

**THANET EXTENSION OFFSHORE WIND FARM (THE PROJECT)****DEADLINE 1 – 15 JANUARY 2019****NEMO LINK LIMITED****WRITTEN REPRESENTATION****RESPONSE TO EXAMINING AUTHORITY'S (EXA) FIRST ROUND OF WRITTEN QUESTIONS****1. INTRODUCTION**

- 1.1 Nemo Link Limited (**NLL**) is the company delivering the Nemo Link project (**Nemo**). Nemo is an electricity interconnector between the UK and Belgium: it will be the first electricity interconnector between these two countries, and it is a joint project between National Grid Interconnectors Limited, part of National Grid Plc and Elia Group, the Belgian electricity transmission system operator.
- 1.2 Nemo is a high voltage interconnector with an approximate capacity of 1GW and it will comprise two 130km HVDC subsea electricity cables, two 3.1km onshore HVDC underground electricity cables, an HVDC converter station located in the Richborough Energy Park to convert HVDC power to HVAC power, three HVAC underground electricity cables (one circuit) between the converter station and the substation and a connection bay at an existing/new National Grid substation located in the Richborough Energy Park.
- 1.3 Nemo is a project of common interest (**PCI**) under the TEN-E Regulation, in recognition of its status as one of the most important energy projects in Europe. At 1GW, Nemo's capacity is nearly three times that of the Project.
- 1.4 NLL agrees with the ExA's initial assessment of principal issues, and agrees that the implication of the Project on Nemo is a principal issue.
- 1.5 NLL arranged a meeting with the Applicant on 7 January 2019 to discuss its concerns about the Project.

**2. NEMO CONSENTS**

- 2.1 We note that the ExA has asked the Applicant to provide copies of the consent documents for Nemo.
- 2.2 Please find enclosed:
- 2.2.1 planning permissions granted by Thanet District Council and Dover District Council in respect of Nemo. Please note that the planning permissions were hybrid permissions, with consent for the converter station granted in outline and consent for the cables granted in detail;
- 2.2.2 a red line plan showing the permitted route of the Nemo cables and the permitted location of the converter station; and
- 2.2.3 marine licence for Nemo granted by the Marine Management Organisation.

**3. CHALK BUND**

- 3.1 In respect of Nemo, part of the onshore cables have not been installed underground: instead, they are surface laid with a chalk bund constructed over them to provide protection.
- 3.2 Within the majority of Pegwell Bay Country Park, the Nemo onshore cables were laid on the existing land surface and chalk was used to cover them. The chalk was spread to marry with existing levels gently. It was proposed that the chalk would be seeded with appropriate native grassland species but through discussions with Kent Wildlife Trust it was considered that self-seeding was the most appropriate option.
- 3.3 The surface lay method of installation of the onshore Nemo cables was selected after consultation responses from the Environment Agency which expressed concern at the possibly of trenching the cables through a former landfill site. The surface laying of the cables was selected to avoid the risk of excavation disturbing contaminated ground of a former landfill site and opening potential contamination pathways during cable installation. Much of the land in Pegwell Bay Country Park has already been subject to capping treatment to further cover the landfill below and to allow native vegetation to establish. The cable installation method effectively replicated the treatment which has been successfully implemented in other parts of the Country Park.
- 3.4 The draft DCO (**dDCO**) currently includes an ability for the Applicant to surface lay its onshore export cables or to underground its onshore export cables. We understand that the Applicant intends to amend the dDCO to remove this flexibility and to provide that the onshore export cables will all be installed underground. NLL supports this amendment as it resolves one of NLL's concerns in respect of the interrelationship between Nemo and the Project. NLL reserves its position to make further submissions on this issue at Deadline 2 in the event that the Applicant does not remove the ability to surface lay its onshore export cables from the dDCO.

**4. COMPULSORY ACQUISITION**

- 4.1 At present, the dDCO includes the compulsory acquisition of NLL's land, interests and rights.
- 4.2 NLL's position is that none of its land, interests or rights can be acquired compulsorily or new rights created over its land and that until NLL reaches an agreement with the Applicant it will require an article in the DCO to make this clear. NLL's position is also that none of its rights or interests can be extinguished by the DCO, and again until it reaches an agreement with the Applicant it will require an article in the DCO to make this clear. Particular works which cause NLL particular concern are identified below in sections 5, 6 and 7 below.
- 4.3 Nemo is a PCI under the TEN-E Regulation, in recognition of its status as one of the most important energy projects in Europe. It has recently been constructed following a detailed consenting process and it is now moving towards operational status.
- 4.4 Nemo is of national and international importance as underlined by its PCI status, and the land comprising the underground cable and converter station is operational land. Whilst Nemo was not designated, or consented, as a nationally significant infrastructure project (**NSIP**) it is important to note that another electricity interconnector project (the Aquind interconnector) has received NSIP status via the application process in s35 of the Planning Act 2008. This reinforces the national significance that the Secretary of State places upon interconnectors.

- 4.5 As set out in response to the ExA's questions, NLL is a statutory undertaker and all of its land (and interests in or rights over land) affected by the Project is land that:
- 4.5.1 is used for the purposes of carrying on NLL's undertaking; and
  - 4.5.2 NLL holds an interest in for the purposes of NLL's undertaking.
- 4.6 NLL's land (or its interests in or rights over land) affected by the Project cannot be acquired and replaced or rights created over such land without serious detriment to the carrying on of NLL's undertaking. At this stage, NLL is not satisfied that the land or any new rights to deliver the Project can be acquired or created without serious detriment to the carrying on of NLL's undertaking or that (where relevant):
- 4.6.1 if purchased it can be replaced by other land, as no such other land has been identified.
  - 4.6.2 any such detriment could be made good by the Applicants through the use of other land belonging to or available for acquisition by the Applicants, as no such replacement land has been identified.
- 4.7 NLL would wish to appear at the Compulsory Acquisition Hearing (CAH) on Thursday 21 February 2019.

## **5. ONSHORE CABLE – WORK NO.16**

- 5.1 The Project's onshore cable route could interfere with Nemo's onshore cable at the interface with the NGET substation (the Project's Work No.16 and shown on the land plan as lot 02/121), but this appears to be just one option that the Applicant has included within its dDCO as part of Work No.16. The other options are shown as plots 02/122 and 02/124 on the land plans.
- 5.2 It is not clear from the application materials why this optionality is required, and Work No 16 is not split into options in the same way that Work No 3B is split into options. This approach is not made clear in the Works Plans or within the description of development within Work No.16 of the dDCO itself (where no optionality is identified), but it is made clear on the Land Plans where the three routes are described as options.
- 5.3 The dDCO does not capture any element of optionality in respect of Work No.16. If granted in its current form, the dDCO would authorise the Applicant to construct Work No. 16 in its entirety. However, NLL understands from the Applicant that this is intended to be optional and that only one of the onshore cable routes would be constructed. Therefore, the dDCO and the works plans need to be amended to reflect this position.
- 5.4 NLL's position is that the Applicant has not provided any justification for an element of optionality in respect of Work No.16, and that the dDCO should only permit one option.
- 5.5 In relation to the option shown on the land plans at plot 02/121, it is not clear to NLL how this could be delivered given that this is a constrained area that includes Nemo's cables and this option would necessitate a crossing of Nemo's cables. NLL has not been provided with any information which would identify the method of this crossing. Therefore, NLL objects to the inclusion of this work.
- 5.6 In relation to the option shown on the land plans at plot 02/122, it is not clear to NLL how this could be delivered and how NLL's access could co-exist. NLL has not been provided with any information

which would identify the extent of any interference with NLL's access. Therefore, NLL objects to the inclusion of this work.

5.7 Given that the Applicant has included three options in respect of Work No.16, and only the options to the north/north east and the south of the existing substation would interfere with Nemo, NLL's position is that Work No.16 should be amended so as to:

5.7.1 remove the cable route to the north/north east of the substation (which is excluded from the order limits and is shown on the land plans and work plans as the larger of the two "islands" in between Work No.16) as part of Work No.16 (shown as plot 02/121 on the land plan);

5.7.2 remove the cable route to the south of the substation as part of Work No.16 (shown as plot 02/122 on the land plan); and

5.7.3 only include the cable route to the west/south west of the substation as part of Work No.16 (shown as plot 02/124 on the land plan).

5.8 This would ensure that the integrity of Nemo's cable route is protected, and would not prevent the Project from being delivered using the alternative route which the Applicant has sought consent for.

5.9 NLL understands from the Applicant that its connection to the substation would be to the south in any event. Therefore, NLL considers that such amendments to Work No.16 would not prejudice the Applicant's ability to deliver the Project and connect to the substation and would enable this connection to be made using the most appropriate route.

5.10 As a backstop position, NLL would be happy to accept the inclusion of an amended definition of Work No. 16, which effectively splits the options into Work No.16A, Work No.16B and Work No.16C with an article included within the DCO that provided that the relevant works (for example Works No.16A or 16B) could not be delivered without approval of NLL (such approval to be at NLL's absolute discretion).

5.11 NLL objects to the compulsory acquisition of any of its land or its rights or interests in land associated with Work No. 16. There is no compelling case in the public interest for NLL's land or NLL's rights or interests in land to be compulsorily acquired or extinguished. This land is not:

5.11.1 required for the development to which the development consent relates, given the alternative options that exist;

5.11.2 required to facilitate or incidental to the development; or

5.11.3 replacement land.

## **6. ONSHORE CABLE - WORKS NO 3B(B) AND 3B(C)**

6.1 The Project includes three alternative works packages as part of Work No. 3B. This includes Work No. 3B(b) and Work No. 3B(c).

6.2 These two works could involve the construction of seawall, and the acquisition of NLL's land/interference with NLL's rights. However, they are only possible alternatives. NLL objects to these alternatives. NLL does not object to Work No.3B(a).

- 6.3 NLL does not understand the broader implications for the seawall, for example whether the effect of diverting seawater to the north by the construction of a seawall would be to adversely affect the integrity of the Nemo cable to the north.
- 6.4 Given that the Applicant has included an alternative works package in Work No. 3B(a), NLL's position is that the DCO should only authorise Work No. 3B(a) and that the DCO should not authorise Work No. 3B(b) and Work No. 3B(c). It is not clear why the Applicant requires three options.
- 6.5 This would ensure that the integrity of Nemo's cable route and access is protected, and would not prevent the Project from being delivered using the alternative works package under Work No.3B(a).
- 6.6 As a backstop position, NLL would be happy to accept the inclusion of an article within the DCO that provided that could be that Work No.3B(c) could not delivered without approval of NLL (such approval to be at NLL's absolute discretion).
- 6.7 NLL understands that the Applicant intends to amend the dDCO to remove any ability to extend the seawall. NLL supports this amendment, as it resolves one of NLL's concerns in respect of the interrelationship between Nemo and the Project. NLL reserves its position to make further submissions on this issue at Deadline 2 in the event that the Applicant does not remove the ability to surface lay its onshore export cables from the dDCO.
- 6.8 NLL objects to the compulsory acquisition of any of its land or its rights or interests in land associated with Work No. 3B. There is no compelling case in the public interest for NLL's land or NLL's rights or interests in land to be compulsorily acquired.
- 6.9 At present, the Applicant intends to permanently acquire Plots 01/05, 01/06, 01/10 and 01/11 to deliver Work No.3B. However, NLL is not satisfied that this land:
- 6.9.1 can be purchased and not replaced without serious detriment to the carrying on of NLL's undertaking; or
  - 6.9.2 if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

## **7. VEHICULAR ACCESS -WORK NO 6**

- 7.1 The Project seeks the upgrading and widening of an existing access from Sandwich Road and more importantly the crossing of the surface laid Nemo cables by vehicles to access Work No 4A, 4, 3B. The surface laid Nemo cables were not constructed with the intention of heavy construction traffic crossing them. No details have been provided to demonstrate how the construction traffic will cross the existing chalk bund where Nemo's cables are surface laid. Therefore, NLL objects to the inclusion of this work.
- 7.2 NLL has not been provided with technical details as to how this access track would be constructed, or sufficient details to demonstrate that it would not adversely interfere with the Nemo cable.
- 7.3 NLL's preferred technical solution would be one that completely avoids the surface laid Nemo cables, for example by the delivery of a bridged solution that does not involve the crossing of the surface laid Nemo cables by construction traffic.

7.4 NLL objects to the compulsory acquisition of any of its land or its rights or interests in land associated with Work No.6. There is no compelling case in the public interest for NLL's land or NLL's rights or interests in land to be compulsorily acquired.

7.5 At this stage, NLL is not satisfied that:

7.5.1 the right to deliver these works can be purchased without serious detriment to the carrying on of NLL's undertaking given the potential adverse effects on the Nemo cables; and

7.5.2 any detriment to the carrying on of NLL's undertaking, in consequence of the acquisition of the right, can be made good by the Applicant's by the use of other land belonging to or available for acquisition by them as this land is unique in that it comprises the Nemo cables and it is not land in respect of which alternative land is appropriate.

## **8. NATIONAL GRID SUBSTATION**

8.1 At this stage, NLL does not understand the implications for Nemo in respect of the construction of the connection to the substation, as there is no provision within the works package for a connection bay to the substation and the substation is excluded from the order limits.

8.2 At this stage, there is insufficient information to identify where the connection will be made. As identified above, there are three cable route options to connect to the substation but it is not clear exactly where this connection will be made. Accordingly, the implications for Nemo are not clear.

8.3 NLL understands that the grid connection is likely to be to the south of this substation, and this has informed NLL's comments on Work No.16 at section 5 above.

## **9. UNEXPLODED ORDNANCE (UXO)**

9.1 NLL will require confirmation that the Project will not dispose of any UXO that will affect Nemo. NLL understand that the Applicant will need to undertake further survey work to identify the scope of any UXO that it will need to dispose of in due course.

9.2 NLL will work with the Applicant to reach agreement in relation to UXO, but in the absence of any agreement it may require protection within the DCO.

## **10. OFFSHORE CROSSING**

10.1 NLL understands that there will be an offshore crossing of the Nemo offshore electricity cable, but NLL currently has insufficient information to allow it to identify the location of this crossing or the likely impacts on Nemo. To assist NLL, it will require the following information:

10.1.1 what the impressed voltage implications on cable crossings will be;

10.1.2 where the offshore crossing will be and how deep this will be, as well the proximity to other crossings and how matting will be undertaken;

10.1.3 the anchor spread plans; and

10.1.4 the offshore repair strategy.

10.2 NLL will work with the Applicant to reach agreement in relation to such crossing once it is provided with sufficient information.

## 11. SOCG

11.1 We note that the ExA has requested that the Applicant enter into an SoCG with NLL, and given the concern that NLL identified within its relevant representation we consider that there is merit in agreeing an SoCG.

11.2 The Applicant has not sought to progress an SoCG with NLL, and has not contacted NLL to progress an SoCG since the publication of the Rule 6 letter.

11.3 The concerns that NLL has identified in its section 42 consultation response and its relevant representation remain outstanding, and discussion would assist in ensuring that these concerns can be resolved.

## 12. PROTECTIVE PROVISIONS

12.1 NLL is currently negotiating bespoke protective provisions with the Applicant.

12.2 NLL would wish to appear at the Issue Specific Hearing (ISH) into the DCO on Thursday 21 February 2019.

## 13. EXA QUESTIONS

13.1 Please see below NLL's response to the ExA's first round of written questions.

ExA's Question	NLL's Response
1.1.40	<p>NLL notes the relevant representation from Natural England. However, saltmarsh monitoring is ongoing and is subject to a lengthy period of monitoring controlled by a planning condition. No interim results have been shared with Natural England, and NLL is unaware of any Natural England officers undertaking their own surveys of the site.</p> <p>Therefore, NLL is unsure as to what evidence Natural England has to substantiate its claim that the Saltmarsh isn't recovering well.</p>
1.3.10	<p>In response to the ExA's questions:</p> <p>a) NLL is a statutory undertaker for the purposes of the Planning Act 2008 by virtue of section 127 of the Planning Act 2008, section 112(1) of the Electricity Act 1989 and Paragraph 2 of Schedule 16 to the Electricity Act 1989.</p> <p>NLL is the holder of an electricity interconnector licence under section 6(1)(e) of the Electricity Act 1989, and NLL is the owner and operator of Nemo.</p>



	<p>b) NLL’s objection to the compulsory acquisition of its land or its interests in or rights over land or the creation of new rights over its land is set out in sections 4 to 7 above in more detail. In response to the ExA’s questions:</p> <ul style="list-style-type: none"> <li>i. The full extent of Nemo’s cable route and the converter station site is operational land. The compulsory acquisition of NLL’s land or NLL’s rights or interest in land would adversely and unacceptably impact on NLL’s ability to operate and maintain its operational apparatus.</li> </ul> <p>The land is operational land because it is land:</p> <ul style="list-style-type: none"> <li>i. which is used for the purpose of carrying on NLL’s undertaking;</li> <li>ii. in which an interest is held by NLL for that purpose;</li> <li>iii. over which there is, and has been, a specific planning permission for its development; and</li> <li>iv. that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers’ undertaking.</li> </ul> <ul style="list-style-type: none"> <li>ii. NLL has significant additional landholdings in the vicinity of the Project, including its converter substation (which is excluded from the order limits and is shown on the land plans and work plans as the smaller of the two “islands” in between Work No.16). This converter station is required to convert HVDC electricity into HVAC electricity in order to connect to the NGET substation.</li> <li>iii. The land affected by Works No.6 and Works No.16 is operational land, which includes Nemo’s cables.</li> </ul> <p>The Applicant has confirmed that it does not intend to compulsory acquire any of NLL’s land or relocate any of NLL’s apparatus, therefore NLL’s interests should be excluded from compulsory acquisition and it should be made clear in an article to the DCO that none of NLL’s land or interests in or rights over land may be compulsorily acquired and that no such interests or rights may be extinguished.</p> <p>Nemo has recently been constructed and is due to commence commercial operation in Q1 2019. Nemo was consented following a detailed and optioneering and site selection process, and Nemo has a maximum capacity of almost three times that of the Project.</p>
--	--



	<p>As identified above, there is no compelling case in the public interest for NLL's land or NLL's rights or interests in land to be compulsorily acquired and the requirements of section 127 of the Planning Act 2008 are not met in respect of such acquisition.</p> <p>c) NLL has no comment to make at this stage.</p> <p>d) This question is not addressed to NLL.</p> <p>As noted above, NLL would wish to appear at the CAH on Thursday 21 February 2019.</p>
1.7.2	Please see NLL's representation at sections 5 to 10 above which detail the particular concerns that NLL has in respect of the Project.
1.16.3	NLL notes the reference to Nemo in this question, and reserves the right to respond to any response to this question.
1.18.6	NLL notes the reference to Nemo in this question, and reserves the right to respond to any response to this question.

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**

**15 JANUARY 2019**