



**Vattenfall Wind Power Ltd**

**Thanet Extension Offshore Wind Farm**

## **Statement of Reasons**

June 2019

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Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Statement of Reasons

June 2019

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## 1 Introduction

- 1.1 This Statement of Reasons (the **Statement**) relates to the powers of compulsory acquisition sought in the application by Vattenfall Wind Power Ltd (the **Applicant**) to the Secretary of State under the Planning Act 2008 (the **2008 Act**) for powers to construct and operate an offshore electricity generating station of up to 340 MW generating capacity (the **Application**).
- 1.2 As the total installed electricity generating capacity will exceed 100 MW, the Project is deemed to be a Nationally Significant Infrastructure Project (**NSIP**), and therefore the Applicant is submitting an application to the Secretary of State under Section 37 of the Planning Act 2008 for a Development Consent Order (**DCO**) for the construction and operation of the Project.
- 1.3 The Applicant is seeking to assemble in its ownership the land and associated rights over land included in the draft Development Consent Order (the **Order**) (Document 3.1). This land is required for the Thanet Extension Offshore Wind Farm (the **Project**) and is referred to in this Statement as the **Order Land**.
- 1.4 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising compulsory acquisition of land (or rights over land), only if the decision maker in respect of the Application is satisfied that:
  - The land is required for the development;
  - The land is required to facilitate or is incidental to the development; or
  - The land is replacement land for commons, open spaces, etc.
- 1.5 The Application includes a request for the Secretary of State to grant powers of compulsory acquisition pursuant to section 122 of the 2008 Act.

### Purpose of the Statement

- 1.6 As part of the Application, the Applicant is required to submit to the Secretary of State a Statement of Reasons prepared in accordance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the **APFP Regulations**).
- 1.7 This Statement explains why the powers of compulsory acquisition sought in the draft Order are necessary to implement the Project. Throughout its content, it demonstrates that there is a compelling case in the public interest to grant those powers.

- 1.8 The Department for Communities and Local Government's guidance on compulsory acquisition published in September 2013 provides advice on the content of the Statement. Annex 2 of the Department for Communities and Local Government's now superseded guidance on compulsory acquisition of February 2010 (the Guidance) provided a detailed checklist of what a Statement of Reasons should include. Whilst this Guidance has been superseded, the Applicant still considers that the Guidance is helpful, and this Statement has been drafted to reflect that advice. Paragraph 45 of the September 2013 guidance cross refers to the ODPM circular 06/2004 Compulsory Purchase and the Crichel Down Rules which contained further general guidance on matters related to compulsory acquisition. That guidance was replaced on 29 October 2015 (and updated in February 2018) by the Department for Communities and Local Government (as was) entitled "Guidance on Compulsory Purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion" (CPO Guidance). It sets out the reasons why the powers of compulsory purchase contained in the Order are necessary and why there is a compelling case in the public interest for the Order to be confirmed by the Secretary of State. The Applicant has had regard to the CPO Guidance which is of application to compulsory purchase more generally.
- 1.9 A substantial amount of information regarding baseline conditions, site selection, the proposed development, environmental impact and other relevant matters has been included in the documents which accompany the Application. This Statement should be read alongside these documents, which are listed in Schedule 1.
- 1.10 In relation to the compulsory acquisition powers sought as part of the Application, this Statement should be considered together with the following documents:
- Document 4.2 which contains an explanation of how the proposals contained in the Order for compulsory acquisition will be funded (the **Funding Statement**);
  - The plans showing the land which would be acquired, (the **Land Plans (Onshore)**) (Document 2.3); and
  - The book of reference scheduling all owners, lessees, tenants and occupiers, those with other interests in the land and those entitled to make relevant claims (the **Book of Reference**) (Document 4.3).

### Structure of the Statement

- 1.11 The following sections of this Statement reflect Annex 2 of the Guidance and include:
- A summary of the Applicant's purpose in seeking to acquire the Order Land for the Project (section 3);
  - A description of the Order Land (section 4);
  - Details of the relevant policy in support of the Application (section 5);

- The Applicant's justification for compulsory acquisition, by reference to the Guidance and the requirements of Article 1 of the First Protocol to the European Convention on Human Rights and Article 8 (sections 6, 7 and 9);
- Any special considerations affecting the land to be compulsorily acquired (section 8);
- Other powers of compulsory acquisition being sought under the Order (section 10) and other consents (i.e. in addition to the Order) that would need to be obtained to implement the proposals for the use and development of the Project (section 11); and
- Any other information of interest to someone affected by the Order (section 13).

## 2 Summary

- 2.1 Vattenfall Wind Power Ltd (the **Applicant**) is planning to develop the Thanet Extension Offshore Wind Farm (the **Project**) with up to 34 turbines and an installed capacity of up to 340 MW. The Project comprises an extension to the existing Thanet offshore wind farm off the coast of Thanet, Kent, to be located approximately 8km offshore (at the closest point). The offshore array site occupies an area of approximately 73 km<sup>2</sup>.
- 2.2 The Project directly responds to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's statements of national policy in NPS EN-1 and EN-5. The proposed development would make a significant contribution towards the achievement of the Government's renewable energy targets.
- 2.3 All of the Order Land, shown on the Land Plan (Onshore) and described in the Book of Reference, is required either for the purposes of the Project, to facilitate the same, or for purposes incidental thereto. In order to deliver the Project, the Applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of access as well as rights for the installation of cables) and temporary rights during construction.

- 2.4 The Applicant will continue to seek to acquire rights and interests to deliver the Project by agreement where possible on appropriate commercial terms. Seeking compulsory acquisition powers whilst, in parallel, negotiations to acquire interests continue, is in accordance with both general practice and paragraph 25 of the Guidance. Land included in the Order has been scheduled in the Book of Reference even where agreement has been reached. This is to ensure that, if any minor interests such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, powers are available to override those interests. It also reflects that minor interests may still be outstanding and not waived and therefore have to be extinguished or overridden by the available statutory process. In such circumstances a relevant claim may be made and accordingly scheduling of the interests in land is necessary.
- 2.5 The Applicant's purpose in acquiring the Order Land compulsorily, if required, in accordance with the provisions of the 2008 Act, is to secure the lands and rights required to construct and then operate the Project within a reasonable commercial timeframe.
- 2.6 The Applicant considers that a compelling case in the public interest for powers of compulsory acquisition exists. This is set out further in section 7 of this Statement.

### 3 The Application

- 3.1 The Applicant is planning to develop the Project with up to 34 turbines and an installed capacity of up to 340 MW. The Project comprises an extension to the existing Thanet offshore wind farm off the coast of Thanet, Kent, to be located approximately 8km offshore (at the closest point).
- 3.2 As the total installed electricity generating capacity will exceed 100 MW, the Project is deemed to be a Nationally Significant Infrastructure Project (**NSIP**), and therefore the Applicant is submitting an application to the Secretary of State under Section 37 of the Planning Act 2008 for a Development Consent Order (**DCO**) for the construction and operation of the Project.
- 3.3 The NSIP element of the Project comprises the following:
- An extension to the existing Thanet offshore wind farm off the coast of Thanet, Kent of up to 340 MW;
  - Up to one meteorological mast;
  - Up to one Floating Lidar Device; and
  - A network of subsea cables.

3.4 Section 115 of the Planning Act 2008 enables development consent to be granted not only for an NSIP, but also for "associated development". In determining what comprises associated development, one must have regard to guidance on associated development issued by the Secretary of State for Communities and Local Government (the **Associated Development Guidance**), which illustrates the type of development that may qualify and sets out the defining characteristics of associated development.

3.5 Associated development for the Project within the meaning of section 115 includes the following:

- Up to one offshore substation;
- A subsea electrical connection between the turbine array or the offshore substation, and the landfall at Pegwell Bay Country Park;
- Up to four transition joint bays at the landfall;
- An underground electrical connection comprising up to 12 underground cables and associated fibre optic cables;
- A new onshore substation housing the principal electrical equipment located on the opposite side of the A256 from Richborough Energy Park, Kent; and
- An underground electrical connection comprising up to 6 underground 400 kV cables and associated fibre optic cables between the new onshore substation and the grid connection at the new NGET 400 kV substation location in Richborough Energy Park.

3.6 A more detailed description of the offshore works in relation to the Project is provided in the Environmental Statement (Project Description (Offshore) Document 6.2.1).

#### 4 Description of the Order Land

4.1 The Order Land represents the land and interests required for the onshore infrastructure associated with the Project.

4.2 The key onshore components of the Project are:

- The landfall site with associated transition joint bays to connect the offshore and onshore cables;
- Up to 4 onshore electrical cable circuits (each comprising 3 individual cables);
- Up to four joint bay locations each containing up to four joint bays to be located along the cable route (the precise location and all technical details such as cable length will be determined by local factors such as topography and hydrology);
- An onshore substation;



- Landscaping and enhancement around the substation;
  - A tenant relocation area for use by the Department of Justice (Border Force) for lorry holding; and
  - Up to 2 onshore 400 kV electrical cable circuits connecting the onshore substation to the NGET substation.
- 4.3 The Order Land comprises a route of approximately 2.5 km from the landfall at Pegwell Bay Country Park on the Kent coast to the new substation and onward to the NGET connection at Richborough Energy Park in Kent. A total working cable corridor of up to 30 metres wide will be required. The width required for the 400 kV cable installation will depend on site conditions and available space within Richborough Energy Park.

- 4.4 From the point of landfall to the grid connection point at Richborough, the onshore cable corridor runs as follows:
- 4.4.1 In a westerly direction from the transition joint bays located within Pegwell Bay Country Park, after first running through the intertidal area from mean low water to the sea wall, the cable route then turns to run south-west adjacent to the existing Nemo interconnector cable berm through the country park.
  - 4.4.2 The cable corridor continues to run adjacent to the Nemo cable berm through Stonelees Nature Reserve after which it turns south-east and then immediately south-west within the playing fields of the Bay Point Club sports club. From there it continues to run south-westerly along the eastern boundary of the former Richborough Port site, currently occupied by British Car Auctions, under Minster Stream and into the new onshore substation location
  - 4.4.3 From the new onshore substation the cable corridor crosses under the A256, Ramsgate Road, into Richborough Energy Park (formerly Richborough Power Station). The route through Richborough Energy Park is constrained with multiple conflicting users and interests, as such, optionality has been retained for the ongoing cable corridor to the new NGET 400 kV substation.

#### **Ownership of the Order Land**

- 4.5 The Book of Reference identifies those persons with an interest in the Order Land. Land is held by a number of individuals, corporations and companies. For all plots the Applicant has sought to obtain details of the relevant interests in land and served notices under section 42 of the Planning Act 2008 on owners, lessees, tenants and occupiers as well as those holders of rights over land it has identified.
- 4.6 Where the owner of interests in land or beneficiary of rights has not yet been ascertained after diligent inquiry, the Applicant will continue to seek details of the relevant party and will post site notices asking for details of the additional beneficiaries.
- 4.7 All known principal owners of the Order Land have been approached and engaged in dialogue to ascertain if they would be willing to reach agreement with the Applicant for the use of their land by way of negotiated easements for the construction and maintenance of the cable route (and in respect of the onshore substation(s) site, for freehold acquisition).

## 5 Other Interests in the Order Land: Identification of Category 3 Parties

- 5.1 Other than the principal landowners, 'Category 3' parties are required to be scheduled in Part II of the Book of Reference. There are three types of Category 3 parties, and the Applicant has considered the impacts of the scheme on these potential parties. This section is included to explain why no Category 3 parties have been scheduled in the Book of Reference. Category 3 parties fall into three sub-categories, each of which is considered below.

### Section 10 – Compulsory Purchase Act 1965 Claimants

- 5.2 Section 10 of the Compulsory Purchase Act 1965 relates to parties whose land may be injuriously affected by the execution of the works. Any land interests that might fall into this category are held by parties who also own interests in the principal Order land required for the scheme, and those parties are accordingly scheduled in Part I of the Book of Reference. The columns within Part II of the Book of Reference have been left intentionally blank in relation to potential claimants that might fall into this category, as there are no others beyond certain parties listed in Part I of the Book of Reference.
- 5.3 The Applicant is seeking to agree compensation that may be due to these parties as part of the ongoing process of land negotiation, with a view to acquiring land or rights, in land from those parties. If that process is not successful, compensation may be agreed pursuant to a claim made by the relevant party following any exercise by the applicant of its compulsory acquisition powers.

### Part 1 – Land Compensation Act 1973

- 5.4 The Applicant's environmental statement considered and assessed the physical factors that will arise from the use of the works during the operational phase. The Applicant has considered the results of the environmental assessment in relation to the nature of the land contained within the Order Land, and the nature of the surrounding land which could be subject to physical factors arising from the use of the works under this category.
- 5.5 The land is either developed industrial land or undeveloped brownfield industrial land. Having considered the nature of land in relation to the assessment of impacts contained within the environmental assessment, the applicant does not consider there to be a likelihood of there being a depreciation in the value of any land as a result of physical factors arising from the use of the works, beyond those interests identified within Part I of the Book of Reference. The Applicant is in discussions with the principal landowners and other parties scheduled in Part I of the Book of Reference about acquiring those interests in land.

### **Section 152(3) Planning Act 2008**

- 5.6 This section of the 2008 applies where there is any party whose land may be injuriously affected by the works has been identified within Part I of the Book of Reference and the applicant is in discussions with a view to acquiring the rights in land that the applicant seeks.
- 5.7 Section 152(3) of the Planning Act 2008 also has the effect of extending the obligations of Part 1 of the Land Compensation Act 1973 to pay compensation for the physical factors arising from the use of public works to statutory authorities who are the operators of works authorised by a Development Consent Order.
- 5.8 The Applicant has considered the results of the environmental impact assessment relative to the nature of the land that is subject to the application and surrounding land. The applicant does not consider there to be any likelihood of their being any depreciation in the value of any land interest as a result of physical factors arising from the use of the works beyond those land interests that are identified in Part I of the Book of Reference and with whom the applicant is in discussions.

## **6 Policy support for the Project**

- 6.1 The Project forms a key part of meeting the Government's strategy for achieving targets for renewable energy provision in the UK. The national, regional and local planning policy and guidance relevant to the Project as well as an overview of the legislative framework are set out fully in the Environmental Statement and are summarised below.

### **International Framework**

- 6.2 International agreement regarding action on climate change was reached through the Kyoto Protocol to the United Nations Framework Convention on Climate Change. This agreement set binding targets for the reduction of greenhouse gas emissions over the period 2008 to 2012.
- 6.3 Within Europe, Directive 2001/77/EC on "the promotion of electricity produced from renewable energy sources in the internal electricity market" sets out the need to promote renewable energy sources in order to meet Kyoto targets. This Directive committed Member States to national targets for consumption of energy from renewable sources. The UK target was 10% of electricity to be produced from renewable sources by 2010.

- 6.4 European Directive 2009/28/EC on "the promotion and use of energy from renewable sources" (the Renewable Energy Directive) has amended and repealed earlier European Directives on renewable energy. Article 3 and Annex 1 set mandatory targets for the share of energy to be obtained from renewable sources for each European Member State. The UK's target is to equal or exceed 15% of gross final consumption of energy from renewable sources by 2020. To achieve this, UK Government policy since 2009 has been to achieve 30% of electricity generation from renewable sources by 2020<sup>1</sup>.
- 6.5 Article 4 of the Renewable Energy Directive requires Member States to produce national renewable energy action plans, setting out national targets for key sectors, including heating and cooling, transport and electricity, and measures to achieve these targets.

## UK Framework

### *The Climate Change Act 2008*

- 6.6 The Climate Change Act 2008 provides a framework for the UK to reduce greenhouse gas emissions in response to climate change. It puts in place a range of measures including emissions reduction targets and carbon budgets as well as establishing the Independent Committee on Climate Change. Part 1 of the Act sets out a duty to reduce UK greenhouse gas emissions to at least 80% below 1990 levels by 2050. It also requires carbon budgets to be set for UK emissions by the Secretary of State over five year periods.

### *UK Renewable Energy Policy*

- 6.7 In response to the requirement in Article 4 of the Renewable Energy Directive, the Department of Energy and Climate Change (**DECC**) published the National Renewable Energy Action Plan for the UK in July 2010 (DECC 2010)<sup>2</sup>. The plan sets out a "lead scenario" to achieve the 15% renewable energy target for 2020. This should not be seen as an upper limit to renewable energy production in the UK however. The action plan states, in relation to offshore wind development, that:

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<sup>1</sup> DCLG (2010) *Consultation Paper on a New Planning Policy Statement: Planning for a Natural and Healthy Environment*; DCLG (2010) *Planning Policy Statement 5: Planning for the Historic Environment*.

<sup>2</sup> DECC (2010) *National Renewable Energy Action Plan for the United Kingdom*

*"Offshore wind is a key area for development. We will work to develop an offshore electricity grid to support our continuing commitment to being world leaders in this technology. This new generation of offshore wind power will play a key role in meeting our 2020 target." (section 1, page 7)*

6.8 DECC has also published a UK Renewable Energy Roadmap<sup>3</sup>, setting out how the 2020 targets can be achieved. The Roadmap highlights the predicted contributions of different energy technologies to reach the 15% target. The Roadmap predicts that offshore wind will contribute 33 to 58 terawatt hours (TWh) by 2020, which would provide 14 to 25% of the 2020 target requirement of 234 TWh. This document also confirms the Government's commitment beyond 2020, indicating that the UK could reach 30 to 45% energy generation from renewable sources by 2030.

6.9 In December 2011, the Government published its Carbon Plan<sup>4</sup>, which sets out the policies for meeting the commitment for an 80% reduction in greenhouse gas emissions made under the Climate Change Act 2008. The document also describes the measures proposed to meet the first four carbon budgets (from 2008 to 2027). The Carbon Plan states that:

*"The power sector accounts for 27% of UK total emissions by source. By 2050, emissions from the power sector need to be close to zero." (paragraph 43)*

### Planning Act 2008

6.10 The 2008 Act introduced a new planning system in England and Wales for NSIPs. The new consenting regime for major infrastructure under which a development consent order may be granted to permit NSIPs to be carried out and which, if granted, may incorporate a number of other consents from different consenting regimes. A key element is the designation of a series of National Planning Statements (**NPSs**) setting out national policy in relation to specified descriptions of development which shall be taken into account by the Secretary of State for Energy and Climate Change in their consideration of the development consent applications.

6.11 The three NPSs of relevance to the Project are NPS Overarching Energy (EN-1) and NPS Renewable Energy Infrastructure (EN-3) which, amongst other matters, identify the construction of offshore generating stations in excess of 100MW as NSIPs, and NPS Electricity Networks (EN-5) which covers the electrical infrastructure in connection with EN-1.

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<sup>3</sup> DECC (2011) *UK Renewable Energy Roadmap*

<sup>4</sup> DECC (2011) *The Carbon Plan: Delivering Our Low Carbon Future*

6.12 The policy context for the development of nationally significant energy infrastructure is outlined in Part 2 of EN-1. EN-1 notes that "energy is vital to economic prosperity and social wellbeing and so it is important to ensure that the UK has secure and affordable energy".

6.13 Paragraphs 3.1.3 and 3.1.4 of NPS EN-1 advise that the decision maker:

*"should... 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 (NPS)" and;*

*"should therefore 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."*

#### **Electricity Act 1989 - Schedule 9**

6.14 The Applicant has fully considered its duty under Schedule 9 of the 1989 Act to have regard to the desirability of preserving natural beauty of conserving flora fauna and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and to do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on such flora, fauna, features, sites, buildings or objects.

#### **The Project**

6.15 The Project directly responds to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's statement of national policy in NPS EN-1 and EN-5. The proposed development would make a significant contribution towards the achievement of the Government's renewable energy targets.

#### **7 Compulsory Acquisition Powers and Guidance**

7.1 Section 120 of the 2008 Act prescribes those matters which may be provided for in an order granting development consent. Sections 120(3) and 120(4) provide that an Order may make provision relating to, or to matters ancillary to, the development for which consent is granted. The matters in respect of which provision may be made include (but are not expressly limited to) the matters listed in Schedule 5 to the 2008 Act, for example:

- The acquisition of land, compulsorily or by agreement;
- The creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement; and

- The payment of compensation.
- 7.2 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising compulsory acquisition of land (which may include rights in land), only if the decision maker in respect of the Application is satisfied that:
- The land is required for the development;
  - The land is required to facilitate or is incidental to the development; or
  - The land is replacement land for commons, open spaces, etc (section 122(2)).
- 7.3 Section 122(3) states it is also necessary for the decision-maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order.
- 7.4 The Guidance makes it clear in respect of the section 122(2) condition that the decision maker must be in no doubt as to the purposes for which any land is to be compulsorily acquired. The Guidance requires:
- 7.4.1 In the case of land required for a project to which the development consent relates, the promoter must be able to demonstrate that the land is needed and the decision maker must be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development; and
  - 7.4.2 In the case of land required to facilitate or land incidental to the proposed development, the land to be taken should be no more than is reasonably necessary for the facilitating or incidental purpose and must be proportionate.
- 7.5 For the section 122(3) condition the decision maker must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. The public benefits derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is proposed to be acquired.
- 7.6 The Applicant submits that this Statement, and the documents provided with the Application, show that the Applicant has a clear need for the powers of compulsory acquisition it seeks and has a clear purpose in its proposed acquisition powers. The Works Plan (Onshore) (Document 2.6) and description of the authorised development in the Order demonstrate that the Applicant has a clear idea of what the relevant Order Lands are required for and that the acquisitions proposed are required for the Project to be constructed and used for the purpose of supporting the conveyance of electricity. That the Project is in the public interest is demonstrated by the level of national policy support described in Section 5.



- 7.7 The Applicant has conducted searches and enquiries with the Land Registry in respect of ownership of land, franchises and rights; conducted numerous site visits; made enquiries of agents, surveyors and solicitors acting for those owners known to the Applicant; completed searches with the local and highways authorities; and met with the landowners and occupiers in the process of negotiation and through public consultation. In respect of companies in the Book of Reference, the Applicant has regularly searched for registered details at Companies House up to the date of the Application. The Applicant has benefited from direct contact with solicitors and surveyors acting on behalf of the owners of the onshore cable route since March 2017, with every landowner engaged with by November 2017.
- 7.8 There are also a number of plots identified in the Book of Reference where it has not been possible to identify ownership. The statement "Unknown" is given in the Book of Reference when diligent inquiry has been exhausted and it has still not been possible to provide details.
- 7.9 The Guidance provides a number of general considerations that the promoter must demonstrate to the satisfaction of the decision maker:
- 7.9.1 All reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;
  - 7.9.2 The proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
  - 7.9.3 The promoter has a clear idea of how it intends to use the land which it is proposing to acquire;
  - 7.9.4 There is a reasonable prospect of the requisite funds becoming available;
  - 7.9.5 The compulsory purchase of land meets the two conditions in section 122 and is therefore justified in the public interest at that time;
  - 7.9.6 The purposes for which an order authorises the compulsory acquisition of land are legitimate and sufficiently justify interfering with the human rights of those with an interest in the land affected.

## **8 Justification for the use of powers of Compulsory Acquisition**

- 8.1 This section sets out below the factors that the Applicant seeks to rely on to demonstrate that the conditions in section 122 of the 2008 Act and the Guidance are satisfied. It also explains the purpose for acquisition of the relevant plots.

### **Requirement for the Order Land (section 122(2) and (3))**

- 8.2 All of the Order Land, shown on the Land Plan and described in the Book of Reference, is required either for the purposes of the Project, or to facilitate the same, or for purposes incidental thereto.

8.3 The Applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of access, repair and maintenance) and temporary rights.

8.4 The nature of the land interests required for the Project are as follows:

*Freehold title*

8.4.1 The Applicant seeks freehold title where permanent control of the land is required by the Applicant or the interference with the interests of the existing owners is such that acquisition of a lesser interest in land would not be appropriate. This applies in the location of the onshore substation and its associated compound and permanent landscaping (Plots 02/55, 02/60, 02/61, 02/65, 02/70, 02/75 and 02/85).

*Permanent rights to install and pull through cables and maintain and repair ducts and cables*

8.4.2 These rights are sought to permit the Applicant to install cables for the Project and to facilitate access for installation and for maintenance of the onshore infrastructure and associated works.

8.4.3 This is the principal type of acquisition proposed for the majority of the Order Lands, comprising the onshore cable route and associated rights of access for construction and maintenance purposes. It is anticipated that the process to secure permanent rights compulsorily will commence only after temporary possession has first been taken of the surface of the relevant Order Lands, and construction of the relevant part of the authorised Project is complete.

*Permanent rights of access*

8.4.4 For some plots, cable installation will not be required but a right to access the cable corridor is necessary. For the most part this will be along existing routes, but there are some points in remote areas where temporary haul roads or minor accesses are required and these routes are identified as temporary access tracks in the figures to the Environmental Statement. Whilst the haul roads will for the most part be temporary in duration, the right of access sought is a permanent right over land to allow the Applicant or its successors to use the same route for occasional maintenance during the Project's operational period, as well as to secure a route for decommissioning activities. This includes both the right to improve existing access routes and to lay down hard standing.

8.4.5 Other than this right of access, there will be limited interference with the surface of the Order Land along these routes.

*Miscellaneous rights*

8.4.6 In addition to the principal rights for cable installation rights are sought to:

*For the seaward cable rights (Work No. 3):*

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of drilling and/or trenching;
- (b) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables and cable ducts;
- (c) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity and telecommunications along the cables and cable ducts;
- (d) retain and use the cables for the purposes of the conveyance of telecommunications and electricity;
- (e) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;
- (f) remove materials (including excavated material) within the Order land;
- (g) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (h) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;
- (i) carry out environmental mitigation, remediation and/or enhancement works;
- (j) when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications and ancillary equipment associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (k) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

*For the cable landfall works:*

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—

- (a) construct, lay and install by way of drilling or trenching and repair, renew, upgrade, inspect, remove and replace underground electrical cables and ducts, jointing works including transition joint bays and other apparatus together with such telemetry and fibre optic lines, structures, jointing works, ducting and other apparatus, protection and safety measures and equipment which is ancillary to the purposes of conveying electricity along such electrical cables (which collectively for the purposes of this schedule are referred to as the “cables”);

- (b) effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and offshore elements of the authorised project;
- (c) install, retain, and connect apparatus to connect onshore electrical apparatus to offshore electrical apparatus;
- (d) enter and be upon the land and remain with or without plant, vehicles, vessels, machinery, apparatus and equipment which is ancillary to the purposes of conveying electricity along the cables, or use of the cables, cable ducts and jointing works;
- (e) retain and use the cables, cable ducts and jointing pits for the purpose of the conveyance of telecommunications and electricity;
- (f) pass and repass with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying down, installing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (g) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
- (h) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
- (i) retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
- (j) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduit or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers); and
- (l) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass.

*For the access rights:*

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to—
  - (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
  - (b) retain and maintain existing hardstandings and lay down new, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;

- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to adjoining land;
- (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and/or for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised project.”

#### *Temporary possession*

- 8.4.7 Powers of temporary possession of land are sought for two purposes. In land where activities will only be carried out during construction, or where construction plant, equipment and other apparatus will need to be laid down but no cables or other apparatus are proposed to be installed, the Order permits the Applicant to take possession of this land temporarily, without the requirement to exercise permanent powers of compulsory acquisition.
- 8.4.8 A second use of temporary powers is to allow construction activities on the land where cables are to be installed, prior to any permanent rights to retain, operate, and maintain those cables being acquired compulsorily (or by agreement). The purpose of this second use is to allow the Applicant to complete the cable installation works, including any micro-siting of cables within the land, before committing to acquiring permanent rights. This is intended to reduce the amount of land affected by permanent rights, and reduce the impact on landowners accordingly.
- 8.4.9 Schedule 7 of the Order lists all the relevant plots which will be occupied for construction onshore, including the cable corridor and the substation land.

*Restrictive covenants over lands where rights are sought*

- 8.4.10 Restrictive covenants are also sought for the lands that will have the cables installed, to protect the cables from becoming exposed or damaged, or built over. This is necessary over the cable route to ensure the cables are not damaged by construction or excavation works or made materially harder to access in case of emergency or routine works to the cables and ducts being necessary. It is submitted that this is a justifiable use of compulsory acquisition powers to protect the NSIP and to give the Applicant and its successors (including any successor offshore transmission network operator or OFTO) the comfort that the cables and ducts are appropriately protected and the conveying of electricity will not be interrupted by such excavation.
- 8.4.11 Restrictive covenants are not sought over areas that are owned or used by statutory undertakers or highway lands.
- 8.5 The nature of the onshore works, described with reference to the nature of the proposed acquisition, and running from the landfall at Pegwell Bay to the substation at Richborough Port, broadly from north to south, is as follows:

*Description of route, works and plots, and general justification for extent of Order lands**Work Nos. 3A and 4B*

- 8.5.1 Work No. 3A comprises the location for the offshore subsea export cables below mean high water, which approach the land in a narrowing span towards Work No. 4A. Work No. 4B sits above mean high water but is required for the same purposes as Work No. 3A. Although Work No. 3A is below Mean High Water Springs (MWHS) and will be covered by the seabed licence obtained from the Crown Estate, it is held partly within a registered freehold title by Thanet District Council (Plot 00/01), and partly within a registered freehold title held by the National Trust (Plots 00/05 and 00/10) of which part (Plot 00/10) is leased to the Kent Wildlife Trust. Plot 00/05 is within the National Trust's title but not within the Kent Wildlife Trust lease. Plot 00/03 is in the separate freehold ownership of the Kent Wildlife Trust. Plots 00/02 and 00/15 are unregistered and in unknown ownership. Each of these plots has been included in the DCO and scheduled in the Book of Reference for compulsory acquisition.
- 8.5.2 Up to and including Plots 01/05 and 01/06, a reduced set of rights is sought to install, retain and maintain the cables (Plots 00/01, 00/02, 00/03, 00/05, 00/10, and 00/15, 01/01, 01/02, 01/05 and 01/06).

*Work Nos. 4A and 4*

- 8.5.4 Work No. 4A comprises the location for the landfall works, described in Section 4 of this Statement of Reasons and set out in the works description of the DCO.
- 8.5.5 The Applicant seeks permanent new rights to install the cables, jointing works and associated works beneath the current level of the ground in Work No. 4.

*Work No. 5*

- 8.5.6 Work No. 5 (within Plot 01/50) comprises a temporary works compound to facilitate construction of the Project, located in the area of Pegwell Bay Country Park. Plot 01/50 is scheduled in the Book of Reference for temporary possession only.

*Work No. 6*

- 8.5.7 Work No. 6 (within Plot 01/55) extends into the adjacent public highway at Sandwich Road. The Applicant seeks new rights over this plot, in the event that works to upgrade and widen the existing access from Sandwich Road are required.

*Work No. 7*

- 8.5.8 Passing into Work No. 7 at the boundary between Plots 01/15 and 01/65, Work No. 7 comprises the cables continuing underground in a southerly direction following parallel to Sandwich Road towards the sports ground to the south.
- 8.5.9 Work No. 7 then turns in a south easterly direction immediately to the north of the Baypoint sports club, following the edge of the sports ground within Plot 01/80.

*Work No. 8*

- 8.5.10 Work No. 8 comprises a new access into Work No. 7 from the public highway at Sandwich Road.

*Work Nos. 9 and 10*

- 8.5.11 Work No. 9 (Plot 01/105) comprises a second temporary construction compound area and is sought for temporary possession only.
- 8.5.12 Within Work No. 10, new permanent rights of access are sought within Plots 01/85, 01/90, 01/95 and 01/100; 01/120, 01/125, 01/115 and 01/110; and 02/20 (Work No. 10), which access passes around the southern boundary of the sports club and sports ground, leading into Plot 02/10.

*Work No. 11*

- 8.5.13 Plot 02/25 (Work No. 11) comprises a smaller temporary construction compound and is sought for temporary possession only.
- 8.5.14 The cable route continues within Work No. 7 in a south westerly direction through land owned by RAMAC into the proposed substation compound at Work No. 13.

*Richborough Port and substation area (Work Nos. 12, 13, 14 and 15)*

- 8.5.15 Work No. 12 comprises a private access where the Applicant seeks rights to carry out limited widening works along the northern limit of the proposed Thanet substation. The plots comprising this work are scheduled for the acquisition of new access rights only.
- 8.5.16 Work Nos. 13, 14, and 15 are scheduled for freehold acquisition.
- 8.5.17 Work No. 13 comprises the proposed Thanet substation. Work No. 14 comprises mixed use industrial land within Richborough Port, which the Applicant seeks to acquire freehold in order to create a temporary worksite to facilitate the construction of Work No. 12, and within which to permanently relocate a number of businesses currently sited within the RAMAC land. Accordingly Plots 02/55, 02/60, 02/61, 02/65, 02/70, 02/75 and 02/85 are scheduled for freehold acquisition.
- 8.5.18 Businesses currently sited within Work Nos. 13 and 14 include the Ministry of Justice, operating as the Department of Justice Border Force, and a number of parties benefitting from minor tenancies within the Richborough Port land. Plot 02/80 comprises a new access into Richborough Port from the Ramsgate Road public highway, over which permanent rights are required but freehold land is not sought.
- 8.5.19 Work No. 15 comprises an area for biodiversity enhancement including permanent planting and maintenance, and is accordingly sought for freehold acquisition.

*Work No. 16*

- 8.5.20 Within Work No. 16, Plots 02/90, 02/95, 02/100, 02/105 and 02/115 comprise areas of publicly maintained highway for which Kent County Council is the highway authority. A reduced set of cable rights is sought to install the cables beneath Ramsgate Road and the roundabout immediately to the east of the existing electricity distribution sub-station.
- 8.5.21 Plots 02/120, 02/125, 02/135 and 02/140 within Work No. 16 are scheduled for the same standard cable rights. No new structures will be required above the level of the existing ground within Richborough Energy Park.



*Richborough Energy Park: different route options*

- 8.5.22 Within Richborough Energy Park, three different potential routes for the cable are sought in order to connect the cables to the existing National Grid substation in Plot 02/130.
- 8.5.23 Richborough Energy Park and the National Grid 400 kV substation are currently under construction, and as such the final configuration of this site is sufficiently uncertain as to require three route options to be retained.
- 8.5.24 Critically, NGET has not yet confirmed the location of the connection point within its substation compound that the Thanet Extension cables will connect into. The Applicant accordingly requires flexibility to allow a connection to the east or the west of the NGET compound.
- 8.5.25 Following detailed design work and further consultation with the landowner, NGET, and other infrastructure owners, the Applicant will identify a single cable route. Plots 02/121, 02/122, 02/123, 02/124, 02/135 and 02/140 represent the three route options set out below. They are cross-hatched and indicated as "Cable Route Options" on the Land Plans reflecting the fact that only one route will be selected.
- 8.5.26 All route options would enter Richborough Energy Park using horizontal directional drilling (**HDD**) under the A256 from the onshore substation. The location of the HDD entry or exit pits within Richborough Energy Park will be determined by the final cable route, local constraints, and discussions with the landowner and other utilities including NGET, Nemo Link and UKPN.
- 8.5.27 **Option 1** comprises a route south of the existing UKPN 132 kV substation compound, going north along the road along the western boundary of the site to a connection point in the west of the NGET compound. There is a proposal for NGET to install 132 kV cables within this road, connecting to the UKPN substation. This would significantly constrain this route option, particularly at the point between the south western corner of the UKPN compound and the retaining wall on the western boundary of REP.
- 8.5.28 **Option 2** passes through the corridor between the Thanet Offshore Wind Farm substation and the Nemo Link converter station, before following the same alignment as option 1 along the road on the western boundary of the Richborough Energy Park site within Plots 02/120, 02/125, 02/135 and 02/140. This would require a connection point in the west of the NGET compound. This option avoids the pinch point identified for option 1, but will only be confirmed as a viable option following further investigation of the final HDD location, the buried infrastructure in this area and the final layout of any access road along this corridor.

- 8.5.29 **Option 3** facilitates a connection point in the east of the NGET substation compound. The route runs to east of the Nemo converter station with cables either in the road or within the verge. There are other below-surface utilities on this route but these do not present significant constraints.
- 8.5.30 All plots within Richborough Energy Park that are, at this stage, optional and may not feature in the final made Order have been clearly indicated as contingent in the Land Plans and Book of Reference.
- 8.6 In Plot 02/130, the Applicant seeks a right that is substantially identical to the rights sought across the rest of Richborough Energy Park, but which in addition includes a power to connect into existing cable sealing ends, and to construct a connection to the NGET sub-station.
- 8.7 This is considered a proportionate approach, and will provide the Project with no greater powers than it requires to facilitate the Project.

#### Negotiations with affected parties

- 8.8 The Applicant will continue to seek to acquire rights and interests by agreement where possible on appropriate commercial terms. Seeking compulsory acquisition powers whilst, in parallel, negotiations to acquire interests continue is in accordance with both general practice and paragraph 25 of the Guidance.
- 8.9 The Applicant's purpose in acquiring the Order Land compulsorily, if required, in accordance with the provisions of the 2008 Act, is to secure the lands and rights required to construct and then operate the Project within a reasonable commercial timeframe.
- 8.10 The interests in land affected are described in the Book of Reference and Land Plans. The numbers and letters indicated on the Land Plans are cross-referred to the Book of Reference.
- 8.11 It is to be noted that land has been included in the Order as being scheduled in the Book of Reference even where agreement has been reached. This is to ensure that, if any minor interests such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, powers are available to override those interests. It also reflects that minor interests may still be outstanding and not waived and therefore have to be extinguished or overridden by statutory process. In such circumstances a relevant claim may be made and accordingly scheduling of the interests in land is necessary. As a result of the application of the Applicant's statutory powers the beneficiary of an interest will be entitled only to a right to compensation and not to prevent the scheme from proceeding. Including land within the Book of Reference where agreement has been reached will also assist in the event that a negotiated agreement proves difficult to enforce for any reason.

8.12 As is noted above negotiations are underway with each of the affected parties at the landfall, along the cable route and at the substation site, and the Applicant continues to seek agreement with all relevant parties. It cannot yet however be anticipated that all of the interests in the Order Land will be acquired within a reasonable commercial timeframe and as a result the compelling case in the public interest for the promotion of the Order, so as to permit the Project to proceed is, it is submitted, in existence and the private interests of the relevant landowners should not take precedence over the compelling public interest.

### Highways subsoil

8.13 For all highways subsoil, the interest of the presumed owners has been scheduled in the Book of Reference. The interest of Kent County Council as highway authority is also scheduled, but the interest of the highway authority excluded from compulsory acquisition. The Applicant may also seek to rely on its powers contained in Article 21 of the Order to use the land under the subsoil only and not to acquire any greater interest in that land.

### Land in Unknown Ownership

8.14 There are a number of plots identified in the Book of Reference where it has not been possible to identify ownership. Accordingly notices were posted on site seeking information from the landowner prior to the commencement of the last round of consultation pursuant to section 42 of the 2008 Act. Notices as required under section 48 of the 2008 Act were also posted on site to invite consultation responses from the potential, but unknown, owners or occupiers at the same time as notices were served on known landowners under section 42.

8.15 Despite ongoing diligent inquiry, it has not been possible to identify all of the beneficiaries of the many third party interests in the Order lands but the Applicant will continue to attempt to identify the relevant interests where possible.

### Need for Power to Override Rights and Easements

8.16 Numerous rights in the Order Land have been identified and are scheduled in the Book of Reference.

8.17 Whilst it is not anticipated that any beneficiaries of these rights will have a relevant claim leading to the payment of compensation it remains possible that the beneficiaries may seek to enforce rights, potentially even by applying to injunct the Project.

- 8.18 The Applicant believes it is both necessary and appropriate for the Order to include provisions allowing for the overriding and/or extinguishment of rights and covenants over the Order Land. It is submitted that the overriding of such rights is in the public interest. Without the ability to extinguish or override such rights the Project may be delayed or prevented. Compensation for any loss that can be demonstrated will be available in accordance with the Statutory Compensation Code. In any event the Applicant will seek to agree (with each of the benefitting parties it can identify) details of how access can be maintained, or substitute access provided, during the short time that construction impacts upon the relevant access where such rights are affected.
- 8.19 Whilst the powers in Article 18 allow for the over-riding or extinguishment of such rights, the Applicant anticipates that it will be able to serve a notice on the majority of the relevant beneficiaries of rights to confirm that, subject to the Applicant having the necessary protections to enable it to construct the works, the rights will not be extinguished. If agreement cannot be reached and extinguishment of rights is necessary the Applicant will offer to re-grant rights on similar terms wherever possible to minimise compensation claims.

#### **Alternatives to compulsory acquisition**

- 8.20 The Applicant has sought, and continues to seek, a negotiated solution to each of the identified required interests. In each case the Applicant has chosen to secure land or rights in a way that minimises disruption to the relevant owners.
- 8.21 The selection of the landfall, onshore cable corridor and substation location is set out in detail in the Environmental Statement. The land scheduled in the Book of Reference is necessary and appropriate; there are no other suitable alternatives.
- 8.22 Where land is in unknown ownership and so scheduled in the Book of Reference, the Applicant has not been able to identify the relevant holder of that interest. All identified owners of interests have been approached and where possible agreement has been reached. Negotiations will continue, but the Applicant believes compulsory acquisition powers can now be justified to ensure that the Project can be developed within a reasonably commercial timescale.

### Availability of funds for compensation

8.23 The Applicant is part of the Vattenfall group which is one of Europe's largest generators of electricity and the largest producer of heat. The ultimate parent company, Vattenfall AB, is 100%-owned by the Swedish state. The Vattenfall group owns and operates a broad range of assets across Europe from six energy sources - biomass, hydro, natural gas, nuclear and wind power. The company's main business interests are in Sweden, Germany, the Netherlands, Denmark and the UK. Vattenfall sees wind power as a cornerstone of its total energy mix and currently has over 1000 turbines installed in its core markets. In the UK, the Vattenfall group owns and operates Thanet, Kentish Flats, Kentish Flats Extension and Ormonde Offshore Wind Farms.

8.24 Details of the proposed funding for the implementation of the Project and the acquisition of land are contained in the Funding Statement (Document 4.2) which accompanies the Application.

8.25 In brief, the Applicant has the ability to procure the financial resources necessary to fund the works to be authorised by the Order, subject to final Board authority. These funds will meet the capital expenditure for:

- The cost of acquiring the land identified in the Order; and
- The cost of compensation otherwise payable in accordance with the Order.

8.26 As a result, the Secretary of State can be assured that sufficient funding for payment of compensation will be available to the Applicant if compulsory acquisition powers are provided in the Order now being sought.

### Compelling case in the public interest (section 122(3))

8.27 The Applicant considers that, for all of the reasons in the Statement, a compelling case in the public interest for powers of compulsory acquisition exists.

8.28 The Project will contribute to the national demand for generation of power using renewable energy. The case for this is made out in Government Policy as outlined in the Statement.

8.29 The Applicant has sought, and will continue to seek, to negotiate acquisition of interests where possible by voluntary agreement and is seeking appropriate powers to ensure that the Project can be brought forward in a reasonable and commercial time frame.

8.30 The Applicant has a well worked up scheme and funding sufficient to take the Project forward.

8.31 In summary the Applicant considers the Project to be:

- In accordance with established and emerging national policy in relation to NSIPs contained in NPS EN-1, NPS EN-3 and NPS EN-5;
- Required to meet a pressing national need for electricity generating capacity; and
- Entirely necessary and proportionate to the extent that interference with private rights is required.

## 9 Special Considerations affecting the Order Land

### Crown Land

- 9.1 There is no Crown Land present below the mean high water mark at the landfall at Pegwell Bay, and no Crown interest, except to the extent that a seabed licence is required for the offshore cable works up to mean high water.
- 9.2 The marsh land seaward of the sea wall, from the western limits of Plots 01/05 and 01/06, is owned by other parties or is in unknown ownership. These interests are described and illustrated in the Book of Reference as required by the 2008 Act (Plots 00/01, 00/02, 00/03, 00/05, 00/10, and 00/15).
- 9.3 There are no tidal rivers or other presumed Crown interests in the Order land. Accordingly consent under section 135 of the 2008 Act is not required from the Crown Estate Commissioners for the landfall or other tidal areas.
- 9.4 The Ministry of Justice, a government department, is a lessee and occupier of the RAMAC Holdings Limited land in Plots 02/60 and 02/61, and benefits from a right of access over Plot 02/75. The Ministry of Justice is a Crown interest within the terms of Section 135 of the 2008 Act, and cannot be compulsorily acquired.
- 9.5 The Applicant intends to negotiate to acquire the necessary interests directly with the Ministry of Justice, and does not perceive any obvious impediment to obtaining these interests.
- 9.6 Consent from the Ministry of Justice is being sought by the Applicant for the inclusion of its interest in the Order. Section 135 of the 2008 Act requires this consent to be provided before the Order can be made, and it will be needed in the event that the Applicant requires to compulsorily acquire any interests in this Crown land held otherwise than by the Crown for the time being (for example, utility interests or restrictive covenants belonging to third parties).

### Special category land – open space

9.7 The grid connection route passes through potential open space land at Plots 01/10, 01/11, 01/15, 01/20, 01/25, 01/30, 01/35, 01/40, 01/50, 01/60, 01/65, 01/70 and 01/75 being Pegwell Bay Country Park (**the Open Space Land**). The Open Space Land is shown on the Special Category Land Plan submitted as part of the Application (Document 2.4), which is appended to this document. This land is considered to be Open Space Land pursuant to Section 132 of the 2008 Act.

9.8 Section 132 of the 2008 Act provides that where an applicant for development consent seeks the inclusion in an Order of provisions for the compulsory acquisition of a right over open space land, the Order will be subject to Special Parliamentary Procedure unless the Secretary of State is satisfied that:

- (a) ... *"one of subsections (3) to (5) applies, and*
- (b) *that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.*

9.9 Subsections (3) to (5) provide as follows:

*(3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—*

- (a) the persons in whom it is vested,*
- (b) other persons, if any, entitled to rights of common or other rights, and*
- (c) the public.*

*(4) This subsection applies if—*

- (a) replacement land has been or will be given in exchange for the order right, and*
- (b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).*

*(4A) This subsection applies if—*

- (a) the order land is, or forms part of, an open space,*
- (b) none of the order land is of any of the other descriptions in subsection (1),*
- (c) either –*

*(i) there is no suitable land available to be given in exchange for the order land, or*

*(ii) any suitable land available to be given in exchange is available only at prohibitive cost, and*

*(d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the*

*order were to be subject (to any extent) to special parliamentary procedure.*

*(4B) This subsection applies if—*

*(a) the order land is, or forms part of, an open space,*

*(b) none of the order land is of any of the other descriptions in subsection (1), and*

*(c) the order land is being acquired for a temporary (although possibly long-lived) purpose.*

*(5) This subsection applies if—*

*(a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and*

*(b) the giving of other land in exchange for the order right 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.*

## **The Open Space Land**

- 9.10 The cable route to effect the connection will follow the route indicated on the Land Plans. To effect the necessary connection to the grid connection location at Richborough Energy Park, a landfall location has been selected at Pegwell Bay.
- 9.11 The site and route selection process for the onshore elements of the Project are detailed in the Environmental Statement Volume 3, Chapter 1: Project Description (Onshore) (Document 6.3.1).
- 9.12 A precautionary approach is being taken to treat the Country Park as public open space because of the delay that could be caused to the Project, which is a Nationally Significant Infrastructure Project, if the Applicant is caused to enter the Special Parliamentary Procedure process. The Open Space Land comprises Plot numbers 01/10, 01/11, 01/15, 01/20, 01/25, 01/30, 01/35, 01/40, 01/50, 01/60, 01/65, 01/70 and 01/75 on the Land Plan and in the Book of Reference. It measures approximately 82,503 square metres. The Open Space Land is shown hatched green on the Special Category Land Plan (Document 2.4).
- 9.13 The Open Space Land is owned by the Kent County Council except for Plot 01/75 which is owned by Kent Wildlife Trust. Kent Wildlife Trust manages the whole Country Park and so has an interest as an occupier.



- 9.14 The Open Space Land has been included in the Order and scheduled in the Book of Reference to ensure that if any minor interests such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, powers are available to override those interests. As a result of the application of the Applicant's statutory powers, any beneficiary of such an interest will be entitled only to a right to compensation and not to prevent the Project from proceeding.
- 9.15 As set out above, rights permitting the Applicant's use of the surface of the Open Space Land which would be infrequent, and including easements to retain the apparatus underground and to access it for maintenance, are sought to be compulsorily acquired.

#### **Maintenance of the cables and the ducts**

- 9.16 Maintenance of the cable and pre-installed ducts will principally be by way of occasional walkover, consisting of non-intrusive inspections. Intrusive maintenance will only occur if faults occur in the cables or ducts, or maintenance necessitates cable or duct replacement. Maintenance will be short in duration and infrequent and will not require the fencing of large linear areas. Rights of access with vehicles plant and machinery are sought but it is envisaged such rights will also be exercised only infrequently. No permanent haul roads or access tracks will be required in relation to the exercise of the right of access over the Open Space Land.

#### **Special Considerations Affecting the Open Space Land**

- 9.17 The draft DCO includes provision for the compulsory acquisition of land to which the provisions of the 2008 Act relating to special category land apply, but none of the land that is special category land is land forming part of public open space.
- 9.18 The open space to be used or acquired comprises approximately 82,503 m<sup>2</sup> of land over which new rights are sought, and approximately 9,442 m<sup>2</sup> of land that is required temporarily during the construction period (Plot 01/50). The overall potential loss during the construction period will therefore be approximately 82,503 m<sup>2</sup>.
- 9.19 Included within this total, during the operation of the Project the Applicant requires permanent rights of access for maintenance to be granted over Plots 01/25, 01/30, 01/35 and 01/40 to gain access from Sandwich Road to the landfall and cable easement areas, over which a permanent right of access for maintenance will also be included (Plots 01/10, 01/11, 01/15, 01/20, 01/60, 01/65, 01/70 and 01/75).
- 9.20 The public open space land is crossed by a number of Category B, C and D paths. More detail on these paths is given in the Outline Access Management Strategy (Document 8.4).
- 9.21 The Land does not include any land forming part of a common.

9.22 Sections 131 and 132 of the 2008 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 or open space. Specifically:

9.22.1 Section 131 applies where an application is made for a development consent order authorising the compulsory acquisition of land forming part of a common or open space.

9.22.2 Section 132 applies where an application is made for a development consent order authorising the compulsory acquisition of a right over land forming part of a common or open space, by the creation of a new right over land.

*Section 131:*

9.23 Special parliamentary procedure will apply where Section 131 is engaged. The Applicant does not seek to compulsorily acquire any freehold land in the land forming public open space, and accordingly it is considered that Section 131 will not apply to the Project.

*Section 132:*

9.24 Special parliamentary procedure will apply where Section 132 is engaged unless the Secretary of State is satisfied that one of the following circumstances applies:

(a) The open space land when burdened with the order right will be no less advantageous than it was before to the persons in whom it is vested, other persons who have rights and the public (132(3));

(b) replacement land has been, or will be, given in exchange for land being compulsorily acquired and the replacement land has been, or will be, vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land (subsection 132(4));

(c) for open space only, that suitable replacement land 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 (subsection 132(4A));

(d) for open space only, if the land, or right over land, is being acquired for a temporary purpose (subsection 132(4B)); or

(e) 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 the people entitled to certain rights or the public (subsection 132(5)).

- 9.25 Subsection 132(2) of the 2008 Act provides that an order granting development consent shall be subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of special category land, unless the Secretary of State is satisfied that one of subsections 131(3) to 131(5) (detailed above) applies; and that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.
- 9.26 The Applicant considers that the criteria in subsection 132(3) of the 2008 Act are met, because the right of access to, and over, the land for maintenance purposes would not burden the open space land in such a way that would make it less advantageous to Kent County Council as owner, the Kent Wildlife Trust as manager, owner of Plot 01/75 and as a party using the land, or to the public using the land. The Applicant is not aware of any other rights exercised over the land. The reasons for this are as follows:
- 9.26.1 The Applicant anticipates a **five month initial** construction period at Pegwell Park. Following this, should construction be sequential, there will be a **18 month onshore cable trenching/HDD installation and pull-through exercise for the whole Project, of which (at a conservative estimate) the Country Park would be affected for approximately 12 months** (set out within Table 4.12 of Environmental Statement Volume 3, Chapter 4: Tourism and Recreation (APP-060)). **During the up to 12 month period when cable pulling and jointing may be carried out within the Country Park**, the public would be able to access the Park, although at times potentially only on a specified route or diversionary route through the Country Park. The temporary construction compound within Plot 01/50 may be used for up to 28 months as it will support the installation works for the whole Project.
- 9.26.2 Much of the Country Park is not currently accessible to the public, due either to being fenced off, or clearly signposted as not for walking due to specific habitats potentially being disturbed. This restricted portion of the land currently amounts to up to approximately 46% of the Country Park as a whole.
- 9.26.3 The only land in which the power to compulsorily acquire permanent new rights is sought is the route of the cable, landfall and jointing works, and a small area of marsh land at landfall. The area of marsh land is not considered to be currently accessible to the public as it would be very difficult to walk across. The Applicant understands that the marshy nature of the site would prevent any recreational use, including, for example, walking or exercising dogs.

- 9.26.4 As the construction period is likely to only 5 months, with cable pulling and jointing occurring during a subsequent 12 months period and only small areas of the land would be cordoned off for these works, the Applicant considers that it would be disproportionate to seek to acquire replacement land for the open space land being used from a separate landowner, particularly through the exercise of compulsory acquisition powers.
- 9.27 During the operation and maintenance period, the Applicant will at times require access to the land during for maintenance, likely on an annual basis. This work will be limited to discrete parts of the Park which would be affected only intermittently, essentially through the use of created manhole covers. Any works would be of short duration and would be consistent with the ongoing management of the country park by Kent County Council and Kent Wildlife Trust. It is not expected that any intrusive maintenance works will be required.
- 9.28 The maintenance periods will not diminish the use of and access to the Country Park. Further information about the nature and impact of the anticipated maintenance works can be found at Table 4.12 of Environmental Statement Volume 3, Chapter 4: Tourism and Recreation (APP-060).
- 9.29 In light of the above, the Applicant seeks the Secretary of State's confirmation that he is satisfied that the exemption in subsection 132(3) of the 2008 Act applies to this area of special category land and that, accordingly, the parts of the DCO which relate to this special category land shall not be subject to special parliamentary procedure.

### Statutory Undertakers

- 9.30 Statutory undertakers' operational land may be the subject of special procedures under the 2008 Act.

#### *Section 127 Planning Act 2008*

- 9.31 Section 127 of the 2008 Act applies to statutory undertakers' land held for the purposes of the undertaking if that statutory undertaker has made a representation to its relevant Secretary of State about the proposed development consent order before the completion of the examining authority's examination of the application. If that representation has not been withdrawn; and if that decision-maker is satisfied the land is used for the purposes of the carrying out of the statutory undertaking, then statutory undertakers' land may only be included for acquisition in a development consent order if the Secretary of State is satisfied that the land may be purchased and not replaced without serious detriment to the carrying on of the undertaking or it can be replaced with other land belonging to or available for acquisition by the undertaking without serious detriment to the carrying on of the undertaking. A similar provision applies to the acquisition of new rights over statutory undertakers' operational land.

*Section 138*

- 9.32 Section 138 of the 2008 Act is engaged by Article 25 (Statutory undertakers) of the Order. This Article will permit the compulsory acquisition of land or rights of undertakers or enable the Applicant to extinguish or relocate the rights or apparatus of statutory undertakers. Such power may only be included in the Order if the Secretary of State is satisfied the extinguishment or removal is necessary for the Project. If a representation has been made by the relevant undertaker and not withdrawn then section 138(4)(b) requires the undertakers' own Secretary of State to consent to the inclusion of the provision.
- 9.33 Article 25 of the Order is expressed to be subject to protective provisions agreed between the Applicant and the relevant undertakers. Proposed Protective Provisions form Schedule 8 to the Order, to the extent they are required. The Applicant is seeking to agree these provisions in good time before the close of the examination.
- 9.34 Details of the negotiations to date with the affected utilities to which Section 127 and/or Section 138 of the 2008 Act may apply are set out as follows:

*Nemo Link Limited*

- 9.35 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from Nemo Link Limited (**NEMO**) by private treaty.
- 9.36 The Applicant has been in contact with NEMO since September 2017 to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement for the protection of NEMO as soon as possible. Negotiations have now completed and NEMO lifted its objection to the Order on 5 June 2019.
- 9.37 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of NEMO's undertaking.

*Southern Water Limited*

- 9.38 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from Southern Water Limited (SWL) by private treaty.
- 9.39 The Applicant has been in contact with SWL since October 2017 to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement for the protection of SWL as soon as possible. **Negotiations with SWL completed on 6 June 2019, and SWL have withdrawn their objection to the Order.**

9.40 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of SWL's undertaking.

*UK Power Networks (Operations) Limited*

9.41 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from UK Power Networks (Operations) Limited (**UKPN**) by private treaty.

9.42 The Applicant has been in contact with UKPN since September 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement and protective provisions for the protection of UKPN as soon as possible. Protective provisions benefitting UKPN are included in the Order.

9.43 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of UKPN's undertaking.

*Scotia Gas Networks Limited*

9.44 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from Scotia Gas Networks Limited (**SGN**) by private treaty.

9.45 The Applicant has been in contact with SGN since November 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement and protective provisions for the protection of SGN as soon as possible. Protective provisions that will benefit SGN are included in the Order.

9.46 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of SGN's undertaking.

*National Grid Electricity Transmission plc*

9.47 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from National Grid Electricity Transmission plc (**NGET**) by private treaty. The Applicant's proposed works that may interact with NGET's land, rights and apparatus are described in Sections 7.5 in this Statement of Reasons.

9.48 The Applicant has been in contact with NGET since September 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement and protective provisions for the protection of NGET as soon as possible.

9.49 Protective provisions benefitting NGET have been negotiated for inclusion in the Order, and NGET lifted its objection to the Order on 23 May 2019.

9.50 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of NGET's undertaking.

*BT Limited*

9.51 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from British Telecommunication plc (**BT**) by private treaty. The Applicant has been in contact with BT since September 2017 to progress private treaty negotiations in tandem with the compulsory acquisition process. Protective provisions that will protect BT are included in the Order.

9.52 The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of BT's undertaking.

*Thanet OFTO Limited*

9.53 The Applicant is seeking to negotiate to acquire the land, and rights over land necessary for the Project from Thanet OFTO Limited (**Thanet OFTO**) by private treaty. The Applicant's proposed works that may interact with Thanet OFTO's land, rights and apparatus are described in Sections 7.5 in this Statement of Reasons.

9.54 The Applicant has been in contact with Thanet OFTO since early 2018 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding an agreement for the protection of Thanet OFTO as soon as possible. Protective provisions that will benefit Thanet OFTO are included in the Order.

*Highway Authority (Kent County Council)*

9.55 Land held by Kent County Council as highway authority is also included in the Book of Reference for completeness, although the interest of the highway authority is expressly excluded from compulsory acquisition.

## 10 The Human Rights Act 1998

- 10.1 The European Convention on Human Rights (**Convention**) was incorporated into domestic law by the Human Rights Act 1998. The Convention contains Articles aimed to protect the rights of the individual (referred to as **Convention Rights**).
- 10.2 The provisions of particular relevance to the determination as to whether the Order should include compulsory acquisition powers are:
- Article 1 of the First Protocol to the Convention: This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws and principles.
  - Article 6: This entitles those affected by powers sought for the Project to a fair, public hearing.
  - Article 8: This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.
- 10.3 The decision maker, as a public body, is under a duty to consider whether the exercise of its powers engages Convention Rights. The approach to be taken to give effect to rights under the Convention is reflected in the advice in the Guidance.
- 10.4 The Order has the potential to infringe the human rights of persons who hold interests in the Order Land. Such infringement can be authorised by law provided the appropriate statutory procedures for making the Order are followed and there is made out a compelling case in the public interest for the compulsory acquisition and the interference with the Convention Right is proportionate. On the basis of decisions of the courts, the test of proportionality is satisfied if the Order strikes a fair balance between the public benefit sought and the interference with the rights in question.
- 10.5 The Applicant has weighed the potential infringement of Convention Rights in consequence of the inclusion of compulsory powers within the Order with the potential public benefits if the Order is made.
- 10.6 The Applicant considers that there would be significant public benefit arising from the grant of development consent. That benefit is only likely to be realised if the Order includes powers of compulsory acquisition. The significant public benefits on balance outweigh the effects upon persons who own property and rights within the Order Land.



- 10.7 Those affected by compulsory acquisition may claim compensation in accordance with the Statutory Compensation Code. Through its ultimate parent company, the Applicant has the resources to provide such compensation.
- 10.8 In accordance with Part 5 of the 2008 Act, the Applicant has consulted persons set out in the categories contained in section 44 of the 2008 Act, which include owners of the Order Land and those who may be able to make claims either under section 10 of the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973. (No persons were identified in the latter category). All scheduled interests are able to make representations to the Examining Authority and therefore the requirements of Article 6 are met.
- 10.9 Representations can be made in response to any notice given under section 56 of the 2008 Act (notifying persons of accepted application).
- 10.10 Should the Order be made, a person aggrieved may also challenge the Order in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the 2008 Act. Affected persons have the right to apply to the Upper Tribunal (Lands Chamber), if compensation is disputed.
- 10.11 The requirements of compensation being payable for the acquisition of any interest are met. Therefore Article 1 of Protocol 1 is not contravened.
- 10.12 For the above reasons, the Applicant considers that the inclusion of powers of compulsory acquisition in the Order would not constitute any unlawful interference with Convention Rights and further that it would be appropriate and proportionate to make the Order, including the grant of powers of compulsory acquisition.

## 11 Other compulsory acquisition powers in the Order

- 11.1 Regulation 5(2)(h) of the APFP Regulations requires a Statement of Reasons for seeking an Order to authorise “*the compulsory acquisition of land or an interest in or right over land*”. The question whether such powers should be granted raises questions of need and justification, proportionality, interference with property rights and interests, compensation and access to judicial process.
- 11.2 The precise wording of Regulation 5(2)(h) does not on the face of it extend beyond the outright acquisition of land or interests in or rights over land. This, however, does not capture other compulsory powers sought in the Order which similarly relate to land and will or may interfere with property rights and interests.
- 11.3 The additional powers referred to in above are the following:

### *Article 8 (Street works)*

- 11.3.1 This article would allow the Applicant to carry out certain specified kinds of works in specified streets.

11.3.2 The exercise of the powers in Article 8 could potentially interfere with private rights. The rights in question could be suspended, extinguished or otherwise interfered with. A person suffering loss from this would be entitled to claim compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

*Article 10 (Temporary stopping up of streets)*

11.3.3 This Article would enable the Applicant to temporarily to stop up, alter or divert streets. Any stopping up or other interference could not be for longer than a reasonable time. During that time the Applicant could divert traffic from the street and prevent pedestrian access along it.

11.3.4 The general power to prevent pedestrian access would be subject to the obligation to provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion if there would otherwise be no such access.

11.3.5 Powers in Article 10 would be exercisable in respect of the streets or parts of streets specified in Schedule 10 to the Order. With the consent of the street authority the power could also be exercised in respect of any other street.

11.3.6 The exercise of Article 10 could potentially interfere with private rights, i.e. rights vested in a person rather than the public at large. In that event the right in question would be suspended. A person suffering loss due to such suspension would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

*Article 15 (Authority to survey and investigate the land inshore)*

11.3.7 This article would enable the Applicant, for the purposes of the Order, to enter onto any land shown within the Order limits to survey and investigate the land. A person suffering loss due to such interference would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

*Article 20 (private rights)*

11.3.8 Article 19 provides for the extinguishment of private rights over land subject to compulsory acquisition. The exercise of those powers amounts to an interference with property rights. A person suffering loss due to such interference would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition. The Applicant will take particular regard to those rights of access over which the Order lands cross and where possible maintain access at all reasonable times. Where possible the Applicant will reach agreement with the relevant beneficiary of the right or if appropriate serve a prior notice under Article 19(6) of the Order to preserve the right of access. If a right of access is extinguished or overridden, the Applicant will seek to offer a re-grant of that right on similar terms to the affected party following the works being completed, with an appropriate licence for access during the time the works are carried out.

*Article 24 (Rights over or under streets)*

11.3.9 Article 24 would enable the Applicant, where required for the construction of the Project, to use the subsoil of, or airspace over, any highway, i.e. a way of any sort over which the public have a right to pass. The powers would not extend to a subway or underground building or to cellars or similar structures forming part of a building fronting the street, but would nonetheless interfere with property rights. A person suffering loss due to such interference would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

*Article 25 (Temporary use of land for carrying out the authorised project)*

11.3.10 Article 25 would enable the Applicant, for the purpose of constructing the Project to take temporary possession of certain land. "Possession" means that the Applicant could occupy and control the land to the exclusion of everyone else.

11.3.11 The land to which the Article applies is the land specified in columns (1) to (3) of Schedule 7 to the Order and any other land within the limits of land to be acquired or used (as shown on the land plans) so long as the Applicant has not made a declaration to vest the land in itself or entered the land following a notice of entry in advance of acquisition. The Applicant would have the power to remove buildings and vegetation from the land and construct temporary works (including accesses) and buildings on the land.

11.3.12 Before giving up possession of any land the Applicant would be obliged to remove all temporary works and restore the land to its condition immediately before entry, or otherwise to the owner's reasonable satisfaction.

11.3.13 The exercise of these powers would interfere with the property rights of owners and occupiers of the land. An owner or occupier suffering loss or damage would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

*Article 26 (Temporary use of land for maintaining the authorised project)*

11.3.14 Article 26 would enable the Applicant to take temporary possession of certain land at any time during the maintenance period i.e. in relation to any part of the Project, five years from the date on which that part is first opened for use.

11.3.15 The land to which Article 26 applies is any land within the limits of land to be acquired or used as regards which possession is reasonably required for the purpose of maintaining the Project.

11.3.16 The exercise of the powers would interfere with the property rights of owners and occupiers of the land. An owner or occupier suffering loss or damage would be entitled to claim compensation. The amount of compensation, if not agreed, would be subject to determination in the same way as compensation for outright acquisition.

*Article 33 (Felling or lopping trees and removal of hedgerows)*

11.3.17 This Article would enable the Applicant to fell or lop any trees or shrubs near any part of the Project so as to prevent the trees or shrubs from obstructing or interfering with the construction, maintenance or operation of the development or which may constitute a danger. A person suffering loss due to such interference would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

## **12 Other consents and licences**

12.1 Additional consents and licences are required under other legislation in addition to the Order. These are listed in Document 5.4. The principal consents that might impact on the timetable for the commencement of construction are as follows:

- European Protected Species Licence: this will be sought from Natural England or the MMO after the Order is made;
- Safety Zones: if required, an application will be made to the Secretary of State after the Order is made, under the Energy Act 2004;

- Environmental Permits: these may be required, for instance for the discharge of water and the need for these will be reviewed following submission of the Application;
  - Flood Defence Permit and Land Drainage consent: both will be sought, where necessary, following making of the Order. In addition consents to alter culverts or drains or water courses may be required. Again these will be sought following making of the Order.
- 12.2 For these consents and the others listed in Document 5.4 it is not envisaged that there will be any undue delay or any obvious reason why consent cannot be forthcoming.

### 13 Conclusions

- 13.1 The Applicant believes the inclusion of powers of compulsory acquisition in the Order for the purposes of the Project meets the conditions of section 122 of the 2008 Act and the Guidance.
- 13.2 The interests sought are no more than are reasonably required. Other land required to facilitate or land incidental to the Project is no more than is reasonably necessary for that purpose and is proportionate.
- 13.3 The need for the Project and the support for such projects in the relevant NPS' demonstrate a compelling case in the public interest for the required interests to be acquired compulsorily.
- 13.4 All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the Project and the support for it found in policy, the land identified by the Applicant for the Project is the only land available for those purposes.
- 13.5 The proposed interference with the rights of those with an interest in the Order Land is for a legitimate purpose and is necessary and proportionate to that purpose.
- 13.6 The Applicant has set out clear and specific proposals of how the Order Land will be used.
- 13.7 The requisite funds are available to meet any costs of land acquisition or amount of compensation payable as a result of the use of powers of compulsory acquisition.
- 13.8 The purpose of powers of compulsory acquisition to be included in the Order justifies interfering with the human rights of those persons with an interest in the land proposed to be acquired.

## 14 Further Information

### Funding

- 14.1 As outlined in section 6 of this Statement, the Application is also accompanied by a Funding Statement to explain how the proposed compulsory acquisition for which it seeks authorisation in the Order is proposed to be funded.
- 14.2 For the reasons set out above and in the Funding Statement, the availability of funding is not an impediment to the implementation of the Project or any part of it.

### Negotiations with the Applicant

- 14.3 Owners and occupiers of property affected by the Project who wish to negotiate or discuss matters of compensation should contact John Hillis on the following details:

[john@blackhallpowis.com](mailto:john@blackhallpowis.com)

Blackhall Manor

Barrhead Road

Paisley

Renfrewshire

PA2 7EA

Tel: [REDACTED]

- 14.4 Provision is made by statute with regard to compensation for the compulsory acquisition of land and the depreciation in value of properties. More information is given in the series of booklets published by the Department for Communities and Local Government entitled "Compulsory Purchase and Compensation" listed below:

- Booklet No. 1 - Compulsory Purchase Procedure.
- Booklet No. 2 - Compensation to Business Owners and Occupiers.
- Booklet No. 3 - Compensation to Agricultural Owners and Occupiers.
- Booklet No. 4 - Compensation for Residential Owners and Occupiers.
- Booklet No. 5 - Reducing the Adverse Effects of Public Development: Mitigation Works.

- 14.5 Copies of these booklets are obtainable, free of charge, from:

Communities and Local Government Publications

Cambertown House

Goldthorpe Industrial Estate

Rotherham S63 9BL

Tel: 0300 123 1124

14.6 In addition, the booklets are available to download for free online at:

<http://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/compulsory-purchase-system-guidance>

## 15 Schedule 1

### List of Application Documents

Reference	Document
<b>1</b>	<b>Application form</b>
1.1	Cover letter to the Planning Inspectorate
1.2	Application Form
1.3	Guide to the Application
1.4	Navigation Document
1.5	Copies of newspaper notices
<b>2</b>	<b>Plans</b>
2.1	Location Plan
2.2	Land Plan (offshore)
2.3	Land Plan (onshore)
2.4	Special Category Land Plan
2.5	Works Plan (Offshore)
2.6	Works Plan (Onshore)
2.7	Access Plan
2.8	Temporary Stopping Up of Public Rights of Way Plan
2.9	Street Works Plan
2.10	Statutory/ Non-statutory Nature Conservation Sites Plan
2.11	Statutory/ Non-statutory Sites of Features of the Historic Environment Plan
2.12	Crown Land Plan
2.13	Extinguishment of Public Rights of Way Plan
2.14	Radar Line of Sight Coverage Plan



<b>Reference</b>	<b>Document</b>
2.15	Water Bodies in a River Basin Management Plan Plan
<b>3 Development Consent Order</b>	
3.1	Draft Development Consent Order
3.2	Explanatory Memorandum
<b>4 Compulsory acquisition information</b>	
4.1	Statement of Reasons
4.2	Funding Statement
4.3	Book of Reference
<b>5 Reports/Statements</b>	
5.1	Consultation Report
5.2	Report to Inform Appropriate Assessment
5.3	Environmental Protection Statement of Engagement
5.4	Consents and licences required under other legislation
<b>6 Environmental Impact Assessment</b>	
6.1	Environmental Statement Volume 1
6.2	Environmental Statement Volume 2
6.3	Environmental Statement Volume 3
6.4	Environmental Statement Volume 4
6.5	Environmental Statement Volume 5
6.6	Environmental Statement Volume 6
6.7	Non-Technical Summary
6.8	Scoping Opinion
<b>7 Additional information for specific types of infrastructure</b>	

Reference	Document
7.1	Cable Statement
7.2	Safety Zone Statement
<b>8</b>	<b>Other documents</b>
8.1	Code of Construction Practice
8.2	Planning Statement
8.3	Schedule of Mitigation
8.4	Outline Access Management Strategy
8.5	Environmental Impact Assessment Evidence Plan
8.6	Offshore Archaeology Draft Written Scheme of Investigation
8.7	Outline Landscape and Ecological Management Plan
8.8	Fishing Liaison and Co-existence Plan
8.9	Shadow European Protected Species Licence (Marine Mammals)
8.10	Offshore Operations and Maintenance Plan
8.11	Draft Marine Mammal Mitigation Protocol for Piling Activities
8.13	Saltmarsh Mitigation, Reinstatement and Monitoring Plan
8.14	Disposal Site Characterisation
8.15	Biogenic Reef Mitigation Plan
8.16	Design and Access Statement