national level that can impact on planning decisions affecting biodiversity and geological conservation issues are set out in a Government Circular[97]. A separate guide sets out good practice in England in relation to planning for biodiversity and geological conservation[98].

Applicant's assessment

5.3.3 Where the development is subject to EIA the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The applicant should provide environmental information proportionate to the infrastructure where EIA is not required to help the IPC consider thoroughly the potential effects of a proposed project.

5.3.4 The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

IPC decision making

5.3.5 The Government's biodiversity strategy is set out in 'Working with the grain of nature'[99]. Its aim is to ensure:

- a halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems; and
- the general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.

5.3.6 In having regard to the aim of the Government's biodiversity strategy the IPC should take account of the context of the challenge of climate change: failure to address this challenge will result in significant adverse impacts to biodiversity. The policy set out in the following sections recognises the need

97 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website www.tso.co.uk/bookshop. It should be noted that this document does not cover more recent legislative requirements, such as the Marine Strategy Framework Directive.

98 Planning for Biodiversity and Geological Conservation: A Guide to Good Practice (March 2006).

99 'Working with the grain of nature' applies in England only.

to protect the most important biodiversity and geological conservation interests. The benefits of nationally significant low carbon energy infrastructure development may include benefits for biodiversity and geological conservation interests and these benefits may outweigh harm to these interests. The IPC may take account of any such net benefit in cases where it can be demonstrated.

5.3.7 As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.

5.3.8 In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

International Sites

5.3.9 The most important sites for biodiversity are those identified through international conventions and European Directives. The Habitats Regulations provide statutory protection for these sites but do not provide statutory protection for potential Special Protection Areas (pSPAs) before they have been classified as a Special Protection Area. For the purposes of considering development proposals affecting them, as a matter of policy the Government wishes pSPAs to be considered in the same way as if they had already been classified. Listed Ramsar sites should, also as a matter of policy, receive the same protection[100].

Sites of Special Scientific Interest (SSSIs)

5.3.10 Many SSSIs are also designated as sites of international importance and will be protected accordingly. Those that are not, or those features of SSSIs not covered by an international designation, should be given a high degree of protection. All National Nature Reserves are notified as SSSIs.

5.3.11 Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect, after mitigation, on the site's notified special interest features is likely, an exception should only be made where the benefits (including need) of the development at this site[101], clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. The IPC should use requirements and/or planning

100 See http://www.jncc.gov.uk/page-161

101 'At this site' applies the language in PPS9: *Biodiversity and Geological Conservation*. The benefits of the development 'at this site' should be interpreted as including any benefits which are not dependent on a particular location.

obligations to mitigate the harmful[102] aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest.

Marine Conservation Zones

5.3.12 Marine Conservation Zones (MCZs) (Marine Protected Areas in Scotland), introduced under the Marine and Coastal Access Act 2009, are areas that have been designated for the purpose of conserving marine flora or fauna, marine habitats or types of marine habitat or features of geological or geomorphological interest. The protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ, which provides statutory protection for these areas implemented by the MMO (see paragraph 1.2.2). As a public authority, the IPC is bound by the duties in relation to MCZs imposed by sections 125 and 126 of the Marine and Coastal Access Act 2009.

Regional and Local Sites

5.3.13 Sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Sites, have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education. The IPC should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent.

Ancient Woodland and Veteran Trees

5.3.14 Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The IPC should not grant development consent for any development that would result in its loss or deterioration unless the benefits (including need) of the development, in that location[103] outweigh the loss of the woodland habitat. Aged or 'veteran' trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided[104]. Where such trees would be affected by development proposals the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons why.

102 In line with the principle in paragraph 4.2.11, the term 'harm' should be understood to mean 'significant harm'.

103 "in that location" applies the language in PPS9: *Biodiversity and Geological Conservation*. The benefits of the development in that location should be interpreted as including any benefits which are not dependent on a particular location.

104 This does not prevent the loss of such trees where the IPC is satisfied that their loss is unavoidable.

Biodiversity within Developments

5.3.15 Development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. When considering proposals, the IPC should maximise such opportunities in and around developments, using requirements or planning obligations where appropriate.

Protection of Habitats and Other Species

5.3.16 Many individual wildlife species receive statutory protection under a range of legislative provisions[105].

5.3.17 Other species and habitats have been identified as being of principal importance for the conservation of biodiversity in England and Wales and thereby requiring conservation action[106]. The IPC should ensure that these species and habitats are protected from the adverse effects of development by using requirements or planning obligations. The IPC should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits (including need) of the development outweigh that harm. In this context the IPC should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from a proposed development.

Mitigation

5.3.18 The applicant should include appropriate mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:

- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;
- during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;
- habitats will, where practicable, be restored after construction works have finished; and
- opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals.

105 Certain plant and animal species, including all wild birds, are protected under the Wildlife and Countryside Act 1981. European plant and animal species are protected under the Conservation of Habitats and Species Regulations 2010. Some other animals are protected under their own legislation, for example Protection of Badgers Act 1992.

106 Lists of habitats and species of principal importance for the conservation of biological diversity in England published in response to Section 41 of the Natural Environment and Rural Communities Act 2006 are available from the Biodiversity Action Reporting System website at http://www.ukbap-reporting.org.uk/news/details.asp?X=45

5.3.19 Where the applicant cannot demonstrate that appropriate mitigation measures will be put in place the IPC should consider what appropriate requirements should be attached to any consent and/or planning obligations entered into.

5.3.20 The IPC will need to take account of what mitigation measures may have been agreed between the applicant and Natural England (or the Countryside Council for Wales) or the Marine Management Organisation (MMO), and whether Natural England (or the Countryside Council for Wales) or the MMO has granted or refused or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

5.4 Civil and military aviation and defence interests

Introduction

5.4.1 Civil and military aerodromes, aviation technical sites, and other types of defence interests (both onshore and offshore) can be affected by new energy development.

Aviation

5.4.2 UK airspace is important for both civilian and military aviation interests. It is essential that the safety of UK aerodromes, aircraft and airspace is not adversely affected by new energy infrastructure. Similarly, aerodromes can have important economic and social benefits, particularly at the regional and local level. Commercial civil aviation is largely confined to designated corridors of controlled airspace and set approaches to airports. However, civilian leisure and military aircraft may often fly outside of 'controlled air space'. The approaches and flight patterns to aerodromes are not necessarily routine and can be irregular owing to a variety of factors including the performance characteristics of the aircraft concerned and the prevailing meteorological conditions.

5.4.3 Certain civil aerodromes, and aviation technical sites, selected on the basis of their importance to the national air transport system, are officially safeguarded in order to ensure that their safety and operation are not compromised by new development. A similar official safeguarding system applies to certain military aerodromes and defence assets, selected on the basis of their strategic importance. Areas of airspace around aerodromes used by aircraft taking off or on approach and landing are described as "obstacle limitation surfaces" (OLS). OLS for civil aerodromes are defined according to criteria set out in relevant Civil Aviation Authority (CAA) guidance[107] and for military aerodromes according to MoD criteria. Aerodromes that are officially safeguarded will have officially produced plans that show the OLS.

5.4.4 The certified Safeguarding maps depicting the OLS and other criteria (for example to minimise "birdstrike" hazards) are deposited with the relevant local planning authorities. DfT/ODPM Circular 01/2003[108] provides advice to planning authorities on the official safeguarding of aerodromes and includes a list of the aerodromes which are officially safeguarded. The Circular and CAA guidance also recommend that the operators of aerodromes which are not officially safeguarded should take steps to protect their aerodrome from the effects of possible adverse development by establishing an agreed consultation procedure between themselves and the local planning authority or authorities.

5.4.5 There are also "Public Safety Zones" (PSZs) at the end of runways of the busiest airports in the UK, within which development is restricted to minimise risks to people on the ground in the event of an aircraft accident on take-off

107 CAA (Dec 2008) CAP 168: Licensing of Aerodromes.
108 DfT/ODPM Circular 01/2003: Safeguarding, Aerodromes, Technical Sites and Military Explosives Storage Areas.

or landing. Maps showing the PSZs are deposited with the relevant local planning authorities. DfT/ODPM Circular 01/2010 provides advice to local planning authorities on Public Safety Zones[109].

5.4.6 The military Low Flying system covers the whole of the UK and enables low flying activities as low as 75m (mean separation distance). A considerable amount of military flying for training purposes is conducted at as low as 30m in designated Tactical Training Areas (TTAs) in mid Wales, Cumbria, the Scottish Border region and in the Electronic Warfare Range in the Scottish Border area. In addition, military helicopters may operate down to ground level. New energy infrastructure may cause obstructions in Ministry of Defence (MoD) low flying areas.

5.4.7 Safe and efficient operations within UK airspace is dependent upon communications, navigation and surveillance (CNS) infrastructure, including radar (often referred to as 'technical sites'). Energy infrastructure development may interfere with the operation of CNS systems such as radar. It can also act as a reflector or diffractor of radio signals upon which Air Traffic Control Services rely (an effect which is particularly likely to arise when large structures, such as wind turbines, are located in close proximity to Communications and Navigation Aids and technical sites). Wind turbines may also cause false returns when built in line of sight to Primary or Secondary Surveillance radar installations.

Other defence interests

5.4.8 The MoD operates military training areas, military danger zones (offshore Danger and Exercise areas), military explosives storage areas and TTAs. There are extensive Danger and Exercise Areas across the UK Continental Shelf Area (UKCS) for military firing and highly surveyed routes to support Government shipping that are essential for national defence.

5.4.9 Other operational defence assets may be affected by new development, for example the Seismological Monitoring Station at Eskdalemuir and maritime acoustic facilities used to test and calibrate noise emissions from naval vessels, such as at Portland Harbour. The MoD also operates Air Defence radars and Meteorological radars which have wide coverage over the UK (onshore and offshore). It is important that new energy infrastructure does not significantly impede or compromise the safe and effective use of any defence assets.

Applicant's assessment

5.4.10 Where the proposed development may have an effect on civil or military aviation and/or other defence assets an assessment of potential effects should be set out in the ES (see Section 4.2).

5.4.11 The applicant should consult the MoD, CAA, NATS and any aerodrome – licensed or otherwise – likely to be affected by the proposed development in preparing an assessment of the proposal on aviation or other defence interests.

109 DfT/ODPM Circular 01/2002: Control of Development in Airport Safety Zones.

5.4.12 Any assessment of aviation or other defence interests should include potential impacts of the project upon the operation of CNS infrastructure, flight patterns (both civil and military), other defence assets and aerodrome operational procedures. It should also assess the cumulative effects of the project with other relevant projects in relation to aviation and defence.

5.4.13 If any relevant changes are made to proposals during the pre-application and determination period, it is the responsibility of the applicant to ensure that the relevant aviation and defence consultees are informed as soon as reasonably possible.

IPC decision making

5.4.14 The IPC should be satisfied that the effects on civil and military aerodromes, aviation technical sites and other defence assets have been addressed by the applicant and that any necessary assessment of the proposal on aviation or defence interests has been carried out. In particular, it should be satisfied that the proposal has been designed to minimise adverse impacts on the operation and safety of aerodromes and that reasonable mitigation is carried out. It may also be appropriate to expect operators of the aerodrome to consider making reasonable changes to operational procedures. When assessing the necessity, acceptability and reasonableness of operational changes to aerodromes, the IPC should satisfy itself that it has the necessary information regarding the operational procedures along with any demonstrable risks or harm of such changes, taking into account the cases put forward by all parties. When making such a judgement in the case of military aerodromes, the IPC should have regard to interests of defence and national security.

5.4.15 If there are conflicts between the Government's energy and transport policies and military interests in relation to the application, the IPC should expect the relevant parties to have made appropriate efforts to work together to identify realistic and pragmatic solutions to the conflicts. In so doing, the parties should seek to protect the aims and interests of the other parties as far as possible.

5.4.16 There are statutory requirements concerning lighting to tall structures[110]. Where lighting is requested on structures that goes beyond statutory requirements by any of the relevant aviation and defence consultees, the IPC should satisfy itself of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.

5.4.17 Where, after reasonable mitigation, operational changes, obligations and requirements have been proposed, the IPC considers that:

- a development would prevent a licensed aerodrome from maintaining its licence;
- the benefits of the proposed development are outweighed by the harm to aerodromes serving business, training or emergency service needs,

110 Articles 219 and 220. Air Navigation Order 2009.

taking into account the relevant importance and need for such aviation infrastructure; or

- the development would significantly impede or compromise the safe and effective use of defence assets or significantly limit military training;
- the development would have an impact on the safe and efficient provision of en route air traffic control services for civil aviation, in particular through an adverse effect on the infrastructure required to support communications, navigation or surveillance systems;

consent should not be granted.

Mitigation

5.4.18 Where a proposed energy infrastructure development would significantly impede or compromise the safe and effective use of civil or military aviation or defence assets and or significantly limit military training, the IPC may consider the use of 'Grampian[111], or other forms of condition which relate to the use of future technological solutions, to mitigate impacts. Where technological solutions have not yet been developed or proven, the IPC will need to consider the likelihood of a solution becoming available within the time limit for implementation of the development consent. In this context, where new technologies to mitigate the adverse effects of wind farms on radar are concerned, the IPC should have regard to any Government guidance which emerges from the joint Government/Industry Aviation Plan.

5.4.19 Mitigation for infringement of OLS may include[112]:

- amendments to layout or scale of infrastructure to reduce the height, provided that it does not result in an unreasonable reduction of capacity or unreasonable constraints on the operation of the proposed energy infrastructure;
- changes to operational procedures of the aerodromes in accordance with relevant guidance, provided that safety assurances can be provided by the operator that are acceptable to the CAA where the changes are proposed to a civilian aerodrome (and provided that it does not result in an unreasonable reduction of capacity or unreasonable constraints on the operation of the aerodrome); and
- installation of obstacle lighting and/or by notification in Aeronautical Information Service publications.

5.4.20 For CNS infrastructure, the UK military Low Flying system (including TTAs) and designated air traffic routes, mitigation may also include:

- lighting;
- operational airspace changes; and

111 A negative condition that prevents the start of a development until specific actions, mitigation or other development have been completed.

112 Where mitigation is required using a condition or planning obligation, the tests set out at paragraphs 4.1.7 – 4.1.8 in EN-1 should be applied.

- upgrading of existing CNS infrastructure, the cost of which the applicant may reasonably be required to contribute in part or in full.

5.4.21 Mitigation for effects on radar, communications and navigational systems may include reducing the scale of a project, although in some cases it is likely to be unreasonable for the IPC to require mitigation by way of a reduction in the scale of development, for example, where reducing the tip height of wind turbines in a wind farm would result in a material reduction in electricity generating capacity or operation would be severely constrained. However, there may be exceptional circumstances where a small reduction in such function will result in proportionately greater mitigation. In these cases, the IPC may consider that the benefits of the mitigation outweighs the marginal loss of function.

5.5 Coastal change

Introduction

5.5.1 The Government's aim is to ensure that our coastal communities continue to prosper and adapt to coastal change. This means planning should:

- ensure that policies and decisions in coastal areas are based on an understanding of coastal change over time;
- prevent new development from being put at risk from coastal change by
  - (i) avoiding inappropriate development in areas that are vulnerable to coastal change or any development that adds to the impacts of physical changes to the coast, and
  - (ii) directing development away from areas vulnerable to coastal change;
- ensure that the risk to development which is, exceptionally, necessary in coastal change areas because it requires a coastal location and provides substantial economic and social benefits to communities, is managed over its planned lifetime; and
- ensure that plans are in place to secure the long term sustainability of coastal areas.

5.5.2 For the purpose of this section, coastal change means physical change to the shoreline, i.e. erosion, coastal landslip, permanent inundation and coastal accretion. Where onshore infrastructure projects are proposed on the coast, coastal change is a key consideration. Some kinds of coastal change happen very gradually, others over shorter timescales. Some are the result of purely natural processes; others, including potentially significant modifications of the coastline or coastal environment resulting from climate change, are wholly or partly man-made. This section is concerned both with the impacts which energy infrastructure can have as a driver of coastal change and with how to ensure that developments are resilient to ongoing and potential future coastal change.

5.5.3 The construction of an onshore energy project on the coast may involve, for example, dredging, dredge spoil deposition, cooling water, culvert construction, marine landing facility construction and flood and coastal protection measures which could result in direct effects on the coastline, seabed and marine ecology and biodiversity.

5.5.4 Additionally, indirect changes to the coastline and seabed might arise as a result of a hydrodynamic response to some of these direct changes. This could lead to localised or more widespread coastal erosion or accretion and changes to offshore features such as submerged banks and ridges and marine biodiversity.

5.5.5 This section only applies to onshore energy infrastructure projects situated on the coast. The impacts of offshore renewable energy projects on marine life and coastal geomorphology are considered in the Renewable Energy NPS. Section 5.3 on biodiversity and geological conservation, Section 5.7 on flood risk and Section 4.8 of Part 4 on adaptation to climate change, including the increased risk of coastal erosion, are also relevant, as is advice on access to coastal recreation sites and features in Section 5.10 on land use. Advice on the historic environment in Section 5.8 may also be relevant.

Applicant's assessment

5.5.6 Where relevant, applicants should undertake coastal geomorphological and sediment transfer modelling to predict and understand impacts and help identify relevant mitigating or compensatory measures.

5.5.7 The ES (see Section 4.2) should include an assessment of the effects on the coast. In particular, applicants should assess:

- the impact of the proposed project on coastal processes and geomorphology, including by taking account of potential impacts from climate change. If the development will have an impact on coastal processes the applicant must demonstrate how the impacts will be managed to minimise adverse impacts on other parts of the coast;
- the implications of the proposed project on strategies for managing the coast as set out in Shoreline Management Plans (SMPs) (which provide a large-scale assessment of the physical risks associated with coastal processes and present a long term policy framework to reduce these risks to people and the developed, historic and natural environment in a sustainable manner), any relevant Marine Plans, River Basin Management Plans and capital programmes for maintaining flood and coastal defences;
- the effects of the proposed project on marine ecology, biodiversity and protected sites;
- the effects of the proposed project on maintaining coastal recreation sites and features; and
- the vulnerability of the proposed development to coastal change, taking account of climate change, during the project's operational life and any decommissioning period.

5.5.8 For any projects involving dredging or disposal into the sea, the applicant should consult the Marine Management Organisation (MMO) at an early stage. Where the project has the potential to have a major impact in this respect, this is covered in the technology-specific NPSs. For example, EN-4 looks further at the environmental impacts of dredging in connection with Liquified Natural Gas (LNG) tanker deliveries to LNG import facilities.

5.5.9 The applicant should be particularly careful to identify any effects of physical changes on the integrity and special features of Marine Conservation Zones, candidate marine Special Areas of Conservation (SACs), coastal SACs and candidate coastal SACs, coastal Special Protection Areas (SPAs) and

potential coastal SPAs, Ramsar sites, Sites of Community Importance (SCIs) and potential SCIs and Sites of Special Scientific Interest.

IPC decision making

5.5.10 The IPC should be satisfied that the proposed development will be resilient to coastal erosion and deposition, taking account of climate change, during the project's operational life and any decommissioning period.

5.5.11 The IPC should not normally consent new development in areas of dynamic shorelines where the proposal could inhibit sediment flow or have an adverse impact on coastal processes at other locations. Impacts on coastal processes must be managed to minimise adverse impacts on other parts of the coast. Where such proposals are brought forward consent should only be granted where the IPC is satisfied that the benefits (including need) of the development outweigh the adverse impacts.

5.5.12 The IPC should ensure that applicants have restoration plans for areas of foreshore disturbed by direct works and will undertake pre- and post-construction coastal monitoring arrangements with defined triggers for intervention and restoration.

5.5.13 The IPC should examine the broader context of coastal protection around the proposed site, and the influence in both directions, i.e. coast on site, and site on coast.

5.5.14 The IPC should consult the MMO on projects which could impact on coastal change, since the MMO may also be involved in considering other projects which may have related coastal impacts.

5.5.15 In addition to this NPS the IPC must have regard to the appropriate marine policy documents, as provided for in the Marine and Coastal Access Act 2009. The IPC may also have regard to any relevant SMPs.

5.5.16 Substantial weight should be attached to the risks of flooding and coastal erosion. The applicant must demonstrate that full account has been taken of the policy on assessment and mitigation in Section 4.22 of this NPS, taking account of the potential effects of climate change on these risks as discussed above.

Mitigation

5.5.17 Applicants should propose appropriate mitigation measures to address adverse physical changes to the coast, in consultation with the MMO, the EA, LPAs, other statutory consultees, Coastal Partnerships and other coastal groups, as it considers appropriate. Where this is not the case the IPC should consider what appropriate mitigation requirements might be attached to any grant of development consent.

5.6 Dust, odour, artificial light, smoke, steam and insect infestation

Introduction

5.6.1 During the construction, operation and decommissioning of energy infrastructure there is potential for the release of a range of emissions such as odour, dust, steam, smoke, artificial light and infestation of insects. All have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990. Note that pollution impacts from some of these emissions (for example dust, smoke) are covered in the Section 5.2 on air emissions.

5.6.2 Because of the potential effects of these emissions and infestation, and in view of the availability of the defence of statutory authority against nuisance claims described in Section 4.14, it is important that the potential for these impacts is considered by the IPC.

5.6.3 For energy NSIPs of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. The aim should be to keep impacts to a minimum, and at a level that is acceptable.

Applicant's assessment

5.6.4 The applicant should assess the potential for insect infestation and emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity, as part of the Environmental Statement.

5.6.5 In particular, the assessment provided by the applicant should describe:

- the type, quantity and timing of emissions;
- aspects of the development which may give rise to emissions;
- premises or locations that may be affected by the emissions;
- effects of the emission on identified premises or locations; and
- measures to be employed in preventing or mitigating the emissions.

5.6.6 The applicant is advised to consult the relevant local planning authority and, where appropriate, the EA about the scope and methodology of the assessment.

IPC decision making

5.6.7 The IPC should satisfy itself that:

- an assessment of the potential for artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out; and
- that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts.

5.6.8 If the IPC does grant development consent for a project, it should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If it cannot conclude that this is justified, it should disapply in whole or in part the defence through a provision in the development consent order.

5.6.9 Where it believes it appropriate, the IPC may consider attaching requirements to the development consent, in order to secure certain mitigation measures.

5.6.10 In particular, the IPC should consider whether to require the applicant to abide by a scheme of management and mitigation concerning insect infestation and emissions of odour, dust, steam, smoke and artificial light from the development. The IPC should consider the need for such a scheme to reduce any loss to amenity which might arise during the construction, operation and decommissioning of the development. A construction management plan may help codify mitigation at that stage.

Mitigation

5.6.11 Mitigation measures may include one or more of the following:

- **engineering**: prevention of a specific emission at the point of generation; control, containment and abatement of emissions if generated;
- **lay-out:** adequate distance between source and sensitive receptors; reduced transport or handling of material; and
- **administrative:** limiting operating times; restricting activities allowed on the site; implementing management plans.

5.7 Flood risk

Introduction

5.7.1 Flooding is a natural process that plays an important role in shaping the natural environment. However, flooding threatens life and causes substantial damage to property. The effects of weather events on the natural environment, life and property can be increased in severity both as a consequence of decisions about the location, design and nature of settlement and land use, and as a potential consequence of future climate change. Although flooding cannot be wholly prevented, its adverse impacts can be avoided or reduced through good planning and management.

5.7.2 Climate change over the next few decades is likely to mean milder, wetter winters and hotter, drier summers in the UK, while sea levels will continue to rise. Within the lifetime of energy projects, these factors will lead to increased flood risks in areas susceptible to flooding, and to an increased risk of the occurrence of floods in some areas which are not currently thought of as being at risk. The applicant and the IPC should take account of the policy on climate change adaptation in Section 4.8.

5.7.3 The aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall.

Applicant's assessment

5.7.4 Applications for energy projects of 1 hectare or greater in Flood Zone 1 in England or Zone A in Wales[113] and all proposals for energy projects located in Flood Zones 2 and 3 in England or Zones B and C in Wales should be accompanied by a flood risk assessment (FRA). An FRA will also be required where an energy project less than 1 hectare may be subject to sources of flooding other than rivers and the sea (for example surface water), or where the EA, Internal Drainage Board or other body have indicated that there may be drainage problems. This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.

5.7.5 The minimum requirements for FRAs are that they should:

- be proportionate to the risk and appropriate to the scale, nature and location of the project;
- consider the risk of flooding arising from the project in addition to the risk of flooding to the project;

113 The Flood Zones refer to the probability of flooding from rivers, the sea and tidal sources and ignore the presence of existing defences, because these can be breached, overtopped and may not be in existence for the lifetime of the project. The definition of Flood Zones can be found in PPS25 (in England), TAN 15 (in Wales), or their relevant successor documents.

- take the impacts of climate change into account, clearly stating the development lifetime over which the assessment has been made;
- be undertaken by competent people, as early as possible in the process of preparing the proposal;
- consider both the potential adverse and beneficial effects of flood risk management infrastructure, including raised defences, flow channels, flood storage areas and other artificial features, together with the consequences of their failure;
- consider the vulnerability of those using the site, including arrangements for safe access;
- consider and quantify the different types of flooding (whether from natural and human sources and including joint and cumulative effects) and identify flood risk reduction measures, so that assessments are fit for the purpose of the decisions being made;
- consider the effects of a range of flooding events including extreme events on people, property, the natural and historic environment and river and coastal processes;
- include the assessment of the remaining (known as 'residual') risk after risk reduction measures have been taken into account and demonstrate that this is acceptable for the particular project;
- consider how the ability of water to soak into the ground may change with development, along with how the proposed layout of the project may affect drainage systems;
- consider if there is a need to be safe and remain operational during a worst case flood event over the development's lifetime; and
- be supported by appropriate data and information, including historical information on previous events.

5.7.6 Further guidance can be found in the Practice Guide which accompanies Planning Policy Statement 25 (PPS25), TAN15 for Wales or successor documents.

5.7.7 Applicants for projects which may be affected by, or may add to, flood risk should arrange pre-application discussions with the EA, and, where relevant, other bodies such as Internal Drainage Boards, sewerage undertakers, navigation authorities, highways authorities and reservoir owners and operators. Such discussions should identify the likelihood and possible extent and nature of the flood risk, help scope the FRA, and identify the information that will be required by the IPC to reach a decision on the application when it is submitted. The IPC should advise applicants to undertake these steps where they appear necessary, but have not yet been addressed.

5.7.8 If the EA has concerns about the proposal on flood risk grounds, the applicant should discuss these concerns with the EA and take all reasonable steps to agree ways in which the proposal might be amended, or additional information provided, which would satisfy the Environment Agency's concerns.

IPC decision making

5.7.9 In determining an application for development consent, the IPC should be satisfied that where relevant:

- the application is supported by an appropriate FRA;
- the Sequential Test has been applied as part of site selection;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- the proposal is in line with any relevant national and local flood risk management strategy[114];
- priority has been given to the use of sustainable drainage systems (SuDs) (as required in the next paragraph on National Standards); and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.

5.7.10 For construction work which has drainage implications, approval for the project's drainage system will form part of the development consent issued by the IPC. The IPC will therefore need to be satisfied that the proposed drainage system complies with any National Standards published by Ministers under Paragraph 5(1) of Schedule 3 to the Flood and Water Management Act 2010. In addition, the development consent order, or any associated planning obligations, will need to make provision for the adoption and maintenance of any SuDS, including any necessary access rights to property. The IPC should be satisfied that the most appropriate body is being given the responsibility for maintaining any SuDS, taking into account the nature and security of the infrastructure on the proposed site. The responsible body could include, for example, the applicant, the landowner, the relevant local authority, or another body, such as an Internal Drainage Board.

5.7.11 If the EA continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the IPC can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the EA to try to resolve the concerns.

5.7.12 The IPC should not consent development in Flood Zone 2 in England or Zone B in Wales unless it is satisfied that the sequential test requirements have been met. It should not consent development in Flood Zone 3 or Zone C unless it is satisfied that the Sequential and Exception Test requirements have been met. The technology-specific NPSs set out some exceptions to the application of the sequential test. However, when seeking development consent on a site allocated in a development plan through the application of the Sequential Test, informed by a strategic flood risk assessment, applicants need not apply the Sequential Test, but should apply the sequential approach to locating development within the site.

114 As provided for in section 9(1) of the Flood and Water Management Act 2010.

The Sequential Test

5.7.13 Preference should be given to locating projects in Flood Zone 1 in England or Zone A in Wales. If there is no reasonably available site in Flood Zone 1 or Zone A, then projects can be located in Flood Zone 2 or Zone B. If there is no reasonably available site[115] in Flood Zones 1 or 2 or Zones A & B, then nationally significant energy infrastructure projects can be located in Flood Zone 3 or Zone C subject to the Exception Test. Consideration of alternative sites should take account of the policy on alternatives set out in Section 4.4 above.

The Exception Test

5.7.14 If, following application of the sequential test, it is not possible, consistent with wider sustainability objectives, for the project to be located in zones of lower probability of flooding than Flood Zone 3 or Zone C, the Exception Test can be applied. The test provides a method of managing flood risk while still allowing necessary development to occur.

5.7.15 The Exception Test is only appropriate for use where the sequential test alone cannot deliver an acceptable site, taking into account the need for energy infrastructure to remain operational during floods. It may also be appropriate to use it where as a result of the alternative site(s) at lower risk of flooding being subject to national designations such as landscape, heritage and nature conservation designations, for example Areas of Outstanding Natural Beauty (AONBs), Sites of Special Scientific Interest (SSSIs) and World Heritage Sites (WHS) it would not be appropriate to require the development to be located on the alternative site(s).

5.7.16 All three elements of the test will have to be passed for development to be consented. For the Exception Test to be passed:

- it must be demonstrated that the project provides wider sustainability benefits to the community[116] that outweigh flood risk;
- the project should be on developable, previously developed land[117] or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously developed land subject to any exceptions set out in the technology-specific NPSs; and

115 When making the application, the applicant should justify with evidence what area of search has been used in examining whether there are reasonably available sites. This will allow the IPC to consider whether the Sequential Test has been met as part of site selection.

116 These would include the benefits (including need), for the infrastructure set out in Part 3.

117 Previously developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This definition includes defence buildings, but excludes (a) land that is or has been occupied by agricultural or forestry buildings (b) land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures (c) land in built up areas such as parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed (d) land that was previously developed but where the remains of the permanent surface structure or fixed surface structure have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings).

- a FRA must demonstrate that the project will be safe, without increasing flood risk elsewhere subject to the exception below and, where possible, will reduce flood risk overall.

5.7.17 Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the IPC may grant consent if it is satisfied that the increase in present and future flood risk can be mitigated to an acceptable level and taking account of the benefits of, including the need for, nationally significant energy infrastructure as set out in Part 3 above. In any such case the IPC should make clear how, in reaching its decision, it has weighed up the increased flood risk against the benefits of the project, taking account of the nature and degree of the risk, the future impacts on climate change, and advice provided by the EA and other relevant bodies.

Mitigation

5.7.18 To satisfactorily manage flood risk, arrangements are required to manage surface water and the impact of the natural water cycle on people and property.

5.7.19 In this NPS, the term Sustainable Drainage Systems (SuDS) refers to the whole range of sustainable approaches to surface water drainage management including, where appropriate:

- source control measures including rainwater recycling and drainage;
- infiltration devices to allow water to soak into the ground, that can include individual soakaways and communal facilities;
- filter strips and swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns;
- filter drains and porous pavements to allow rainwater and run-off to infiltrate into permeable material below ground and provide storage if needed;
- basins ponds and tanks to hold excess water after rain and allow controlled discharge that avoids flooding; and
- flood routes to carry and direct excess water through developments to minimise the impact of severe rainfall flooding.

5.7.20 Site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts.

5.7.21 The surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.

5.7.22 It may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site. There may be circumstances where it is appropriate for infiltration facilities or attenuation storage to be provided outside the project site, if necessary through the use of a planning obligation.

5.7.23 The sequential approach should be applied to the layout and design of the project. More vulnerable uses should be located on parts of the site at lower probability and residual risk of flooding. Applicants should seek opportunities to use open space for multiple purposes such as amenity, wildlife habitat and flood storage uses. Opportunities should be taken to lower flood risk by reducing the built footprint of previously developed sites and using SuDS.

5.7.24 Essential energy infrastructure which has to be located in flood risk areas should be designed to remain operational when floods occur. In addition, any energy projects proposed in Flood Zone 3b the Functional Floodplain (where water has to flow or be stored in times of flood), or Zone C2 in Wales, should only be permitted if the development will not result in a net loss of floodplain storage, and will not impede water flows.

5.7.25 The receipt of and response to warnings of floods is an essential element in the management of the residual risk of flooding. Flood Warning and evacuation plans should be in place for those areas at an identified risk of flooding. The applicant should take advice from the emergency services when producing an evacuation plan for a manned energy project as part of the FRA. Any emergency planning documents, flood warning and evacuation procedures that are required should be identified in the FRA.

5.8 Historic environment

Introduction

5.8.1 The construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.

5.8.2 The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, landscaped and planted or managed flora. Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest are called ”heritage assets”. A heritage asset may be any building, monument, site, place, area or landscape, or any combination of these. The sum of the heritage interests that a heritage asset holds is referred to as its significance[118].

5.8.3 Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are: a World Heritage Site; Scheduled Monument; Protected Wreck Site; Protected Military Remains, Listed Building; Registered Park and Garden; Registered Battlefield; Conservation Area; and Registered Historic Landscape (Wales only)[119].

5.8.4 There are heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance. These include:

- those that have yet to be formally assessed for designation;
- those that have been assessed as being designatable but which the Secretary of State has decided not to designate; and
- those that are incapable of being designated by virtue of being outside the scope of the Ancient Monuments and Archaeological Areas Act 1979.

5.8.5 The absence of designation for such heritage assets does not indicate lower significance. If the evidence before the IPC indicates to it that a non-designated heritage asset of the type described in 5.8.4 may be affected by the proposed development then the heritage asset should be considered subject to the same policy considerations as those that apply to designated heritage assets.

118 Save for the term “Designated Heritage Asset (covered in 5.8.3 above), these and other terms used in this section are defined in Annex 2 to PPS5, or any successor to it. The PPS5 Practice Guide contains guidance on their interpretation. Additionally, part of the purpose of designating National Parks is in order to protect their cultural heritage and the conservation of cultural heritage is an important consideration in all Areas of Outstanding Natural Beauty.

119 The issuing of licenses to undertake works on Protected Wreck Sites in English waters is the responsibility of the Secretary of State for Culture, Media and Sport and does not form part of development consents issued by the IPC. In Wales it is the responsibility of Welsh Ministers. The issuing of licences for Protected Military Remains is the responsibility of the Secretary of State for Defence .

5.8.6 The IPC should also consider the impacts on other non-designated heritage assets, as identified either through the development plan making process (local listing) or through the IPC's decision making process on the basis of clear evidence that the assets have a heritage significance that merits consideration in its decisions, even though those assets are of lesser value than designated heritage assets.

5.8.7 Impacts on heritage assets specific to types of infrastructure are included in the technology-specific NPSs.

Applicant's assessment

5.8.8 As part of the ES (see Section 4.2) the applicant should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset. As a minimum the applicant should have consulted the relevant Historic Environment Record[120] (or, where the development is in English or Welsh waters, English Heritage or Cadw) and assessed the heritage assets themselves using expertise where necessary according to the proposed development's impact.

5.8.9 Where a development site includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation. Where proposed development will affect the setting of a heritage asset, representative visualisations may be necessary to explain the impact.

5.8.10 The applicant should ensure that the extent of the impact of the proposed development on the significance of any heritage assets affected can be adequately understood from the application and supporting documents.

IPC decision making

5.8.11 In considering applications, the IPC should seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development, including by development affecting the setting of a heritage asset, taking account of:

- evidence provided with the application;
- any designation records;

120 Historic Environment Records (HERs) are information services maintained by local authorities and National Park Authorities with a view to providing access to resources relating to the historic environment of an area for public benefit and use. The County HERs for England are available from the Heritage Gateway website at http://www.heritagegateway.org.uk/Gateway/CHR/ For Wales, HERs can be obtained through the Historic Wales Portal at http://jura.rcahms.gov.uk/nms/start.jsp English Heritage and Cadw hold additional information about heritage assets in English or Welsh waters. This should also be consulted, where relevant.

- the Historic Environment Record, and similar sources of information[121];
- the heritage assets themselves;
- the outcome of consultations with interested parties; and
- where appropriate and when the need to understand the significance of the heritage asset demands it, expert advice.

5.8.12 In considering the impact of a proposed development on any heritage assets, the IPC should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development.

5.8.13 The IPC should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality[122]. The IPC should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use. The IPC should have regard to any relevant local authority development plans or local impact report on the proposed development in respect of the factors set out in footnote 122.

5.8.14 There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II listed building park or garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including Scheduled Monuments; registered battlefields; grade I and II* listed buildings; grade I and II* registered parks and gardens; and World Heritage Sites, should be wholly exceptional.

5.8.15 Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the

121 Guidance on the available sources of information can be found in PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide, March 2010, or any successor document.

122 This can be by virtue of:
- heritage assets having an influence on the character of the environment and an area's sense of place;
- heritage assets having a potential to be a catalyst for regeneration in an area, particularly through leisure, tourism and economic development;
- heritage assets being a stimulus to inspire new development of imaginative and high quality design;
- the re-use of existing fabric, minimising waste; and
- the mixed and flexible patterns of land use in historic areas that are likely to be, and remain, sustainable.

greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss. Where the application will lead to substantial harm to or total loss of significance of a designated heritage asset the IPC should refuse consent unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm.

5.8.16 Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. The policies set out in paragraphs 5.8.11 to 5.8.15 above apply to those elements that do contribute to the significance. When considering proposals the IPC should take into account the relative significance of the element affected and its contribution to the significance of the World Heritage Site or Conservation Area as a whole.

5.8.17 Where loss of significance of any heritage asset is justified on the merits of the new development, the IPC should consider imposing a condition on the consent or requiring the applicant to enter into an obligation that will prevent the loss occurring until it is reasonably certain that the relevant part of the development is to proceed.

5.8.18 When considering applications for development affecting the setting of a designated heritage asset, the IPC should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the IPC should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

Recording

5.8.19 A documentary record of our past is not as valuable as retaining the heritage asset and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given.

5.8.20 Where the loss of the whole or a material part of a heritage asset's significance is justified, the IPC should require the developer to record and advance understanding of the significance of the heritage asset before it is lost. The extent of the requirement should be proportionate to the nature and level of the asset's significance. Developers should be required to publish this evidence and deposit copies of the reports with the relevant Historic Environment Record. They should also be required to deposit the archive generated in a local museum or other public depository willing to receive it.

5.8.21 Where appropriate, the IPC should impose requirements on a consent that such work is carried out in a timely manner in accordance with a written scheme of investigation that meets the requirements of this Section and has been agreed in writing with the relevant Local Authority (where the development is in English waters, the Marine Management Organisation and English Heritage, or where it is in Welsh waters, the MMO and Cadw)) and that the completion of the exercise is properly secured[123].

123 Guidance on the contents of a written scheme of investigation is set out in the Practice Guide to PPS5.

5.8.22 Where the IPC considers there to be a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the IPC should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

5.9 Landscape and visual

Introduction

5.9.1 The landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. In this context, references to landscape should be taken as covering seascape and townscape where appropriate.

5.9.2 Among the features of energy infrastructure which are common to a number of different technologies, cooling towers and exhaust stacks and their plumes have the most obvious impact on landscape and visual amenity for thermal combustion generating stations[124]. Some natural draught cooling towers may be up 200 metres, although this would be exceptional. Visual impacts may be not just the physical structures but also visible steam plumes from cooling towers.

5.9.3 Other types of cooling system, for example direct throughput where water is abstracted, used for cooling then returned to source, or air-cooled condensers, will have less visible impacts as the structures are considerably lower than natural draught cooling towers and exhibit no visible steam plumes. Further, modern hybrid cooling systems – for example mechanical draught – do not generally exhibit visible steam plumes except in exceptional adverse weather conditions. These systems are normally considered as the "Best Available Techniques" (BAT). However there may be losses of electricity output owing to the need for energy to operate hybrid cooling or air-cooled condenser systems.

5.9.4 When considering visual impacts of thermal combustion generating stations, the IPC should presume that the adverse impacts would be less if a hybrid or direct cooling system is used and that developers will use BAT. The IPC should therefore expect the applicant to justify BAT for the use of a cooling system that involves visible steam plumes or has a high visible structure, such as a natural draught cooling tower. It should be satisfied that the application of modern hybrid cooling technology or other technologies is not reasonably practicable before giving consent to a development with natural draught cooling towers.

Applicant's assessment

5.9.5 The applicant should carry out a landscape and visual assessment and report it in the ES. (See Section 4.2) A number of guides have been produced to assist in addressing landscape issues[125]. The landscape and

124 Cooling towers and exhaust stacks can form part of projects covered by EN-2, EN-3 and EN-6. Other features of energy infrastructure which can be similarly prominent are associated with particular technologies and so are considered in the technology-specific NPSs (see e.g. Section 2.8 of EN-5).

125 Landscape Institute and Institute of Environmental Management and Assessment (2002, 2nd edition): *Guidelines for Landscape and Visual Impact Assessment*; and Land Use Consultants (2002): *Landscape Character Assessment – Guidance for England and Scotland*: Countryside Council for Wales/Cadw (2007) *Guide to Good Practice on Using the Register of Landscapes of Historic Interest in Wales in the Planning and Development Process*.

visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales.

5.9.6 The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character.

5.9.7 The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation.

IPC decision making

Landscape impact

5.9.8 Landscape effects depend on the existing character of the local landscape, its current quality, how highly it is valued and its capacity to accommodate change. All of these factors need to be considered in judging the impact of a project on landscape. Virtually all nationally significant energy infrastructure projects will have effects on the landscape. Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.

Development proposed within nationally designated landscapes

5.9.9 National Parks, the Broads and AONBs have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the IPC should have regard to in its decisions[126]. The conservation of the natural beauty of the landscape and countryside should be given substantial weight by the IPC in deciding on applications for development consent in these areas.

5.9.10 Nevertheless, the IPC may grant development consent in these areas in exceptional circumstances. The development should be demonstrated to be

126 For an explanation of the duties which will apply to the IPC, see 'Duties on relevant authorities to have regard to the purposes of National Parks, AONBs and the Norfolk and Suffolk Broads' at http://www.defra.gov.uk/rural/documents/protected/npaonb-duties-guide.pdf

in the public interest[127] and consideration of such applications should include an assessment of:

- the need for the development, including in terms of national considerations[128], and the impact of consenting or not consenting it upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area or meeting the need for it in some other way, taking account of the policy on alternatives set out in Section 4.4; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

5.9.11 The IPC should ensure that any projects consented in these designated areas should be carried out to high environmental standards, including through the application of appropriate requirements where necessary.

Developments outside nationally designated areas which might affect them

5.9.12 The duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational, and other relevant constraints. This should include projects in England which may have impacts on National Scenic Areas in Scotland.

5.9.13 The fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.

Developments in other areas

5.9.14 Outside nationally designated areas, there are local landscapes that may be highly valued locally and protected by local designation. Where a local development document in England or a local development plan in Wales has policies based on landscape character assessment, these should be paid particular attention. However, local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

5.9.15 The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The IPC should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

5.9.16 In reaching a judgment, the IPC should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the IPC considers reasonable.

127 PPS7 applies a public interest test for major development in these designated areas.
128 National considerations should be understood to include the national need for the infrastructure as set out in Part 3 of this NPS and the contribution of the infrastructure to the national economy.

5.9.17 The IPC should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by reasonable mitigation.

Visual impact

5.9.18 All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The IPC will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project. Coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast.

5.9.19 It may be helpful for applicants to draw attention, in the supporting evidence to their applications, to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors. This may assist the IPC in judging the weight it should give to the assessed visual impacts of the proposed development.

5.9.20 The IPC should ensure applicants have taken into account the landscape and visual impacts of visible plumes from chimney stacks and/or the cooling assembly. It may need to attach requirements to the consent requiring the incorporation of particular design details that are in keeping with the statutory and technical requirements.

Mitigation

5.9.21 Reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function – for example, the electricity generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. In these circumstances, the IPC may decide that the benefits of the mitigation to reduce the landscape and/or visual effects outweigh the marginal loss of function.

5.9.22 Within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration.

5.9.23 Depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site. For example, filling in gaps in existing tree and hedge lines would mitigate the impact when viewed from a more distant vista.

5.10 Land use including open space, green infrastructure & Green Belt

Introduction

5.10.1 An energy infrastructure project will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development. Given the likely locations of energy infrastructure projects there may be particular effects on open space[129] including green infrastructure[130].

5.10.2 The Government's policy is to ensure there is adequate provision of high quality open space (including green infrastructure) and sports and recreation facilities to meet the needs of local communities. Open spaces, sports and recreational facilities all help to underpin people's quality of life and have a vital role to play in promoting healthy living. Green infrastructure in particular will also play an increasingly important role in mitigating or adapting to the impacts of climate change.

5.10.3 Although the re-use of previously developed land for new development can make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used, it may not be possible for many forms of energy infrastructure.

5.10.4 Green Belts, defined in a local authority's development plan[131], are situated around certain cities and large built-up areas. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belt land can play a positive role in providing access to sport and recreation facilities or access to the open countryside. For further information on the purposes of Green Belt policy see PPG2 or any successor to it.

Applicant's assessment

5.10.5 The ES (see Section 4.2) should identify existing and proposed[132] land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan.

5.10.6 Applicants will need to consult the local community on their proposals to build on open space, sports or recreational buildings and land. Taking account of the consultations, applicants should consider providing new or additional open space including green infrastructure, sport or recreation

129 Open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. However, in applying the policies in this section, open space should be taken to mean all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.

130 Green infrastructure is a network of multi-functional green spaces, both new and existing, both rural and urban, which supports the natural and ecological processes and is integral to the health and quality of life of sustainable communities.

131 Or else so designated under The Green Belt (London and Home Counties) Act 1938.

132 For example, where a planning application has been submitted.

facilities, to substitute for any losses as a result of their proposal. Applicants should use any up-to-date local authority assessment or, if there is none, provide an independent assessment to show whether the existing open space, sports and recreational buildings and land is surplus to requirements.

5.10.7 During any pre-application discussions with the applicant the LPA should identify any concerns it has about the impacts of the application on land use, having regard to the development plan and relevant applications and including, where relevant, whether it agrees with any independent assessment that the land is surplus to requirements.

5.10.8 Applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. Applicants should also identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed. For developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination.

5.10.9 Applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.

5.10.10 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and if it is, whether their proposal may be inappropriate development within the meaning of Green Belt policy (see paragraph 5.10.17 below).

5.10.11 However, infilling or redevelopment of major developed sites in the Green Belt, if identified as such by the local planning authority, may be suitable for energy infrastructure. It may help to secure jobs and prosperity without further prejudicing the Green Belt or offer the opportunity for environmental improvement. Applicants should refer to relevant criteria[133] on such developments in Green Belts.

5.10.12 An applicant may be able to demonstrate that a particular type of energy infrastructure, such as an underground pipeline, which, in Green Belt policy terms, may be considered as an “engineering operation” rather than a building is not in the circumstances of the application inappropriate development. It may also be possible for an applicant to show that the physical characteristics of a proposed overhead line development or wind farm are such that it has no adverse effects which conflict with the fundamental purposes of Green Belt designation.

133 See Annex C to Planning Policy Guidance 2: Green belts, or any successor to it.

IPC decision making

5.10.13 Where the project conflicts with a proposal in a development plan, the IPC should take account of the stage which the development plan document in England or local development plan in Wales has reached in deciding what weight to give to the plan for the purposes of determining the planning significance of what is replaced, prevented or precluded. The closer the development plan document in England or local development plan in Wales is to being adopted by the LPA, the greater weight which can be attached to it.

5.10.14 The IPC should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the IPC determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities. The loss of playing fields should only be allowed where applicants can demonstrate that they will be replaced with facilities of equivalent or better quantity or quality in a suitable location.

5.10.15 The IPC should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. It should give little weight to the loss of poorer quality agricultural land (in grades 3b, 4 and 5), except in areas (such as uplands) where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.

5.10.16 In considering the impact on maintaining coastal recreation sites and features, the IPC should expect applicants to have taken advantage of opportunities to maintain and enhance access to the coast. In doing so the IPC should consider the implications for development of the creation of a continuous signed and managed route around the coast, as provided for in the Marine and Coastal Access Act 2009.

5.10.17 When located in the Green Belt, energy infrastructure projects are likely to comprise 'inappropriate development'[134]. Inappropriate development is by definition harmful to the Green Belt and the general planning policy presumption against it applies with equal force in relation to major energy infrastructure projects. The IPC will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations. In view of the presumption against inappropriate development, the IPC will attach substantial weight to the harm to the Green Belt when considering any application for such development while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation.

134 Referred to in section 3 of PPG2: Green Belts.

5.10.18 In Wales, 'green wedges' may be designated locally[135]. These enjoy the same protection as Green Belt in Wales and the IPC should adopt a similar approach. Green wedges give the same protection as Green Belt in Wales. Green wedges do not convey the same level of permanence of a Green Belt and should be reviewed by the local authority as part of the development plan review process. As with Green Belt, there is a presumption against inappropriate development and the IPC should assess whether there are very special circumstances to justify any proposed inappropriate development.

Mitigation

5.10.19 Although in the case of much energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some at least of that use can still be retained post project construction) applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project.

5.10.20 Where green infrastructure is affected, the IPC should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained in the vicinity of the development and that any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space including appropriate access to new coastal access routes.

5.10.21 The IPC should also consider whether mitigation of any adverse effects on green infrastructure and other forms of open space is adequately provided for by means of any planning obligations, for example exchange land and provide for appropriate management and maintenance agreements. Any exchange land should be at least as good in terms of size, usefulness, attractiveness and quality and, where possible, at least as accessible. Alternatively, where Sections 131 and 132 of the Planning Act 2008 apply, replacement land provided under those sections will need to conform to the requirements of those sections.

5.10.22 Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the IPC should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources.

5.10.23 Where a project has a sterilising effect on land use (for example in some cases under transmission lines) there may be scope for this to be mitigated through, for example, using or incorporating the land for nature conservation or wildlife corridors or for parking and storage in employment areas.

5.10.24 Rights of way, National Trails and other rights of access to land are important recreational facilities for example for walkers, cyclists and horse riders. The IPC should expect applicants to take appropriate mitigation measures to address adverse effects on coastal access, National Trails and other rights of way. Where this is not the case the IPC should consider what appropriate mitigation requirements might be attached to any grant of development consent.

135 See section 2.6 of Planning Policy Wales.

5.11 Noise and vibration

Introduction

5.11.1 Excessive noise can have wide-ranging impacts on the quality of human life, health (for example owing to annoyance or sleep disturbance) and use and enjoyment of areas of value such as quiet places and areas with high landscape quality. The Government's policy on noise is set out in the Noise Policy Statement for England[136]. It promotes good health and good quality of life through effective noise management. Similar considerations apply to vibration, which can also cause damage to buildings. In this section, in line with current legislation, references to "noise" below apply equally to assessment of impacts of vibration.

5.11.2 Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity. Noise effects of the proposed development on ecological receptors should be assessed by the IPC in accordance with the Biodiversity and Geological Conservation section of this NPS.

5.11.3 Factors that will determine the likely noise impact include:

- the inherent operational noise from the proposed development, and its characteristics;
- the proximity of the proposed development to noise sensitive premises (including residential properties, schools and hospitals) and noise sensitive areas (including certain parks and open spaces);
- the proximity of the proposed development to quiet places and other areas that are particularly valued for their acoustic environment or landscape quality; and
- the proximity of the proposed development to designated sites where noise may have an adverse impact on protected species or other wildlife.

Applicant's assessment

5.11.4 Where noise impacts are likely to arise from the proposed development, the applicant should include the following in the noise assessment:

- a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise;
- identification of noise sensitive premises and noise sensitive areas that may be affected;
- the characteristics of the existing noise environment;
- a prediction of how the noise environment will change with the proposed development;
- in the shorter term such as during the construction period;
- in the longer term during the operating life of the infrastructure;

136 http://www.defra.gov.uk/environment/quality/noise/npse/

- at particular times of the day, evening and night as appropriate.
- an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas; and
- measures to be employed in mitigating noise.

The nature and extent of the noise assessment should be proportionate to the likely noise impact.

5.11.5 The noise impact of ancillary activities associated with the development, such as increased road and rail traffic movements, or other forms of transportation, should also be considered.

5.11.6 Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards[137] and other guidance. Further information on assessment of particular noise sources may be contained in the technology-specific NPSs. In particular, for renewables (EN-3) and electricity networks (EN-5) there is assessment guidance for specific features of those technologies. For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards[138] and other guidance which also give examples of mitigation strategies.

5.11.7 The applicant should consult EA and Natural England (NE), or the Countryside Council for Wales (CCW), as necessary and in particular with regard to assessment of noise on protected species or other wildlife. The results of any noise surveys and predictions may inform the ecological assessment. The seasonality of potentially affected species in nearby sites may also need to be taken into account.

IPC decision making

5.11.8 The project should demonstrate good design through selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission.

5.11.9 The IPC should not grant development consent unless it is satisfied that the proposals will meet the following aims:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

137 For example BS 4142: BS 6472 and BS 8233.
138 For example BS 5228.

5.11.10 When preparing the development consent order, the IPC should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that noise levels do not exceed any limits specified in the development consent.

Mitigation

5.11.11 The IPC should consider whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the project application. In doing so the IPC may wish to impose requirements. Any such requirements should take account of the guidance set out in Circular 11/95 (see Section 4.1) or any successor to it.

5.11.12 Mitigation measures may include one or more of the following:

- **engineering**: reduction of noise at point of generation and containment of noise generated;
- **lay-out**: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural barriers, or other buildings; and
- **administrative**: restricting activities allowed on the site; specifying acceptable noise limits; and taking into account seasonality of wildlife in nearby designated sites.

5.11.13 In certain situations, and only when all other forms of noise mitigation have been exhausted, it may be appropriate for the IPC to consider requiring noise mitigation through improved sound insulation to dwellings.

5.12 Socio-economic

Introduction

5.12.1 The construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels. Parts 2 and 3 of this NPS set out some of the national level socio-economic impacts.

Applicant's assessment

5.12.2 Where the project is likely to have socio-economic impacts at local or regional levels, the applicant should undertake and include in their application an assessment of these impacts as part of the ES (see Section 4.2).

5.12.3 This assessment should consider all relevant socio-economic impacts, which may include:

- the creation of jobs and training opportunities;
- the provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;
- effects on tourism;
- the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure. This could change the local population dynamics and could alter the demand for services and facilities in the settlements nearest to the construction work (including community facilities and physical infrastructure such as energy, water, transport and waste). There could also be effects on social cohesion depending on how populations and service provision change as a result of the development; and
- cumulative effects – if development consent were to be granted to for a number of projects within a region and these were developed in a similar timeframe, there could be some short-term negative effects, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region.

5.12.4 Applicants should describe the existing socio-economic conditions in the areas surrounding the proposed development and should also refer to how the development's socio-economic impacts correlate with local planning policies.

5.12.5 Socio-economic impacts may be linked to other impacts, for example the visual impact of a development is considered in Section 5.9 but may also have an impact on tourism and local businesses.

IPC decision making

5.12.6 The IPC should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the IPC considers to be both relevant and important to its decision.

5.12.7 The IPC may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).

5.12.8 The IPC should consider any relevant positive provisions the developer has made or is proposing to make to mitigate impacts (for example through planning obligations) and any legacy benefits that may arise as well as any options for phasing development in relation to the socio-economic impacts.

Mitigation

5.12.9 The IPC should consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development. For example, high quality design can improve the visual and environmental experience for visitors and the local community alike.

5.13 Traffic and transport

Introduction

5.13.1 The transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, for example through increased congestion. Impacts may include economic, social and environmental effects. Environmental impacts may result particularly from increases in noise and emissions from road transport. Disturbance caused by traffic and abnormal loads generated during the construction phase will depend on the scale and type of the proposal.

5.13.2 The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development as set out in Section 2.2 of this NPS.

Applicant's assessment

5.13.3 If a project is likely to have significant transport implications, the applicant's ES (see Section 4.2) should include a transport assessment, using the NATA/WebTAG[139] methodology stipulated in Department for Transport guidance[140], or any successor to such methodology. Applicants should consult the Highways Agency and Highways Authorities as appropriate on the assessment and mitigation.

5.13.4 Where appropriate, the applicant should prepare a travel plan including demand management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal and to mitigate transport impacts.

5.13.5 If additional transport infrastructure is proposed, applicants should discuss with network providers the possibility of co-funding by Government for any third-party benefits. Guidance has been issued[141] in England[142] which explains the circumstances where this may be possible, although the Government cannot guarantee in advance that funding will be available for any given uncommitted scheme at any specified time.

IPC decision making

5.13.6 A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and the IPC should therefore ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the IPC should consider requirements to mitigate

139 WelTag in Wales.
140 Guidance on transport assessments is at http://www.dft.gov.uk/pgr/regional/transportassessments/guidanceonta and (for Wales) at: http://wales.gov.uk/topics/transport/publications/weltag/?lang=en
141 http://www.dft.gov.uk/pgr/regional/fundingtransportinfrastructure/
142 Please note that no separate guidance has been issued for Wales. The Welsh Assembly Government discusses funding arrangements with developers on a project-specific basis.

adverse impacts on transport networks arising from the development, as set out below. Applicants may also be willing to enter into planning obligations for funding infrastructure and otherwise mitigating adverse impacts.

5.13.7 Provided that the applicant is willing to enter into planning obligations or requirements can be imposed to mitigate transport impacts identified in the NATA/WebTAG transport assessment, with attribution of costs calculated in accordance with the Department for Transport's guidance, then development consent should not be withheld, and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure.

Mitigation

5.13.8 Where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure to deal with remaining transport impacts.

5.13.9 The IPC should have regard to the cost-effectiveness of demand management measures compared to new transport infrastructure, as well as the aim to secure more sustainable patterns of transport development when considering mitigation measures.

5.13.10 Water-borne or rail transport is preferred over road transport at all stages of the project, where cost-effective.

5.13.11 The IPC may attach requirements to a consent where there is likely to be substantial HGV traffic that:

- control numbers of HGV movements to and from the site in a specified period during its construction and possibly on the routing of such movements;
- make sufficient provision for HGV parking, either on the site or at dedicated facilities elsewhere, to avoid 'overspill' parking on public roads, prolonged queuing on approach roads and uncontrolled on-street HGV parking in normal operating conditions; and
- ensure satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with network providers and the responsible police force.

5.13.12 If an applicant suggests that the costs of meeting any obligations or requirements would make the proposal economically unviable this should not in itself justify the relaxation by the IPC of any obligations or requirements needed to secure the mitigation.

5.14 Waste management

Introduction

5.14.1 Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible, waste management regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.

5.14.2 Sustainable waste management is implemented through the "waste hierarchy", which sets out the priorities that must be applied when managing waste[143]:

a) prevention;

b) preparing for reuse;

c) recycling;

d) other recovery, including energy recovery; and

e) disposal.

5.14.3 Disposal of waste should only be considered where other waste management options are not available or where it is the best overall environmental outcome.

5.14.4 All large infrastructure projects are likely to generate hazardous and non-hazardous waste. The EA's Environmental Permitting (EP) regime incorporates operational waste management requirements for certain activities. When an applicant applies to the EA for an Environmental Permit, the EA will require the application to demonstrate that processes are in place to meet all relevant EP requirements.

5.14.5 Specific considerations with regard to radioactive waste are set out in section 2.11 and Annex B of EN-6. This section will apply to non-radioactive waste for nuclear infrastructure as for other energy infrastructure.

Applicant's assessment

5.14.6 The applicant should set out the arrangements that are proposed for managing any waste produced and prepare a Site Waste Management Plan. The arrangements described and Management Plan should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.

143 The Waste Hierarchy is set out in Article 16 of the Waste Framework Directive 2008 and The Waste (England and Wales) Regulations 2011.

IPC decision making

5.14.7 The IPC should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development. It should be satisfied that:

- any such waste will be properly managed, both on-site and off-site;
- the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area; and
- adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where that is the best overall environmental outcome.

5.14.8 Where necessary, the IPC should use requirements or obligations to ensure that appropriate measures for waste management are applied. The IPC may wish to include a condition on revision of waste management plans at reasonable intervals when giving consent.

5.14.9 Where the project will be subject to the EP regime, waste management arrangements during operations will be covered by the permit and the considerations set out in Section 4.10 will apply.

5.15 Water quality and resources

Introduction

5.15.1 Infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters[144] and coastal waters. During the construction, operation and decommissioning phases, it can lead to increased demand for water, involve discharges to water and cause adverse ecological effects resulting from physical modifications to the water environment. There may also be an increased risk of spills and leaks of pollutants to the water environment. These effects could lead to adverse impacts on health or on protected species and habitats (see Section 4.3 and Section 4.18) and could, in particular, result in surface waters, groundwaters or protected areas[145] failing to meet environmental objectives established under the Water Framework Directive[146].

Applicant's assessment

5.15.2 Where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment as part of the ES or equivalent. (See Section 4.2.)

5.15.3 The ES should in particular describe:

- the existing quality of waters affected by the proposed project and the impacts of the proposed project on water quality, noting any relevant existing discharges, proposed new discharges and proposed changes to discharges;
- existing water resources[147] affected by the proposed project and the impacts of the proposed project on water resources, noting any relevant existing abstraction rates, proposed new abstraction rates and proposed changes to abstraction rates (including any impact on or use of mains supplies and reference to Catchment Abstraction Management Strategies);
- existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and

144 As defined in the Water Framework Directive (2000/60/EC), transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

145 Protected areas are areas which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.

146 2000/60/EC.

147 See EA document *Water resources strategy for England and Wales: water for people and the environment (2009)*.

- any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive and source protection zones (SPZs) around potable groundwater abstractions.

IPC decision making

5.15.4 Activities that discharge to the water environment are subject to pollution control. The considerations set out in Section 4.10 on the interface between planning and pollution control therefore apply. These considerations will also apply in an analogous way to the abstraction licensing regime regulating activities that take water from the water environment, and to the control regimes relating to works to, and structures in, on, or under a controlled water[148].

5.15.5 The IPC will generally need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the Water Framework Directive.

5.15.6 The IPC should satisfy itself that a proposal has regard to the River Basin Management Plans and meets the requirements of the Water Framework Directive (including Article 4.7) and its daughter directives, including those on priority substances and groundwater. The specific objectives for particular river basins are set out in River Basin Management Plans. The IPC should also consider the interactions of the proposed project with other plans such as Water Resources Management Plans and Shoreline/Estuary Management Plans.

5.15.7 The IPC should consider whether appropriate requirements should be attached to any development consent and/or planning obligations entered into to mitigate adverse effects on the water environment.

Mitigation

5.15.8 The IPC should consider whether mitigation measures are needed over and above any which may form part of the project application. (See Sections 4.2 and 5.1.) A construction management plan may help codify mitigation at that stage.

5.15.9 The risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice. For example, designated areas for storage and unloading, with appropriate drainage facilities, should be clearly marked.

5.15.10 The impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling.

148 Controlled waters include all watercourses, lakes, lochs, coastal waters, and water contained in underground strata.

Glossary

AoS	Appraisal of Sustainability
Associated development	Development associated with the NSIP as defined in Section 115 of the Planning Act 2008
BAT	Best Available Technique; should normally be used and, if not, reasons for not using BAT given.
Biomass	Material of recent biological origin derived from plant or animal matter
Birds Directive	Council Directive 2009/147/EC on the conservation of wild birds
CCGT	Combined Cycle Gas Turbine
CHP	Combined Heat and Power
CCS	Carbon Capture and Storage
CCR	Carbon Capture Readiness
CLG	Department for Communities and Local Government
Co-firing	Use of two fuel types (e.g. coal and biomass) in a thermal generating station (*qv*)
COMAH	Control of Major Accident Hazards
DECC	Department of Energy and Climate Change
Defra	Department of Environment, Food and Rural Affairs
DfT	Department for Transport
“Dispatchable” power	Sources of electricity that can be supplied (turned on or off) by operators at the request of power grid operators, in contrast to intermittent power sources that cannot be similarly controlled.
DNO	Distribution Network Operator.
EfW	Energy from Waste – combustion of waste material to provide electricity and/or heat.
EIA	Environmental Impact Assessment.
ES	Environmental Statement.
FEPA	Food and Environmental Protection Act 1985: licences for operations in England or waters adjacent to England are issued under this Act, although they will be replaced by marine licences under the Marine and Coastal Access Act 2008

Generic Impacts	Potential impacts of any energy infrastructure projects, the general policy for consideration of which is set out in Part 5 of EN-1
Habitats Directive	The European Directive (92/43/EEC) on the Conservation of Natural Habitats and Wild Flora and Fauna
Habitats And Species Regulations	The Conservation of Habitats and Species Regulations 2010(SI2010/490), which implement the Habitats Directive and relevant parts of the Birds Directive
HRA	Habitats Regulations Assessment
LCPD	Large Combustion Plant Directive: sets emission limits of certain pollutants from industrial combustion plants with a thermal input equal to or greater than 50 MW
Nameplate capacity	The rated output of the unit/station at the generator, and therefore includes station own use (parasitic power), and any other consumption/loss prior to despatch to the grid, local network, industrial site or similar transmission system
MMO	Marine Maritime Organisation: set up under the Marine and Coastal Access Act 2008
MW	Megawatt = one million watts
NETSO	National Electricity System Operator
NSIP	Nationally significant infrastructure project
OHL	Overhead electricity line carried on poles or pylons
pfa	Pulverised fuel ash; fine ash from the use of finely crushed coal in fossil fuel generating stations
PPG/PPs	Planning Policy Guidance/Planning Policy Statement: issued by CLG to inform Local Authorities on planning policy, primarily for application to local development plans. Local Authorities should also have regard to PPSs when considering individual planning applications
Substation	An assembly of equipment in an electric power system through which electric energy is passed for transmission, transformation, distribution, or switching
Technical feasibility	Whether it is possible to build and operate a proposed development according to its design parameters
Thermal Generating Station	Electricity generating station that uses a heat source (combustion of fuel or nuclear) to create steam that drives a generating turbine or which uses gas directly to drive a generating turbine
WID	Waste Incineration Directive: sets specific emission limits for waste combustion plant

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THE EUROPEAN UNION

EN

Council conclusions on Energy 2020: A Strategy for competitive, sustainable and secure energy

3072th TRANSPORT, TELECOMMUNICATIONS and ENERGY Council meeting
Brussels, 28 February 2011

The Council adopted the following conclusions:

"The Council,

In the light of the Commission Communications "Energy 2020: A strategy for competitive, sustainable and secure energy" (16096/10) and "Energy infrastructure priorities for 2020 and beyond" (16302/10),

RECALLING the conclusions adopted by the European Council on 4 February 2011 (doc. EUCO 2/11)

UNDERLINES the importance of a comprehensive energy strategy to ensure EU citizens, industry and economy with safe, secure, sustainable and affordable energy, contributing to European competitiveness, and RECOGNISES in this respect the importance of a fully integrated energy market and energy infrastructure,

STRESSES that:

– the Strategy Energy 2020 should contribute to promoting a more energy and resource-efficient, sustainable, low carbon, secure, interconnected and competitive Europe, to the benefit of all consumers (households as well as businesses);

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- the Strategy should be consistent with and support overriding EU priorities such as fighting climate change, protection of the environment, security of supply and competitiveness;
- the Strategy should be put in the longer 2050 energy and low carbon [1] policy perspective
- energy policies and initiatives developed within the framework of the Strategy should have clear added-value and be proportionate;
- a stable legislative framework and transparent markets are vital for investors;
- the Strategy should contribute to ensuring a strong and consistent EU position in external energy cooperation;
- these conclusions do not prejudge the future negotiations of the next Multiannual Financial Framework

and DEFINES the following short, medium and long term priorities for the Strategy:

I. Short and medium term Priorities

1. Internal energy market

a. The timely and full implementation of the third Internal Energy Market legislative package, including the regulatory work called for by the package, is a prerequisite for the success of the Strategy.

b. Cooperation between national regulators, notably in the framework of ACER, is essential in this respect and should be strengthened.

c. While the third Internal Energy Market package will further strengthen consumers' position, non-legislative initiatives in support of consumers' rights might be required to ensure that consumers make the most out of the internal market, as noted in the Council conclusions "An Energy policy for consumers" of 3 December 2010,.

d. This implementation will be further facilitated by making full use of strengthened regional cooperation, including through market coupling.

2. Energy efficiency

a. The key role to be played by energy efficiency with respect to all the objectives of the Strategy calls for the early submission of a comprehensive and ambitious new Energy Efficiency Plan (EEP 2011) as well as for adequate support to concrete energy efficiency activities at national as well as EU level. Focusing on actions where the EU level has an added-value the EEP 2011 should:

- be developed in consistency and synergy with the Flagship initiative "Resource-efficient Europe" and its related initiatives in line with the indicative EU 20 % energy efficiency target for 2020 while taking due account of Member States' different starting points, national circumstances and potentials;
- build on lessons learned from the 2006 EEAP and focus:
  i. on measures enhancing energy efficiency, in a cost-efficient way, throughout the energy system, from production and transmission to distribution and end-use, and
  ii. on the role of the public sector, including public transport and its infrastructure, both as user of energy-efficient solutions and as promoter of energy efficiency. In this respect energy efficiency standards should be included in public procurement for relevant public buildings and services;

[1] Reference to "low carbon" throughout these conclusions should be understood as not excluding energy technologies that while using carbon-based fuel have low carbon emissions.

- in this context, address specific sectors with potential for further actions, in particular the building, transport, and industry sectors while avoiding sectoral targets;
- propose an ambitious implementation of follow-up legislation under the eco-design and labelling Directives in the period 2011-2015;
- foresee the revision of eco-design and energy labelling regulations already in place where justified in order to move towards an approach with minimum standards based on recent technological developments and subject to an assessment of the potential scope and added value of such revision;
- foresee the revision of the Energy Services Directive as well as of the Directive on Combined Heat and Power. The possible revision of the Energy Service Directive should take full account of the results of its mid-term evaluation and impact assessment;
- Integrate the role of consumers in energy-demand management and identify how the demand for energy-efficient solutions can be incentivised. In this respect the Council takes note of the Commission's intention to submit a proposal for the revision of the Directive on Energy Taxation.

b. The implementation of the EEP 2011 and related instruments across Member States would be more easily achieved if a common, easy and practicable methodology for monitoring the development of energy efficiency could be developed. The setting of any additional targets is not justified at present. The implementation of the EU energy efficiency target will be reviewed by 2013 and further measures considered if necessary.

c. Timely and full implementation of relevant legislation (eco-design, labelling, energy performance of buildings, etc.) should be ensured, taking due account of Member States` role with respect to enforcement and the Commission's role in bringing forward further ambitions and dynamic product standards.

d. Given the importance of energy efficiency the issue of the financial support to the implementation of the EEP 2011 should be addressed.

3. Infrastructure

a. The primary role of the market and its operators in the development and financing of infrastructure projects (e.g. networks, storage, LNG facilities) should be maintained. Full and proper implementation of the third internal market package will be the main driver of the necessary infrastructure investment and will support it. Additional measures should therefore be complementary to the means provided by this package.

b. ENTSO-E and ENTSO-G by establishing ten-year network development plans (TYNDP) have important roles to play for the development of European energy infrastructure.

c. Without prejudice to the selection of individual projects or completion of ongoing projects:

- The areas (smart grids) and corridors for electricity (offshore grid in the Northern Seas and its connections to onshore grids and storage, interconnections in South Western)Europe, connections in Central Eastern and South- Eastern Europe, BEMIP), gas (BEMIP, Southern Corridor, North-South Corridors in Central Eastern and in Western Europe) and oil (Central Eastern European pipelines), identified by the Commission Communication "Energy infrastructure priorities for 2020 and beyond", are considered as priorities;

- The Commission is invited to develop, in close cooperation with Member States and all the relevant stakeholders, a comprehensive analysis for each of these priorities, identifying obstacles to project completion, taking into account bottlenecks with cross border impacts and where appropriate suggesting action plans for their completion;
- A clear methodology for project selection, on the basis of transparent and objective criteria such as contribution to the 2020 objectives, to market integration and to security of supply should be developed in close cooperation with Member States and all the relevant stakeholders and taking into account the characteristics of national and regional electricity and gas markets. The list of priority projects should also be reviewed on a regular basis.

d. Future infrastructure and non-binding TYNDPs should be consistent, taking due account of the objectives of diversification of sources, routes and counterparts, notably the increased role of energy from renewable sources, and of supply adequacy.

e. Regional cooperation should be strengthened to deliver on the identified priorities and further contribute to the completion of the internal energy market, buildings on existing and possible future regional initiatives as well as on regional cooperation fora.

f. It should be ensured that no Member State remains isolated from the European gas and electricity networks after 2015 or see its energy security jeopardized by lack of the appropriate connections. Regional initiatives and identification of adequate projects should contribute to that. In this context due attention should be paid to the part of the infrastructure within Member States having a role in cross-border transmission as well as to the situation of islands.

g. The Commission is invited to present, in autumn 2011, an initiative covering the main areas of action foreseen in the "Communication on energy infrastructure priorities for 2020 and beyond". This initiative should, in particular, aim at:
   - Streamlining and improving authorisation procedures, facilitating public acceptance of investment in infrastructure and the improvement, speeding up and coordination of planning and consultation procedures, while respecting national competences of Member States and taking due account of their varying administrative practices;
   - Creating the necessary framework and incentives for delivering infrastructure projects under the identified priorities, notably with regard to cross-border allocation of costs and benefits and their reflection in tariffs. The definition of this framework should be done following a careful assessment of what can already be achieved under the existing internal market legislation, of existing mechanisms such as the inter-TSO compensation mechanism, and taking full account of investments completed previously.

h. The bulk of the important financing costs for infrastructure investments will have to be delivered by the market, with costs recovered through tariffs. It is vital to promote a regulatory framework attractive to investment. Particular attention should be given to the setting of tariffs in a transparent and non-discriminatory manner at levels consistent with financing needs and to the appropriate cost allocation for cross-border investments, enhancing competition and competitiveness and taking account of the impact on consumers. However, some projects that would be justified from a security of supply/solidarity perspective, but are unable to attract enough market-based finance, may require some limited public finance to leverage private funding. Such projects should be selected on the basis of clear and transparent criteria. The important role of cohesion/structural funds in this respect is noted, notably as regards projects with a regional or European dimension.

i. Leverage of existing means could be facilitated by making use of innovative financing mechanisms addressing in a non-discriminatory and non distorting way the varying financial risks and needs of infrastructure projects. Possible innovative financing tools would need further analysis. They would need to be flexible in order to cater for national circumstances. The Commission is invited to report by June 2011 to the Council on figures on the investments likely to be needed, on suggestion how to respond to financing requirements and on how to address possible obstacles to infrastructure investment. The identification of these obstacles would benefit from the cooperation of ENTSO-E, ENTSO-G and the Member States.

4. *Research and Innovation in Low Carbon Energy Technology*
   a. Given the importance of energy technology for fulfilling EU 2020 and 2050 climate and energy targets and for enhancing competitiveness, the implementation of the SET Plan Industrial Initiatives (EII) already launched by the end of 2010, as appropriate, should be carried out as a matter of priority and the development of the European Energy Research Area (EERA) should be encouraged.
   b. Building upon the SET-Plan activities and subject to careful scrutiny of envisaged projects and to resources availability, initiatives concerning new or cutting-edge technologies in relation with the four large-scale European projects mentioned in the Commission communication Energy 2020 (electricity storage, sustainable biofuels, smart grids, and smart cities) as well as clean vehicles, ocean and marine energy should be launched,
   c. Future EU R & D initiatives and programmes should provide a broad range of safe and sustainable technological options, for instance as regards energy efficiency, renewable energy and technologies contributing to mitigate emissions from fossil fuels such as cleaner coal, and should be to the benefit of all EU regions.
   d. The need for future infrastructure in developing energy technologies should be kept under review on a timescale consistent with demonstration and deployment and in close cooperation with all the relevant stakeholders.
   e. The importance of Research and Innovation for the future of the EU energy, climate and growth policy and the EU competitive position should be reflected in the financial commitments of the industry as well as in public funding terms and would benefit from a range of financial instruments. Research, development and deployment of safe and sustainable low carbon technologies should be prioritized in future programmes.
   f. The development and deployment of these technologies will require that the corresponding skills are available in the workforce.
   g. Deployment of new technologies should address consumer concerns, preferably at the design stage, and take place within a well defined regulatory framework.

5. *Indigenous energy sources and production*
   a. While the swift deployment of infrastructure will support the EU diversification policy due importance should be given to indigenous production, including energy from renewable sources, fossil fuels and, in countries which choose to do so, nuclear energy, within the existing regulatory framework.
   b. The legislation on energy from renewable sources should be implemented in a timely manner, making good use of the cooperation mechanisms to reach the targets foreseen under Directive 2009/28/EC and generally to support the ambitious EU policy on renewable energy.

c. While acknowledging the need for continued and consistent national support schemes for renewable energy, barriers to renewable energy should be addressed and eliminated with a view to cost-efficient deployment of renewable energy. This does not imply that national support schemes have to be harmonised. This can take place through enhanced exchange of best practice among Member States and will be facilitated by the identification of remaining barriers.

d. In order to further enhance its security of supply the EU's potential for sustainable extraction and use of conventional and unconventional (e.g. shale gas, oil shale) fossil fuel resources should be assessed, in accordance with existing legislation on environment protection. In this respect due attention should also be paid to the challenges faced by the refining sector which could lead to higher dependence on a limited number of suppliers.

e. Security of supply should not be achieved at the expense of the safety of energy supply-related activities: follow-up to the Council conclusions of 3 December 2010 on offshore oil and gas activities and completion of the regulatory framework for nuclear safety are thus expected.

6. *External energy relations*

While pursuing ongoing dialogues, partnerships and other initiatives with key partners and regions and keeping in line with respective competences of Member States and the Union, the transparency, consistency, coherence and credibility of external action in energy matters should be improved,

a. Through:

i. The realisation of an integrated EU-wide energy market and the implementation of EU legislation in the field of renewable energy, energy efficiency and energy security;

ii. Consistent and coordinated messages delivered at EU and Member State level to supplier, transit and consumer countries;

iii. Improved and timely exchange of information between the Commission and Member States including Member States information to Commission on their new and existing bilateral energy agreements with third countries;

iv. Shared assessment of risks to the EU's energy security and adequate reflection of energy security concerns in the European Neighbourhood Policy;

v. Diversification of Europe's routes and sources of supply, as well as continued efforts to facilitate the development of strategic corridors for the transport of large volumes of gas such as the Southern Corridor

vi. Strategic partnerships and comprehensive cooperation with key supplier, transit and consumer countries and regions. These partnerships should not be limited to gas/oil/electricity issues but cover other areas of common interest, such as energy security, safe and sustainable low carbon technologies, investment environment. They should also aim in particular:

- To promote energy efficiency and energy from renewable sources;
- To facilitate regulatory convergence i.a. through the implementation of EU energy market- related legislation in neighbouring countries, to promote market-based rules and develop measures as necessary to ensure a level playing field for EU power producers vis-à-vis producers outside the EEA.;
- To maintain and promote the highest nuclear safety standards and
- To underpin EU ambitions in international processes, such as climate negotiations.

vii. Enhanced coordination of Member States and Union efforts in order to better protect and promote the EU's collective energy interests and policies

b. By making full use of multilateral fora dedicated to energy or with a strong energy component, and improving coordination in these fora (IEA, IAEA, IPEEC, IRENA, Energy Charter, Energy Community, Union for the Mediterranean, Eastern Partnership, IEF, etc.) synergies between Member States and between the Union and its partners could be better exploited.

c. Reflecting the above points in one comprehensive policy document such as the expected Commission Communication on Energy security and International cooperation would further improve the consistency, transparency and coherence of the EU external action in the energy field.

II. Long term perspectives (2020-2050), review and reporting

a. The whole Strategy should be underpinned by a clear vision for an efficient, secure and sustainable energy system in 2050, progress towards 2050 proceeding step-wise, with intermediary steps adequately reflecting the large increase in the decarbonisation of energy systems to be achieved in a sustainable and cost-efficient way.

b. Orientations on the pathways to 2050 would benefit from an early release of an Energy Roadmap 2050, illustrating in a technology-neutral way, while placing due emphasis on energy efficiency, the possible future fuel-mixes in Europe and what policy measures are required to get there.

c. This Roadmap should be developed in consistency and synergy with the Roadmap towards low carbon economy by 2050, and the White paper on the Future Transport policy. Existing national roadmaps and scenarios have to be taken into account.

d. This long term perspective and the Roadmap 2050 should serve for the future identification and development of the longer term infrastructure priorities building on the "Communication on energy infrastructure priorities for 2020 and beyond" and the tools currently being developed to that end. In this context, good note is taken of the preparatory work envisaged for "electricity highways" and CO_2 infrastructure.

e. The Strategy and its instruments should include adequate and cost-efficient reporting and monitoring requirements as well as review mechanisms in order to facilitate policy adaptation and take due account of technology evolution."