

# Norfolk Boreas Offshore Wind Farm Statement of Reasons

## DCO Document 4.1

Applicant: Norfolk Boreas Limited  
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Author: Womble Bond Dickinson

*Photo: Ormonde Offshore Wind Farm*

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Norfolk Boreas Limited

Norfolk Boreas Offshore Wind Farm

Statement of Reasons for seeking powers of Compulsory Acquisition

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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 Norfolk Boreas Limited (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 with an electrical export capacity of up to 1,800 MW at the point of connection to the offshore electrical platform(s) (the **Application**).
- 1.2 As the total export 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 Norfolk Boreas 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:
- 1) The land is required for the development;
  - 2) The land is required to facilitate or is incidental to the development; or
  - 3) 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, this Statement 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 (as it was then called) guidance on compulsory acquisition for DCO applications published in September 2013 (the **Guidance**) provides advice on the content of the Statement. Annex 2 of the then Department for Communities and Local Government's now superseded general guidance on compulsory acquisition of February 2010 (the **2010 Guidance**) provided a detailed checklist of what a Statement of Reasons should include. Whilst this 2010 Guidance has been superseded, the Applicant still considers that the 2010 Guidance is helpful to that extent, 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:
- 1.10.1 Document 4.2 which contains an explanation of how the proposals contained in the Order for compulsory acquisition will be funded (the **Funding Statement**);
- 1.10.2 The plans showing the land which would be acquired, (the **Land Plans**) (Document 2.2); and
- 1.10.3 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).
- 1.10.4 Articles 18 (*Compulsory acquisition of land*) and 20 (*Compulsory acquisition of rights*) of the Draft DCO which contain the operative provisions of the Order relating to compulsory acquisition and Schedules 6 and 8 setting out, in the event of scenario 1 or scenario 2, which new rights may be compulsorily acquired in each plot, and which plots may be taken possession of temporarily.

#### 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)
  - Any other information of interest to someone affected by the Order (section 13).

## 2. Summary

- 2.1 The Applicant is planning to develop the Project with up to 180 wind turbine generators and an electrical export capacity of up to 1,800 MW at the point of connection to the offshore electrical platform(s). The Project would be located approximately 73 km from the coast of Norfolk at its closest point to land, covering an area of approximately 725 km<sup>2</sup> in the southern North Sea.
- 2.2 The offshore array is located in the northern half of the former Zone 5 (East Anglia Zone) in the North Sea, which is being developed as two individual wind farms, both of which will require the appropriate statutory consents and approvals. The Project is the second to be proposed within that zone. The Norfolk Vanguard Offshore Wind Farm project (**Norfolk Vanguard**), also classified as an NSIP, submitted an application for development consent to the Planning Inspectorate in June 2018 and a decision from the Secretary of State is expected in December 2019. Norfolk Vanguard comprises the first stage of development of this area and does not form part of this application.
- 2.3 Norfolk Vanguard has the same proposed maximum export capacity of up to 1,800MW. Both projects follow the same general export cable route (offshore and onshore) and both projects will connect to the transmission network at the Necton National Grid substation.
- 2.4 Accordingly, the Norfolk Vanguard application also seeks development consent for some enabling works for the Project. This includes, for example, the installation of additional onshore ducts for the Project which, if installed by Norfolk Vanguard, would enable the Project to consent and implement a cable pull-through operation, rather than an independent duct installation with a subsequent pull through operation.
- 2.5 However, as it is not yet known whether Norfolk Vanguard will obtain development consent or whether Norfolk Vanguard will proceed to implementation and construction, the Application also seeks consent to implement the Project as an independent project. Therefore, the two scenarios included in the development consent application are as follows:
- 2.5.1 scenario 1: Norfolk Vanguard and the Project are both delivered (with associated infrastructure), and Norfolk Vanguard installs ducts and carries out other shared enabling works to benefit the Project (**scenario 1**).
- 2.5.2 scenario 2: only the Project is delivered; Norfolk Vanguard does not proceed to construction and the Project proceeds alone. The Project undertakes all works required as an independent project (**scenario 2**).
- 2.6 The Applicant is considering constructing the Project in either a single phase or in two separate phases. The same amount of land is required for both options.
- 2.6.1 In the event of scenario 1, phasing for the pulling of cables through the ducts laid by Norfolk Vanguard and construction of the onshore project substation will be determined by the number of offshore phases taken forward. If one offshore phase is taken forward, there will be a single phase of works to pull the cables through the ducts and a single phase of works to construct the onshore project substation. If two offshore phases are undertaken, the cables will be pulled through the ducts in up to two separate phases and the onshore project substation will be constructed in up to two separate phases.
- 2.6.2 In the event of scenario 2 onshore, the main civil engineering works will take place first, which will comprise the installation of the cable ducts along the full length of the onshore cable route; after this, the electrical infrastructure (onshore cable pulling and substation plant) will be installed either in a single phase or in two separate phases. The number of onshore phases will be informed by the number of phases required for the offshore construction. The phasing for the cable pulling and construction of the onshore project substation will be the same as identified above for scenario 1.

- 2.7 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.
- 2.8 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, 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 new rights (such as rights of access as well as rights for the installation of cables, fibre optic cables and ducts) and temporary rights during construction.
- 2.9 Rights to install cables, fibre optic cables and ducts in the onshore cable route with a width of 45 metres will be sought (inclusive of the temporary working areas). The onshore cable route reflects the space required for the apparatus needed (being, in respect of the onshore cables, electrical cables installed within cable ducts, referred to in this Statement of Reasons as **cables**) and ducts (being ducts for electrical cables, referred to in this Statement of Reasons as **ducts**) required for the Project. In addition, associated fibre optic cables (in smaller ducts) are also sought for the Project. (References to the **cable route** in this Statement of Reasons include both the cables and ducts for the Project, and associated fibre optic cables and smaller ducts. References to **fibre optic cables** include the smaller ducts in which they are to be installed.)
- 2.10 The current application seeks consent for up to four cables (as defined in paragraph **Error! Reference source not found.** of this Statement of Reasons) for the Project to be pulled through existing ducts in the event of scenario 1 and up to four cables to be laid in ducts (as defined in paragraph 2.9 of this Statement of Reasons) for the Project in the event of scenario 2. In addition consent is sought for associated fibre optic cables and smaller ducts for the Project in both scenarios.
- 2.11 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 will remain 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.
- 2.12 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 land and rights required to construct and then operate the Project within a reasonable commercial timeframe.
- 2.13 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 has been awarded the right by The Crown Estate to develop up to 1,800 MW of wind capacity off the coast of East Anglia, in the northern half of the former Zone 5 (East Anglia Zone). The development rights are subject to the Applicant being successful in securing the necessary consents from statutory bodies for the construction, operation and eventual decommissioning of the offshore wind farms that will be located within this area.
- 3.2 The area is being developed as two individual wind farms, both of which will require the appropriate statutory consents and approvals. Norfolk Vanguard was the first of the two projects to be proposed. The Project comprises the next stage of development of this area. Both wind farms, once constructed, will connect via a landfall at Happisburgh South, North Norfolk, across land to the National Grid at an existing substation in Necton in Norfolk, which will be extended as part of the Project. Sufficient capacity has already been secured through agreement with National Grid Electricity Transmission PLC (**NGET**) at that substation.
- 3.3 In order to minimise the disruption to local communities, in the event that Scenario 1 proceeds, the associated development comprising onshore infrastructure for Norfolk Vanguard includes cables, fibre optic cables and substation for Norfolk Vanguard together with up to four ducts for the Project to be laid at the same time as the laying of the ducts for the cables for Norfolk Vanguard.
- 3.4 The Applicant is considering deploy High Voltage Direct Current (**HVDC**) technology for the Project. HVDC cabling will be used between the offshore electrical platform(s) and the onshore project substation, with High Voltage Alternating Current (**HVAC**) inter-array cabling; between the offshore array and the offshore electrical platforms; and for the interface cabling between the onshore project substation and the existing Necton National Grid substation.
- 3.5 The Applicant is considering constructing the project in either a single phase or in two separate phases.
- 3.5.1 In the event of scenario 1, phasing for the pulling of cables through the ducts and construction of the onshore project substation will be informed by the number of offshore phases taken forward.
- 3.5.2 If one offshore phase is taken forward there will be a single phase of works to pull the cables through the ducts and a single phase of works to construct the onshore project substation. If two offshore phases are undertaken, the cables will be pulled through the ducts in two separate phases and the onshore project substation will be constructed in two separate phases.
- 3.5.3 In the event of scenario 2, onshore, the main civil engineering works will take place first; after this, the electrical infrastructure (onshore cable pulling and substation plant) will be installed either in a single phase or in two separate phases. The number of onshore phases will be informed by the number of phases required for the offshore construction.
- 3.5.4 The phasing for the cable pulling and construction of the onshore project substation will be the same as identified above for scenario 1.
- 3.5.5 In both scenarios, whether there will be one phase of construction or two will be determined by the project architecture chosen, and in what numbers the offshore turbines are brought forward at any one time.
- 3.6 A more detailed description of the offshore works in relation to the Project is provided in the Environmental Statement (Document 6.1), but in brief the Project includes up to 180 wind turbines, up to 2 offshore electrical platforms, up to 1 offshore service platform, meteorological masts and inter array cabling and a subsea cable connection between and from the offshore substations to the landfall at Happisburgh South, North Norfolk.

### Approach to associated development

- 3.7 Inclusion of the ducts for the Norfolk Boreas offshore wind farm under the Norfolk Vanguard project takes this approach, and has been justified for the Norfolk Vanguard scheme in that project's Statement of Reasons.

#### **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:
- 4.2.1 The landfall site with associated transition jointing pit to connect the offshore and onshore electrical cables;
  - 4.2.2 Up to four cables to be pulled through existing ducts (in the event of scenario 1) and up to four cables to be laid in ducts (in the event of scenario 2);
  - 4.2.3 An onshore project substation in the vicinity of the existing Necton National Grid substation;
  - 4.2.4 Extension works at the existing Necton National Grid substation (in both scenarios) and overhead line replacement works (in the event of scenario 2);
  - 4.2.5 Landscaping and tree planting around the location of the substation, the existing Necton National Grid substation and other project elements;
  - 4.2.6 Surface water management apparatus and works at the onshore project substation and the Necton National Grid substation; and
  - 4.2.7 Associated access tracks, running tracks, temporary site compounds and mobilisation areas.
- 4.3 The Order Land includes a route of approximately 60km from the landfall at Happisburgh South, North Norfolk on the Norfolk coast, to the onshore project substation at Necton in Norfolk, and also incorporates key areas of land to accommodate infrastructure and activities other than the onshore cable route. This includes the landfall, temporary construction compound areas, and land for the substation under both Scenario 1 and Scenario 2.
- 4.4 A total working onshore cable route of up to 45 metres wide will be required, although under Scenario 2 the ducts, cable pulling and all associated works will be undertaken by Norfolk Boreas within a 35m working width within the 45m cable route.

##### The Order Land

- 4.5 From the point of landfall to the grid connection point at Necton, the onshore cable route in both scenarios runs as follows:
- 4.5.1 From the landfall, the onshore cable route runs in a westerly direction through agricultural land for 1.2km before turning in a north westerly direction immediately after crossing Grub Street.
  - 4.5.2 The onshore cable route then continues in a south westerly direction, travelling through agricultural land for approximately 24km until taking a westerly turn below Salle Hall Farm. The onshore cable route continues to travel west, to the south of Crown Meadow, for approximately 4km until crossing the Marriott Way footpath just south of Kerdiston Road.
  - 4.5.3 After crossing Marriott Way, the onshore cable route continues in a south westerly direction for approximately 12km until crossing a currently disused railway to the north of settlements at North Green, where it takes a westerly turn.

- 4.5.4 The onshore cable route continues in a south westerly direction for approximately 13km before crossing the A47 highway, to the north of the settlement at Scarning Dale.
- 4.5.5 Following this, the onshore cable route continues in a south westerly direction for approximately 3km, before travelling in an easterly direction for approximately 6km to the onshore project substation at Necton.
- 4.6 In the event of scenario 1, the onshore cable ducts will have been installed by Norfolk Vanguard, and the onshore cable route will only require a total (approx.) of 12km of running track alongside the cable route.
- 4.7 In the event of scenario 2, the onshore cable route will require:
  - 4.7.1 trenches for the onshore cables, fibre optic cables and ducts, a running track to deliver equipment to the installation site from mobilisation areas and storage areas for topsoil and subsoil. The onshore cable route will include up to 4 cable trenches, each up to 1 metre wide and separated by a minimum width of 3 metres from trench centre line to trench centre line.
  - 4.7.2 To enable duct installation, mobilisation areas will be required to store equipment and provide welfare facilities. These mobilisation areas will be located adjacent to the onshore cable route, accessible from the local highways network suitable for the delivery of equipment and materials onto the onshore cable route. Each mobilisation area will serve one or two areas of working and are evenly distributed along the onshore cable route where possible.
- 4.8 During the electrical cable pulling phase of the Project in both scenarios, access to and from the jointing pits will be required to facilitate the works. To facilitate the electrical cable pull and joint, the joint pit will be excavated and cable drums will be delivered by HGV low loader to the open joint pit locations. The cable drum will be located adjacent to the joint pit on a temporary hard standing and a winch attached to the cable, pulling the cable off the drum from one joint pit to another, through the buried cable ducts. Cable jointing can be conducted once both lengths of electrical cable that terminate within a joint pit have been installed.
- 4.9 The onshore project substation in both scenarios will consist of an HVDC substation, (also referred to as **the onshore project substation**). This converts the HVDC electrical power from the Project export connection to the High Voltage Alternating Current (**HVAC**) format and appropriate voltage required for connection to the National Grid system. Filtering, switchgear and associated protection and control equipment is also located at the onshore project substation to provide compliance with the technical requirements of the National Grid and allow safe operation of the Project connection.
- 4.10 The onshore project substation in both scenarios will include up to two similar converter stations. The power transfer capability of the converters, the number of converters, and (if relevant) whether certain elements of that infrastructure may be shared between Project and Norfolk Vanguard will depend on the final design of the Project. As such the substation will consist of:
  - 4.10.1 Up to 2 converter station buildings housing DC filter equipment and power electronics to convert HVDC to HVAC power for connection to the National Grid;
  - 4.10.2 Outdoor HVAC compounds: each compound will contain one or more 400kV transformers, plus HVAC filters, busbars and cable sealing ends;
  - 4.10.3 One control building for each converter building housing Supervisory Control, Data Acquisition and protection equipment;

- 4.10.4 Access roads for operation and maintenance and access to equipment (and in the event of scenario 1, 300 metres extension to the access road installed by Norfolk Vanguard to the onshore project substation); and
- 4.10.5 Associated connections between equipment via overhead busbars and cabling, including a buried earthing system.
- 4.11 The largest equipment within the onshore project substation in both scenarios will be the converter halls with an approximate height of 19m. All other equipment will not exceed a height of 15m. The tallest structure will be the lightning protection masts at a height of 25m. The total land requirement for the onshore project substation to the perimeter fence is 250m x 300m.

#### Ownership of the Order Land

- 4.12 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 through diligent enquiry 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.
- 4.13 Where the owner of interests in land or beneficiary of rights has not yet been ascertained after diligent enquiry, the Applicant will continue to seek details of the relevant party through ongoing discussions with neighbouring landowners and as part of the option agreements being negotiated with principal landowners.
- 4.14 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); and a combination of easements and temporary possession of land for the works to NGET's overhead lines. To date over 78% of affected landowners have signed Heads of Terms with the Applicant.

## 5. Policy support for the Project

- 5.1 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

- 5.2 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.
- 5.3 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.
- 5.4 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>.
- 5.5 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*

- 5.6 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*

- 5.7 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 2010. 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:

*"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*

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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*

*generation of offshore wind power will play a key role in meeting our 2020 target." (section 1, page 7)*

- 5.8 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.
- 5.9 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

- 5.10 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.
- 5.11 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.
- 5.12 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"*.
- 5.13 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

- 5.14 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

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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*

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

- 5.15 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.



## 6. Compulsory Acquisition Powers and Guidance

- 6.1 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:
- 6.1.1 The acquisition of land, compulsorily or by agreement;
  - 6.1.2 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
  - 6.1.3 The payment of compensation.
- 6.2 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:
- 6.2.1 The land is required for the development;
  - 6.2.2 The land is required to facilitate or is incidental to the development; or
  - 6.2.3 The land is replacement land for commons, open spaces, etc (section 122(2)).
- 6.3 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.
- 6.4 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:
- 6.4.1 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
  - 6.4.2 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.
- 6.5 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.
- 6.6 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 (Document 2.4) 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 transmission of electricity. That the Project is in the public interest is demonstrated by the level of national policy support described in Section 5.
- 6.7 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 and surveyors 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 agents and surveyors acting on behalf of the owners of the onshore cable route since late in 2016.

- 6.8 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 conclusive details. In these instances, where possible a site notice has been erected in the vicinity of the parcel to allow any interested parties to make contact with the project team. Neighbouring landowners have been contacted and other desktop searches have been conducted to determine the relevant interests.
- 6.9 The Guidance provides a number of general considerations that the promoter must demonstrate to the satisfaction of the decision maker:
- 6.9.1 All reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;
  - 6.9.2 The proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
  - 6.9.3 The promoter has a clear idea of how it intends to use the land which it is proposing to acquire;
  - 6.9.4 There is a reasonable prospect of the requisite funds becoming available;
  - 6.9.5 The compulsory purchase of land meets the two conditions in section 122 and is therefore justified in the public interest at that time;
  - 6.9.6 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.

## 7. Justification for the use of powers of Compulsory Acquisition

7.1 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 (sections 122(2) and 122(3))

7.2 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.

7.3 In the event of scenario 1, phasing for the pulling of cables through the ducts and construction of the onshore project substation will be determined by the number of offshore phases taken forward. If one offshore phase is taken forward there will be a single phase of works to pull the cables through the ducts and a single phase of works to construct the onshore project substation. If two offshore phases are undertaken, the cables will be pulled through the ducts in two separate phases and the onshore project substation will be constructed in two separate phases.

7.4 In the event of scenario 2, onshore, the main civil engineering works will take place first, followed by the electrical infrastructure being installed either in a single phase or in two separate phases. The number of onshore phases will be dictated by the number of phases required for the offshore construction. The phasing for the cable pulling and construction of the onshore project substation will be the same as identified above for scenario 1.

7.5 The land required for construction along the cable route will be substantially reduced following the decision to use a HVDC transmission system. The exercise of powers under Article 26 (*Temporary use of land for carrying out the authorised project*) to gain possession of the land for construction and the use of the vesting process or notices to treat/notices of entry to acquire permanent rights will be completed within the 5 year statutory period.

7.6 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.

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

#### *Freehold title*

7.8 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; under scenario 1 (Plots 40/12a, 40/12c, 40/12d, 40/14a, 40/14b, 40/14c, 40/16, 40/16a, 40/16b, 40/16c, 40/24b, 41/23, 41/23a, 41/24, 41/25, 41/26, 41/26a, 41/26b, 41/26d, 41/26e, 41/26g, 41/28b, 41/28c, 41/28d) and under scenario 2 (plots 40/13, 40/14a, 40/14b, 40/14c, 40/15, 40/16, 40/16c, 40/17, 40/18, 40/19, 40/21, 40/22, 40/22a, 40/24, 40/24c, 40/24d, 40/25, 40/29, 40/30, 41/02, 41/04, 41/06, 41/06b, 41/19, 41/20, 41/21, 41/26, 41/26a, 41/28a, 41/29, 41/30a, 41/31, 41/34, 41/35, 41/36, 41/37, 41/38, 42/01).

#### *Permanent rights to install ducts or pull through cables and fibre optic cables and to retain, maintain and repair the same*

7.8.1 Permanent new rights are sought to permit the Applicant to install ducting, fibre optic cables and cables for the Project and to facilitate access for installation and for maintenance of the onshore infrastructure and associated works.

- 7.8.2 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. It is anticipated that the process to secure permanent rights compulsorily will commence only after temporary possession has first been taken of the surface and subsoil of the relevant Order Lands, and construction of the relevant part of the authorised Project is complete.

*Permanent rights of access*

- 7.8.3 For some plots cable installation will not be required (as the cables and ducts will not need to be installed in these plots) but a right to access the onshore cable route is necessary. For the most part this will be along existing routes. The Applicant has taken account of the location of existing farm gates and entrances to select entry points to the cable route easement from the public highway. There are some points where temporary running tracks are required to facilitate cable pulling. Whilst the running track will 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.

- 7.8.4 Other than these rights of access, there will be limited interference with the surface of the Order Land along these routes during operation.

*Miscellaneous rights*

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

*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 pull-through within the cable ducts and jointing works;*
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;*
- (c) 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, cable ducts and jointing works;*
- (d) retain and maintain existing hardstandings and lay down new, use, repair, alter and remove 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;*
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the cables, or use of the cable ducts and jointing works;*
- (f) retain and use the cables for the purposes of the transmission of telecommunications and electricity;*

- (g) *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;*
- (h) *install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;*
- (i) *remove, store and stockpile materials (including excavated material) within the Order land;*
- (j) *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);*
- (k) *install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);*
- (l) *carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;*
- (m) *retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);*
- (n) *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, cable ducts and jointing works;*
- (o) *carry out environmental mitigation, remediation and/or enhancement works;*
- (p) *install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;*
- (q) *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*
- (r) *place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.*

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

- (a) *enter upon the land and to create temporary secure areas;*
- (b) *place equipment on the land, including portakabins and welfare equipment;*
- (c) *store plant and/or materials and/or equipment;*

- (d) *create car parking sites, site offices, site areas for temporary security and welfare facilities;*
  - (e) *effect access and egress to and from the highway;*
  - (f) *create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and*
  - (g) *access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground electrical cables.*
3. *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 all hardstandings for the purposes of access to adjoining land and highway;*
  - (c) *erect temporary supporting or protective structures (including the bridging over 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 and from adjoining land;*
  - (e) *retain and maintain existing temporary permissive paths or 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 exercise of the rights); and*
  - (i) *retain, maintain, install, use, inspect, modify, improve, maintain, 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 3 means such other parts of the land within the Order limits required for the authorised project.*

4. *A restrictive covenant over the land for the benefit of the remainder of the Order land to—*

- (a) *prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction, erection or works of any kind (including the foundations, footings or other supportive structures thereto);*
- (b) *prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);*
- (c) *prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;*
- (d) *prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and*
- (e) *prevent anything to be done in or open the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.*

*Rights for overhead line alterations (where NGET apparatus is to be retained but altered)*

7.8.6 In addition, rights are sought to facilitate alterations to overhead lines which are to be retained by NGET, in the event of scenario 2 (where this will not have already been done under Norfolk Vanguard):

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—*
  - (a) *to enter the land with or without vehicles plant and equipment to erect the electric lines and thereafter retain, inspect, maintain, repair, alter, renew, replace and remove the overhead lines;*
  - (b) *with or without vehicles, plant and equipment and in a proper and woodmanlike manner to fell, trim or lop all trees and bushes on the land which obstruct or interfere with the exercise of the undertaker's rights;*
  - (c) *enter the land to access any adjoining land;*
  - (d) *to use the overhead lines.*
2. *A restrictive covenant over the land for the benefit of the remainder of the Order land to—*

- (a) *not do or suffer to be done anything upon the land which may in any way interfere with, damage or cause injury to the overhead lines or interfere with or obstruct access thereto or use thereof, and to take all reasonable precautions to prevent such interference, obstruction, damage or injury;*
- (b) *not erect any building or structure (whether temporary or permanent) or plant or allow to grow any plant or tree on the land within 5.3 metres of any conductors when they are at a maximum temperature and/or swing;*
- (c) *not erect any building or structure (whether temporary or permanent) or plant or allow any plant or tree within or under any towers or within 5 metres of the outer edge of each of the foundations of any towers without the written consent of the undertaker (such consent not to be unreasonably withheld or delayed and which consent may be granted subject to reasonable conditions);*
- (d) *not store or place within or under any towers or within 5 metres of the outer edge of the foundations of any towers any goods or materials whatsoever without the written consent of the undertaker (such consent not to be unreasonably withheld or delayed and which consent may be granted subject to reasonable conditions);*
- (e) *not raise the level of the surface of the land so as to make the distance between the level of the ground and the lowest conductor at any point of the span less than 7.6 metres; and*
- (f) *not carry out any works or excavations on the land or otherwise which may endanger the stability, safety and integrity of the overhead lines.*

*Temporary possession*

- 7.8.7 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 draft Order permits the Applicant to take possession of this land temporarily, without the requirement to exercise permanent powers of compulsory acquisition.
- 7.8.8 Schedule 8 of the Order, Part 1 in the event of scenario 1, Part 2 in the event of scenario 2, lists the plots scheduled for temporary possession only.
- 7.8.9 A second use of temporary powers is to allow construction activities on the land where cables, fibre optic cables and ducts are to be installed, prior to any permanent rights to retain, operate, and maintain those cables, fibre optic cables and ducts being acquired compulsorily (or by agreement). The purpose of this second use is to allow the Applicant to complete the cable, fibre optic cables and duct installation works, including any micro-siting of apparatus within the land, before committing to acquiring permanent rights. This is intended to reduce the amount of land affected by permanent rights, and accordingly reduce the impact on landowners.

*Restrictive covenants over lands where rights are sought*

- 7.8.10 Restrictive covenants are sought for the land that will have the cables, fibre optic cables and ducts installed, to protect apparatus from becoming exposed or damaged, or built over. This is necessary over the cable route to ensure apparatus is not damaged by construction or excavation works or made materially more difficult to access in case of emergency or routine works to the cables, fibre optic cables and ducts being necessary. It is submitted that this is a justifiable use of compulsory acquisition powers to protect the NSIP Project and to give the Applicant



and its successors (including any successor offshore transmission network operator) the comfort that the cables, fibre optic cables and ducts are appropriately protected and the transmission of electricity will not be interrupted by such excavation.

- 7.8.11 Restrictive covenants are not sought over areas that are owned or used by statutory undertakers or highway lands.

*Nature of the onshore works*

- 7.9 The nature of the onshore works, described with reference to the nature of the proposed acquisition, and running from the landfall at Happisburgh South, North Norfolk to the onshore project substation at Necton, Norfolk, from east to west, is as follows:

*Landfall (Work No. 4B, Plots 01/20-2/05)*

- 7.9.1 At the landfall (Work Nos. 4A, 4B and 4C), Plots 01/01, 01/02, 01/03, 01/17 and 01/19 represent areas of land now below mean high water. The intertidal zone comprises Plots 01/05, 01/18 and 01/20. The Book of Reference has been scheduled accordingly and the Land Plans drafted according to the most recent available information from the Crown.
- 7.9.2 The landfall works will be located within this area and landwards of mean high water, including parts of the beach, cliff and scrubland to the east Happisburgh Lighthouse, in Norfolk. Work Nos. 4A, 4B and 4C extend over Plots 01/01, 01/02, 01/03, 01/04, 01/05, 01/06, 01/07, 01/08, 01/09, 01/10, 01/11, 01/17, 01/18, 01/19 and 01/20. The offshore cables, fibre optic cables and ducts will be installed under the beach and the cliffs at Plots 01/04, 01/05, 01/06 and 01/20 by a long horizontal directional drill (HDD) and will be jointed to the onshore cable works at the transition joint pits.
- 7.9.3 The transition joint bays for the scheme will be located within an area of search between the seaward limit of Plot 01/07 and the eastern limit of Plot 01/11, which will also be the location of the drilling area for the HDD. This area will include a temporary compound with areas for parking, storage and welfare facilities. The cables, fibre optic cables and ducts for the Project will be installed here.
- 7.9.4 The Project seeks surface rights over the landfall plots for access to the inland arable areas (Plots 01/07, 01/08, 01/09, 01/10, 01/11) for the purposes of construction, and seeks permanent rights to access the landfall and beach area for maintenance during the operational phase and decommissioning. It is not anticipated that any surface interference will take place during the operational stage, and that any necessary impacts from maintenance will be minimal and occasional.
- 7.9.5 A new permanent access is sought over Plots 01/14, 01/15 and 01/16 from Plots 02/06, 02/07 and 02/08 to gain access to Work Nos. 4B and 4C from the existing farm gate to the public road at Holly Farm.

*General justification for extent of Order lands: Onshore cable route (Work Nos. 5-7)*

- 7.9.6 Powers to enter land within an area of lands to be acquired or used with a maximum width of 45 metres will be sought and to install, retain, maintain, repair and replace the cables, fibre optic cables and potential ducts at Work Nos. 5(a), 6(a) and 7(a) in the event of scenario 1 or Work Nos. 5(b), 6(b) and 7(b) in the event of scenario 2, with a localised exception where the eastern end of Work No. 5(a) or 5(b) connects to Work No. 4C. The width of the onshore cable route reflects the width of the works to install the cables, fibre optic cables, the ducts and associated trenching required for the Project and Norfolk Vanguard. The maximum width includes areas for storage of topsoil and subsoil, as well as trenches and running track.

- 7.9.7 The width of the cable easement that will be permanently required for access and maintenance (including areas where restrictive covenants will apply) post-construction is 20 metres, save where construction processes or other reasons necessitate a wider permanent easement being required. This takes into account the comparatively smaller area required for operation and maintenance activities compared to construction activities.
- 7.9.8 Acquisition of the permanent onshore cable route is justified on the basis that all the apparatus required for the Project would be laid within the permanent onshore cable route.
- 7.9.9 Overall, the 45 metre maximum working width of the cable route during construction, with a 20 metre width being required permanently for the majority of the route, represents a clear, justifiable, proportionate and reasonable approach to compulsory acquisition whilst allowing for the delivery of the Project and Norfolk Vanguard in a timely manner.

*Approach to rights along cable route*

- 7.9.10 The majority of the plots on the cable route contain an additional right to create an access to the public highway. This power will not be utilised unless difficulties prevent access from being taken over the various permanent access routes to the cable easement contained in the Order, shown on the Land Plans shaded green.

*Minor crossings*

- 7.9.11 Where the cable route crosses minor roads and publicly maintained highways that are not trunk roads, a reduced set of rights is sought which does not seek a restrictive covenant to restrict the future use of the surface of the land. This is to avoid impacting disproportionately on the interests of the highway authority.

*Major crossings*

- 7.9.12 Where the cable route crosses roads owned by Highways England, railways including the Norwich to Sheringham railway line, certain specified waterways, or the crossings of the Marriott Way area of public open space, a more restrictive set of rights is sought to install the cables, fibre optic cables and ducts. The key difference between this right and the right sought for minor crossings is that here the cables, fibre optic cables and ducts will be installed using only trenchless crossing methods. No right to break open the surface of the land will be sought in these areas, even in an emergency, due to the sensitive nature of the infrastructure being crossed. It is anticipated that crossings beneath trunk roads and railways will be agreed under separate licences with Highways England and Network Rail.

*Access rights*

- 7.9.13 Permanent new rights are sought to provide a large number of accesses into the cable easement through adjacent field boundaries. These will permit access to the cable easement for the undertaker during the operational phase through existing gates and entrances from the publicly maintained highway, rather than having to create new entrances along the easement strip itself. By acquiring rights rather than freehold over these accesses, the land will remain in the ownership of the landowners and within their control except to the extent that access is required for the Project.
- 7.9.14 No permanent hardstanding or surface will be needed for access tracks along the main cable route during the Project's operation, but the Applicant seeks a right to lay down the same, if necessary, to take access. The individual elements of the new rights sought for access are set out in Schedule 6 of the DCO (*Land in which*

*new rights etc. may be acquired*), Part 1 in the event of scenario 1, Part 2 in the event of scenario 2.

7.9.15 In scenario 1, where Norfolk Vanguard will proceed and the cable ducts would have been installed underground, isolated sections of the running track from Norfolk Vanguard (appropriately 20% of the total cable route equalling about 12km) will be used for cable pulling.

7.9.16 This is considered to be a proportionate approach to the requirement to maintain the Project while minimising the impact on the landowners and boundary features.

*Route Description: Key features within Work Nos. 5-7*

7.9.17 Between Plot 02/01 and the area of freehold acquisition at the Necton substation (beginning at Plot 40/13 (Work No. 8A)), the majority of plots are subject to the acquisition of permanent rights to install, retain and maintain cables, fibre optic cables and ducts (together with restrictive covenants to protect the apparatus) following temporary possession being taken under Article 26 (*Temporary use of land for carrying out the authorised Project*) of the Order. The rights proposed to be acquired in these plots, contained in Schedule 6 (*Land in which only new rights etc., may be acquired*) of the Order, Part 1 in the event of scenario 1, Part 2 in the event of scenario 2, will allow for the installation of the cables, fibre optic cables and ducts for the Project. Permanent rights of surface access are also sought for the purposes of inspecting and maintaining the cables, fibre optic cables and ducts.

*Cable route continued: Work No. 5*

7.9.18 Work No. 5 continues from the landfall area, and consists of the works required to install the cables, fibre optic cables and ducts between landfall and the boundary of the district of North Norfolk. The works include the provision of soil storage, fencing and temporary bridges where necessary, temporary construction compounds and access routes to the onshore cable route, and other activities to facilitate construction.

7.9.19 From the beginning of Work No. 5 westwards of Plot 01/11, the cable route passes in a westerly direction to the south of a group of dwellings including Seacroft Farm to the south of Lantern Lane, turning to the north-west towards the junction of North Walsham Road and an unclassified road to the north of High Barn. The cable route turns west and follows to the south of North Walsham Road, turning south-west across primarily arable land, then in a broadly westerly direction through the countryside until it crosses Bacton Road at Plot 07/03.

7.9.20 Plots 07/11, 08/01, 08/07, 08/09, 08/11, 08/14, 08/18, 08/22 and 08/24 are scheduled for temporary possession only. These plots will be required to store and operate drilling and other construction equipment to facilitate trenchless crossing methods in the area adjacent to the water activities training centre and the land to the north of Little London and Royston House, and Paston Way at Plot 08/19.

7.9.21 From Plot 08/19, the cable route passes to the west, crossing a path and the highway (Lyngate Road) to the north of North Walsham at Plot 08/21.

7.9.22 The cable route continues in a broadly westerly direction, crossing minor roads. Plots 09/01, 09/02, 09/04 and 09/05 are scheduled for temporary possession only.

7.9.23 The cable route continues in a westerly direction to the north of Lyngate Road. The cable route crosses the operational railway (the Norwich to Sheringham line) at Plot 10/04. Plots 10/03, 10/06, 10/13 and 10/12 comprise construction compounds for the HDD and other operations to support this crossing. Permanent rights of access are to be acquired over Plots 10/07, 10/08, 10/09 and 10/10. The cable route

continues in a west-south-westerly direction and crosses the A149, known as Cromer Road.

- 7.9.24 The cable route continues in a broadly south-westerly direction, following and to the south of Brick Kiln Lane, crossing minor roads and arable land to the immediate south of Elm Farm. Plots 12/08 and Plot 12/11 comprise further temporary compound sites to support the installation of the cables, fibre optic cables and ducts in arable land to the north of Beck Farm and The Hornbeams, Norfolk.

*Cable route continued: Work No. 6*

- 7.9.25 The cable route continues in a broadly south-westerly direction until it reaches the A140 highway to the north of B115 highway. Work No. 5 ends, and Work No. 6 begins, immediately to the south of Banningham Road, at Plot 14/07. The cable route turns and crosses the A140, which will be accomplished using HDD.
- 7.9.26 Work No. 6 consists of substantially identical works to Work No. 5, except that Work No. 6 comprises the cable, fibre optic cable and duct works in the district of Broadland.
- 7.9.27 The cable route continues to the south-west from the A140 to the north of Abbots Hall Farm, turning west to the south of Greenhouse Park at Plot 16/10, which crosses primarily arable land and shrubbery to the west of Blickling Road, continuing in a westerly direction and then south to cross Aylsham Road at Plot 17/05.
- 7.9.28 The route passes to the south of Docking Farm, past and to the south of a reservoir adjacent to Docking Plantation, crosses the B1148 and continues in a south-westerly direction to the north of Cawston. The cable route crosses the B1145 again and follows the Marriott's Way path to the north of the path, in a westerly direction over predominantly arable land to the north of Reepham.
- 7.9.29 After Reepham the cable route continues to follow a broadly south-westerly direction, crossing the Marriott's Way path once more at Plot 24/10. The cable route continues to the south-west, passing to the south of Lodge Farm Cottages and crossing a minor road at Plot 25/04. The cable route follows south to the east of Folkards Farm and then in a south-westerly direction towards a drain to the east of Reservoir Wood at Plot 26/01.

*Cable route continued: Work No. 7*

- 7.9.30 Work No. 7 consists of substantially similar works to Work Nos. 5 and 6, with the final plot in Work No. 6 being Plot 26/01. Work No. 7 comprises the main cable works in the district of Breckland.
- 7.9.31 The cable route follows to the north of the River Wensum until Plot 28/03, where it crosses part of the same river and continues in a broadly south-westerly direction across arable land to the north of Frogs Hall and Brimanda. Plots 28/06, 28/07, 28/10, 29/03, 29/04 and 29/06 are sought for use as temporary construction compounds.
- 7.9.32 The cable route crosses Norwich Road and the B1147 to the south of Swanton Morley, and continues in a broadly westerly direction until it crosses the disused mid-Norfolk railway line running to Dereham Station to the south (Plot 33/03).
- 7.9.33 The cable route passes in a generally westerly direction across primarily arable land through Dillington and passes to the south of Church Lane and Longham Road, turning to the south until it crosses the A47 at Plot 37/08. Plots 37/03 and 37/10 comprise temporary compounds to support the works including HDD works to cross

the A47. A reduced set of rights considered to be appropriate for "major crossings" is sought to install the cables, fibre optic cables and ducts beneath this highway.

- 7.9.34 The cable route crosses Dereham Road at Plot 31/12, and continues in a broadly south-westerly direction until Plot 40/11.

*The Project Substation (Work No. 8A) and associated project elements (Work Nos. 8B)*

**From this point, the two project Scenarios result in materially different land use in certain respects. Accordingly it is useful to describe each scenario in turn.**

### **SCENARIO 1**

- 7.9.35 The cable route runs from Work No. 7 (comprising plots 26/03, 26/07, 26/09, 26/12, 26/14, 26/15, 27/01, 27/05, 27/07, 27/08, 27/09, 27/10, 27/11, 27/14, 27/15, 27/16, 28/01, 28/02, 28/03, 28/08, 29/02, 29/08, 29/11, 29/13, 30/01, 30/07, 30/08, 30/09, 30/12, 31/01, 31/06, 31/07, 31/08, 31/09, 31/11, 31/12, 31/13, 32/01, 32/04, 32/05, 32/07, 32/08, 32/10, 32/11, 33/01, 33/06, 33/08, 33/11, 33/14, 33/15, 33/16, 34/01, 34/05, 34/06, 34/07, 35/01, 35/03, 35/04, 35/05, 35/06, 35/07, 35/09, 35/13, 35/15, 35/16, 36/01, 36/03, 36/04, 36/07, 36/12, 36/13, 36/18, 36/20, 37/01, 37/02, 37/07, 37/08, 37/09, 37/11, 37/16, 37/17, 37/18, 37/19, 37/20, 37/21, 37/22, 38/01, 38/04, 38/07, 38/09, 38/11, 39/01, 39/02, 39/03, 39/09, 39/10, 39/12, 39/13, 40/01, 40/04, 40/11, 40/12, 40/12b, 40/12c, 40/13a, 40/14, 40/14a, 40/14b, 40/19 to Work No. 8A.
- 7.9.36 To the east of Work No 8A, Work No 8B will provide land for surface water management, bunding, embankments, boundary treatments and landscaping in connection with Work No. 8A.
- 7.9.37 The cables leave the onshore substation at Work No. 8A and run through Work No. 9 (comprising Plots 41/06a, 41/25a, 41/03c, 40/22a, 40/24a, 41/03a, 40/24c, 40/24d, 41/06b, 41/22, 41/06a), consisting of the main cables for the scheme connecting to Work No. 10A.
- 7.9.38 Work No. 7 connects the cables into Work No. 8A, comprising Plots 40/16, 40/16a, 40/14c, 40/12d, 40/16c, the project's onshore substation to be constructed to the east of the existing Necton National Grid substation.
- 7.9.39 To the east of Work No. 8A, Work No. 8B (comprising Plots 40/12a, 40/16b, 40/24b) will provide land for the purposes of landscaping, surface water management, bunding, embankments and boundary treatments in connection with Work No. 8A.
- 7.9.40 The cables leave the onshore substation at Work No. 8A within Work No. 9 (comprising Plots 41/06a, 41/25a, 41/03c, 40/22a, 40/24a, 41/03a, 40/24c, 40/24d, 41/06b, 41/22, 41/06a), consisting of up to twelve interface cables, laid underground and associated fibre optic cables laid underground within cable ducts from Work No. 8A to Work No. 10A.

### *Extension to NGET substation (Work No. 10A) and associated works*

- 7.9.41 The cable then passes in an westerly direction to the south of Lodge Farm before turning north to pass into Work No. 10A (comprising Plots 41/23, 41/24, 41/25, 41/26, 41/26d), consisting of an extension to the existing Necton National Grid substation, in an easterly direction.
- 7.9.42 To the north east of Work No. 10A, Work No. 10B (comprising Plots 41/26b, 41/26a, 41/23a, 41/24, 41/28b, 41/28d) will provide land for additional surface water management in connection with Work No. 10A including the re-siting of the existing attenuation pond.

- 7.9.43 Work No. 10C, comprising Plots 41/28d (which plot forms part of both Work No. 10B and Work No. 10C), 41/26e and 41/26g to the east of Work No. 10A and Work No. 10B will provide land for bunding, embankments, boundary treatments and landscaping in connection with Work No. 10A.
- 7.9.44 Part of the land in this area that the Applicant seeks to acquire freehold is owned by TC Dudgeon OFTO Plc (TCP) (the successor Offshore Transmission Operator (OFTO) and leased to NGET on a long lease (Plot 41/33). Equinor and TCP also own a number of plots in this area which are not leased to NGET. This includes part of the land required for Work Nos. 10A and 10B (in both scenarios), and parts of the land required for the different elements of Work no. 11A and 11B (in the event of scenario 2).
- 7.9.45 The Applicant is seeking a negotiated agreement with NGET, Equinor and TCP for the land and works it requires for the Project. It is anticipated that these will include protective provisions for the crossing of the apparatus of both undertakers elsewhere along the cable route, and agreements in respect of the purchase of land and interests in land required to accommodate the Applicant's Project.
- 7.9.46 At the A47, Work No. 12A will comprise a permanent access to Work No. 8A, and an extension from the existing access connecting the A47 to the Norfolk Vanguard Offshore Wind Farm onshore project substation.

## **SCENARIO 2**

- 7.9.47 The cable route runs south from Work No. 7 (comprising Plots 26/03, 26/07, 26/09, 26/12, 26/14, 26/15, 27/01, 27/05, 27/07, 27/08, 27/09, 27/10, 27/11, 27/14, 27/15, 27/16, 28/01, 28/02, 28/03, 28/08, 29/02, 29/08, 29/11, 29/13, 30/01, 30/07, 30/08, 30/09, 30/12, 31/01, 31/06, 31/07, 31/08, 31/09, 31/11, 31/12, 31/13, 32/01, 32/04, 32/05, 32/07, 32/08, 32/10, 32/11, 33/01, 33/06, 33/08, 33/11, 33/14, 33/15, 33/16, 34/01, 34/05, 34/06, 34/07, 35/01, 35/03, 35/04, 35/05, 35/06, 35/07, 35/09, 35/13, 35/15, 35/16, 36/01, 36/03, 36/04, 36/07, 36/12, 36/13, 36/18, 36/20, 37/01, 37/02, 37/07, 37/08, 37/09, 37/11, 37/16, 37/17, 37/18, 37/19, 37/20, 37/21, 37/22, 38/01, 38/04, 38/07, 38/09, 38/11, 39/01, 39/02, 39/03, 39/09, 39/10, 39/12, 39/13, 40/01, 40/04, 40/11, 40/12, 40/14, 40/14a, 40/15a, 40/15b, 40/19) to Work No 8A (comprising Plots 40/16, 40/17) consisting of the project's onshore substation to the east of the existing Necton National Grid substation. To the east of Work No 8A, Work No 8B will provide land for surface water management, bunding, embankments, boundary treatments and landscaping in connection with Work No. 8A.
- 7.9.48 The cables leave the onshore substation at Work No. 8A and run through Work No. 9 (comprising Plots 40/22a, 40/22, 40/23, 41/03, 41/03a, 41/03b, 41/05, 41/14b, 41/14a, 41/14, 41/15, 41/14c), consisting of the main cables for the scheme connecting to Work No. 10A.

### *Extension to Necton National Grid substation (Work No. 10A) and associated works*

- 7.9.49 The cable then passes in an westerly direction before turning north to pass into Work No. 10A (comprising Plots 41/19, 41/20, 41/21, 41/36), being the extension to the existing Necton National Grid substation, in a westerly direction.
- 7.9.50 To the east of Work No 10A Work No. 10B (comprising Plots 41/25, 41/24, 41/23, 41/23a, 41/26, 41/26a) will provide land for additional surface water management for the extended Necton National Grid substation in connection with Work No. 10A.
- 7.9.51 To the North of Work No. 10A and stretching along the southern edge of Work No. 9, Work No. 10C (comprising Plots 41/03b (part), 42/05, 41/38, 42/01, 41/06b, 41/04, 41/06) will provide land for bunding, embankments, boundary treatments and landscaping in connection with Work No. 10A.

- 7.9.52 Work No. 11A (comprising Plots 41/28a, 41/29, 41/24, 41/23a, 41/30a, 41/31, 41/33, 41/37, 41/34, 41/35 ) are the main pylon works, involving the removal of one existing pylon and construction of two new permanent pylons, as shown marked by (W) and (E) on the works plans, and the installation of conductors, insulators and fittings on to the pylons. These are works that would otherwise have been carried out by Norfolk Vanguard. They include Work No. 11B, which contains the realigned overhead line itself, within the overall overhead line modification.
- 7.9.53 To the west of Work No 10A, Work No. 12B (comprising Plots 42/01, 41/12, 42/05, 40/19, 40/30, 40/29, 40/25, 40/14a, 40/14b) will provide permanent accesses connecting the A47 to Work No.8A, Work No. 10A and Work No. 10B including highway widening works on the A47 to create a new junction.

*Works to the A47 (Work No. 12B)*

- 7.9.54 Under Scenario 2, Work No. 12B will comprise permanent accesses connecting the A47 to Work No.8A, Work No. 10A and Work No. 10B including highway widening works on the A47 to create a new junction.
- 7.9.55 Plots 42/05 and 42/06 are scheduled for temporary works to the highway in order to create a new central lane. The requirement for these works is driven by consultation with the local highway authority, which it wishes to improve the ease of access and site lines for the purposes of safety when vehicles are accessing the Project substation.
- 7.9.56 Highways England is the owner of the A47, and discussions are in progress for the necessary licences to carry out these improvement works.
- 7.9.57 These works will be carried out under temporary possession powers (to the extent that there are any land interests not owned by Highways England that need to be dealt with under compulsory powers) and adopted by the local highway authority or Highways England as required.

Negotiations with affected parties

- 7.10 The Applicant will continue to seek to acquire rights and interests by agreement where possible on appropriate commercial terms. To date 78% of affected landowners have signed Heads of Terms with the Applicant. 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.
- 7.11 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.
- 7.12 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.
- 7.13 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. 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.

- 7.14 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

- 7.15 For all highways subsoil, the interest of the presumed owners has been scheduled in the Book of Reference. The interest of Norfolk 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 25 (*Acquisition of subsoil or airspace only*) of the Order to use the land under the subsoil (or airspace) only and not to acquire any greater interest in that land.

#### Land in Unknown Ownership

- 7.16 There are a number of plots identified in the Book of Reference where it has not been possible to identify ownership. Accordingly, and where access was possible, 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.
- 7.17 Despite ongoing diligent enquiry, 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

- 7.18 Numerous rights in the Order Land have been identified and are scheduled in the Book of Reference.
- 7.19 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 for an injunction to prevent construction of operation of the Project and so inclusion of their interests in this process will prevent that albeit they will be entitled to bring a claim for reduction in value of their interest.
- 7.20 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.
- 7.21 Whilst the powers in Article 21 (*Private rights*) 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

- 7.22 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.
- 7.23 The selection of the landfall, onshore cable route 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.
- 7.24 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

- 7.25 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.
- 7.26 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.
- 7.27 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:
- 7.27.1 The cost of acquiring the land identified in the Order; and
- 7.27.2 The cost of compensation otherwise payable in accordance with the Order.
- 7.28 The Applicant intends to shortly enter into the agreement attached to the Funding Statement (the **Agreement**). In the Agreement, Vattenfall AB (publ) (**Vattenfall**) undertakes to make the payments of agreed or awarded compensation directly to relevant claimants who own interests in land (and other parties who may be entitled under statute to compensation) if the Applicant has not done so.
- 7.29 The Agreement specifically states that the persons of the class specified in the Agreement may, through the provisions of the Contracts (Rights of Third Parties) Act 1999 enforce the obligation upon Vattenfall to place the Applicant in funds to pay compensation for expropriation, injurious affection and claims under Part 1 of the Land Compensation Act 1973 (the **1973 Act**), if such claims are valid and appropriately made. (It should be noted that the Applicant does not anticipate that any claims under the 1973 Act will arise.) 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))

- 7.30 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.
- 7.31 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.
- 7.32 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.
- 7.33 The Applicant has a well worked up scheme and funding sufficient to take the Project forward.
- 7.34 In summary the Applicant considers the Project to be:
- 7.34.1 In accordance with established and emerging national policy in relation to NSIPs contained in NPS EN-1, NPS EN-3 and NPS EN-5;
  - 7.34.2 Required to meet a pressing national need for electricity generating capacity; and
  - 7.34.3 Entirely necessary and proportionate to the extent that interference with private rights is required.

## 8. Special Considerations affecting the Order Land

### Crown Land

Crown Land is presumed to be included in the Order in respect of land below the mean low water mark at the landfall at Happisburgh South, North Norfolk (the details of which are to be found in the Book of Reference and associated Land Plans). The Crown's interest cannot be acquired compulsorily, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body.

These interests are described and illustrated in the Book of Reference as required by the 2008 Act (Plots 01/01, 01/02, 01/03, 01/17 and 01/19). The Applicant intends to negotiate to acquire the necessary interests directly with the Crown and does not perceive any obvious impediment to obtaining these interests. Consent under section 135 of the 2008 Act is in the process of being requested from the Crown Estate Commissioners.

### National Trust

If a DCO authorises the compulsory acquisition of inalienable National Trust land, the DCO will be subject to special parliamentary procedure. The National Trust's interest comprises Plots 15/06, 15/07, 15/08, 15/09, 15/10, 15/12, 15/13, 15/14, 15/15, 16/02, 16/03, 16/04, 16/05, 16/07, 16/08, 16/09, 16/10, 16/11, 16/13, 16/14, 17/01, 17/02, 17/04, 17/06, 17/07 and 18/01 and the National Trust is an occupier of Plot 17/03.

The Applicant is currently negotiating the grant of the necessary interests by the National Trust and anticipates that this will be agreed in due course.

### Highways England

- 8.1 Trunk roads and other highways owned by Highways England are no longer formally regarded as Crown land, but in practice they are treated in the same way. Highways England's interests (comprising the A47 and adjoining land at Plots 37/08, 37/19, 37/20 37/21, 41/12, 41/41, 41/42, 41/43, 41/44, 41/48 and 42/05) are excluded from compulsory acquisition in the Book of Reference. Negotiations for the appropriate licences and (if necessary) property agreements with Highways England are in progress.

### Special category land - open space

- 8.2 The grid connection route passes through potential open space land at Plots 01/04, 01/05, 01/06, 01/18 and 01/20, being the beach at Happisburgh South; and the Marriott's Way long distance path at Plots 23/07 and 24/10 (the **Open Space Land**). The Open Space Land is shown on the Special Category Land Plan submitted as part of the Application (Document 2.3). Whether land is open space or not is a matter of fact. The Applicant's understanding is that this land being beach land does not prevent it from being open space. The land is not restricted to the public and the possibility of use for public recreation cannot be ruled out.
- 8.3 Section 132 provides that where an applicant for development consent under the 2008 Act 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.*
- 8.4 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

- 8.5 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 the existing Necton National Grid substation, a landfall location has been selected at Happisburgh South.
- 8.6 The site and route selection process for the onshore elements of the Project are detailed in the Environmental Statement Volume 1, Chapter 5.5: Project Description – Onshore (Document 6.1).
- 8.7 A precautionary approach is being taken to treat the beach 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 01/04, and 01/06, 23/07 and 24/10 on the Land Plan and in the Book of Reference and forms part of the beach and foreshore at Happisburgh South and part of the Marriott's Way long distance path. The beach and foreshore measure approximately 56,372.75 square metres and the parts of the Marriot's Way within the Order Land measure approximately 3,995.68 square metres. The Open Space Land as a whole measures approximately 60,368.43 square metres. The Open Space Land is shown hatched green on the Special Category Land Plan (Document 2.3).
- 8.8 The Open Space Land is owned by an unknown party and several private parties, comprising Plots 01/04, 01/06, 23/07 and 24/10, 23/07, and 24/10. North Norfolk District Council is responsible for the management of the land in Plot 01/06 and has an interest in this plot as an occupier, they also are lessees of Plots 01/04, 01/05, 01/06 and 01/18, 01/20. Norfolk County Council has an interest in Plots 01/04, 23/07 and 24/10 as highway authority. The Water Management Alliance and Norfolk Rivers Internal Drainage Board have rights in Plot 23/07 in respect of drainage.
- 8.9 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 scheme from proceeding.

### Installation of the cables, fibre optic cables and ducts

#### Landfall

- 8.10 The proposed methodology for installation of cables, fibre optic cables and ducts at the landfall for the Project is as follows:
- 8.10.1 The Applicant plans to install the apparatus for the Project at the landfall using ducts to be installed through directional drilling techniques. The drilling will commence with a pilot hole drilled from the entry point at the temporary construction compound to be instated at Plot 01/09.
- 8.10.2 The holes for the cable ducts will exit the ground offshore at a location beyond 5.5m below lowest astronomical tide, which will be up to 1,000m drilling length from the drilling entry point. The target depth of the drill will be between 10 and 20 metres below mean sea level.
- 8.10.3 The cable ducts will either be installed from the offshore side and pulled through the cable duct holes from the onshore side, or welded together onshore and then pulled through from the offshore side. The electrical and fibre optic cables will be installed from the offshore side and pulled through from the onshore side to the transition joint pit. The transition joint pit will be located at the temporary construction compound and will not affect the Open Space Land.

- 8.10.4 The installation process for the apparatus at the landfall will not involve any works taking place in the Open Space Land such as to have an effect on access to the Open Space Land.
- 8.10.5 Construction of the landfall is anticipated to take up to 20 weeks assuming that construction will take place 12 hours per day, seven days per week. If 24 hour construction is employed, subject to environmental and planning constraints, the construction period for the ducts and cables landfall works may be reduced to 14 weeks.
- 8.11 The permanent rights to be acquired are detailed in Schedule 6, Part 1 in the event of scenario 1, Part 2 in the event of scenario 2, to the Order. Permanent rights are proposed to be acquired over all of the potential Open Space Plots at the landfall (subject to the interests of the Crown Estate Commissioners being excluded from compulsory acquisition).

*Crossing the Marriott's Way*

- 8.12 The proposed methodology for installing the cables, fibre optic cables (in scenario 1 and scenario 2) and ducts (in scenario 2 only) crossing the Marriott's Way long distance path for the Project is as follows:
  - 8.12.1 The Applicant plans to install electrical cables and fibre optic cables under the Marriott's Way (Plots 23/07 and 24/10) using cable ducts to be first installed through trenchless techniques. Installation will commence at the temporary construction compounds to be instated at Plots 23/05 and 24/08.
  - 8.12.2 The cable ducts will emerge at Plots 23/11 and 24/11.
  - 8.12.3 The cable ducts will be installed and the electrical cables and fibre optic cables will be pulled through.
  - 8.12.4 The installation process for cables, fibre optic cables and ducts under the Marriott's Way will not involve any works taking place in the Open Space Land such as to have an effect on access to the Open Space Land.
- 8.13 The Open Space Land should not be affected by the installation of the apparatus, and access should remain open throughout the construction period.
- 8.14 The works described above will necessitate the compulsory acquisition of rights to enter and use the Open Space Land for the purposes of installing the cables, fibre optic cables and ducts and for the repair, maintenance, renewal, replacement and removal of the apparatus once installed
- 8.15 As noted above, the cables, fibre optic cables and ducts will be installed using trenchless techniques in each of the open space locations. No permanent surface installation works will be required within the Open Space Land. The Applicant is seeking powers in the draft Order for the temporary possession of land as well as the acquisition of new rights, rather than outright freehold compulsory acquisition of the land, for installation. There is no operational need for the Applicant to take the freehold of the relevant Order land, as the use of the temporary possession and new rights powers is more proportionate in the circumstances, allowing the use of the relevant land to revert back to the landowner.
- 8.16 Rights permitting the Applicant infrequent use of the Open Space Land, and including easements to retain the apparatus underground and to access it for maintenance, may be compulsorily acquired and these rights are sought to be included in the Order.

*Maintenance of the cables and ducts*

- 8.17 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, fibre optic cables or ducts, or maintenance necessitates cable, fibre optic cables 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 running tracks or access tracks will be required in relation to the exercise of the right of access over the Open Space Land.

- 8.18 It is submitted as a result that section 132(3) of the 2008 Act therefore applies, i.e. that the Open Space Land, when burdened with the rights to install, inspect and maintain the cables, fibre optic cables and ducts, will not be any less advantageous to persons in whom it is vested, other persons, if any, if entitled to rights of common or other rights, and to the public. There will be no impact on public access and there will be no less advantageous beneficial use of the Open Space Land for any party currently interested in that land.
- 8.19 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. The land does not include any land forming part of a common.
- 8.20 The Applicant submits that pursuant to section 132(3) of the 2008 Act the land, when burdened with the Order rights, will be no less advantageous than it was before to:
- 8.20.1 The persons listed as the freehold and leasehold owners, tenants and occupiers in the Book of Reference (Document 4.3);
  - 8.20.2 Any other persons entitled to rights over the beach; and
  - 8.20.3 The public.

Accordingly the Secretary of State will be asked to confirm that, pursuant to section 132 of the 2008 Act, he can be satisfied that no exchange land is required.

#### Statutory Undertakers

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

#### *Section 127 Planning Act 2008*

- 8.22 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*

- 8.23 Section 138 of the 2008 Act is engaged by Article 29 (*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.

8.24 Article 29 of the Order is expressed to be subject to protective provisions agreed between the Applicant and the relevant undertakers. Proposed Protective Provisions form Schedule 17 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.

8.25 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:

*TC Dudgeon OFTO Plc (TCP)*

8.26 The Applicant is seeking to negotiate to acquire the rights over the land necessary for the Project from TCP (the successor Offshore Transmission Operator (OFTO) to the previous landowner, Equinor, and the owner of Plots 41/28a, 41/29, 41/30a, 41/31, 41/34, 41/35 and 41/37) by private treaty. The Applicant has been in contact with Dudgeon since October 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding a commercial agreement for the protection of TCP as soon as possible.

8.27 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 TCP's undertaking.

*National Grid Electricity Transmission plc*

8.28 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 7.9.41 to 7.9.58 in this Statement of Reasons.

8.29 The Applicant has been in contact with NGET since October 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. Protective provisions benefitting NGET are also in negotiation for inclusion in the Order.

8.30 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.

*Cadent Gas Limited*

8.31 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Cadent Gas Limited (**Cadent**) by private treaty. The Applicant has been in contact with Cadent since October 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding a crossing agreement and protective provisions for the protection of Cadent as soon as possible. Protective provisions benefitting Cadent are also in negotiation for inclusion in the Order.

8.32 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 Cadent's undertaking.

*Network Rail Infrastructure Limited*

8.33 In order to connect the Project to the National Grid substation at Necton, it is necessary to install the cables, fibre optic cables and ducts under a railway owned by Network Rail Infrastructure Limited (**Network Rail**). This is the Norwich to Sheringham railway line, south west of Lyngate Road and north west of North Walsham, Norfolk (Plot 10/04).



- 8.34 The Applicant has been in contact with Network Rail Infrastructure Limited since October 2017 and seeks to negotiate to acquire the rights over land necessary for the Project from Network Rail by private treaty. The Applicant has been in contact with Network Rail Infrastructure Limited since October 2017 and seeks to negotiate to acquire the rights over land necessary for the Project from Network Rail by private treaty.
- 8.35 In the absence of a private treaty agreement with Network Rail, it is necessary to include Network Rail's land in the order to ensure that all the land required to deliver the Project can be assembled within the necessary timeframe. It remains the Applicant's preference and intention to acquire the rights by agreement.
- 8.36 The Applicant does not consider it necessary to replace the land 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 Network Rail's undertaking.

*UK Power Networks (Operations) Limited*

- 8.37 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from UK Power Networks (Operations) Limited (**UKPN**) by private treaty. The Applicant has been in contact with UKPN since January 2018 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding a compromise agreement and protective provisions for the protection of UKPN as soon as possible.
- 8.38 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.

*Highway Authority (Norfolk County Council)*

- 8.39 Land held by Norfolk 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.

*Blue Transmission Sheringham Shoal Limited*

- 8.40 The cable route crosses export cables owned by Blue Transmission Sheringham Shoal Limited. The Applicant has been in contact with the apparatus owner in respect of the cable crossing since October 2017 and will continue to progress private treaty negotiations with a view to concluding a crossing agreement and protective provisions for the protection of the cables as soon as possible. The Applicant will include protective provisions for the protection of pipeline undertakers in the Order, which will apply to BPA.

*Anglian Water Services Limited*

- 8.41 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Anglian Water Services Limited (**Anglian**) by private treaty. The Applicant has been in contact with Anglian since October 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 Anglian as soon as possible.
- 8.42 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 Anglian's undertaking.

*British Telecommunications plc*

- 8.43 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 January 2018 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 BT as soon as possible. The Order will contain protective provisions for Electronic Communications Code Networks which will apply to BT.

- 8.44 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.

*Water Management Alliance*

- 8.45 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from the Water Management Alliance (**WMA**) by private treaty. The Applicant has been in contact with WMA since November 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process. The Applicant will include protective provisions for the protection of water apparatus in the Order.

- 8.46 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 WMA's undertaking.

*British Pipeline Agency Limited*

- 8.47 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from British Pipeline Agency Limited (**BPA**) by private treaty. The Applicant has been in contact with BPA since October 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding a crossing agreement for the protection of BPA as soon as possible. The Applicant will include protective provisions for the protection of pipeline undertakers in the Order, which will apply to BPA.

- 8.48 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 BPA's undertaking.

*Vodafone Limited*

- 8.49 The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Vodafone Limited (**Vodafone**) by private treaty. The Applicant has been in contact with BPA since October 2017 and will continue to progress private treaty negotiations in tandem with the compulsory acquisition process with a view to concluding a crossing agreement and protective provisions for the protection of Vodafone as soon as possible. The Order will contain protective provisions for Electronic Communications Code Networks which will apply to Vodafone.

- 8.50 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 Vodafone's undertaking.

*Ørsted Hornsea Project Three (UK) Ltd*

This party is in discussions with the Applicant and has been throughout the development of the Norfolk Vanguard project. The Applicant and Ørsted have agreed protective provisions to be included in the Order.

**The Human Rights Act 1998**

- 8.51 As the exercise of compulsory acquisition powers involves depriving a legal entity of its interests in land it is necessary that an Applicant (commonly known as the acquiring authority under regimes other than the DCO regime) seeking compulsory acquisition powers considers the impact on human rights of those affected. This applies to both individuals and other legal entities including companies.

- 8.52 The European Convention on Human Rights (the **Convention**) is an international treaty signed under the auspices of the Council of Europe. The Convention was never incorporated into United Kingdom law. The Human Rights Act 1998 (**HRA**) addresses the situation to an extent, and is the relevant act that must be observed.
- 8.53 The HRA enables individuals to invoke Convention rights for certain purposes and for certain effects. The Convention contains Articles aimed to protect the rights of the individual (referred to as **Convention Rights**).
- 8.54 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.
- 8.55 In seeking compulsory acquisition powers in the Order, an acquiring authority must show that the acquisition is justified in the public interest. On this basis the Applicant has considered in detail the human rights of those affected. 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.
- 8.56 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, Article 6, and Article 8. The Applicant's considerations and conclusions in relation to each of these articles are set out below.

Article 1 of the First Protocol to the Convention

- 8.57 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.
- 8.58 The right to compensation is an important factor in considering the balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Where new rights are being acquired, the Applicant has considered that whilst there will be an effect on those who remain in occupation for the duration of the works, this will be temporary and they will be entitled to make a compensation claim. 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. Compensation is an essential aspect of compulsory acquisition and an important component of compliance with Article 1, being in line with national law.
- 8.59 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.
- 8.60 Representations can be made in response to any notice given under section 56 of the 2008 Act (notifying persons of accepted application).
- 8.61 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.

- 8.62 The requirements of compensation being payable for the acquisition of any interest are met. Therefore Article 1 of Protocol 1 is not contravened.

#### Article 6

This entitles those affected by powers sought for the Project to a fair, public hearing. If a compulsory acquisition hearing request is made by owners of land in the Order, then the Order will not be made without a hearing before the Secretary of State being held. Article 6 is therefore adhered to in the Order making process.

#### Article 8

- 8.63 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.
- 8.64 A right protected by Article 8 clearly applies and would be interfered with as a result of the compulsory acquisition powers being included in the Order. It was therefore necessary for the Applicant to consider the possible justifications for the interference under Article 8(2), and the Applicant considered three questions accordingly:

##### *8.64.1 Is the interference in accordance with the law?*

The answer is yes, there being a legal basis for seeking compulsory acquisition in the Order, pursuant to promoting a Nationally Significant Infrastructure Project.

##### *8.64.2 Does the interference pursue a legitimate aim?*

The justification for the Order is that it seeks to achieve a particular purpose in the public interest, namely, the delivery of the Project.

##### *8.64.3 Is the interference necessary in a democratic society?*

Here, the Applicant was required to make a balancing judgement between the public interest and the rights of the individual, and to ensure that the Order is necessary and proportionate.

- 8.65 The Applicant has considered the need to balance the constitutional rights of ownership of property for the individuals who are affected by the Order either through the acquisition of land or rights against the benefit of proceeding with the Order. The Applicant considers that the making of the Order with compulsory acquisition powers which would lead to an interference with the individuals' rights is justified, necessary and proportionate.
- 8.66 In considering this balance, and as is set out in the Statement of Reasons, national Government policy states there is a need for renewable energy schemes in the UK and this need in the public benefit should be considered in the balance with any private loss.
- 8.67 The Applicant also considers that as the nature of rights that are to be acquired beneath the surface of lands, any interference is proportionate in the circumstances.
- 8.68 In summary, 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. 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.

8.69 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.

## 9. Other compulsory acquisition powers in the Order

- 9.1 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.
- 9.2 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.
- 9.3 The additional powers referred to in above are the following:

### Article 9 (Street works)

- 9.3.1 This article would allow the Applicant to carry out certain specified kinds of works in specified streets.
- 9.3.2 The exercise of the powers in Article 9 could potentially interfere with private rights. 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 11 (temporary stopping up of streets)

- 9.3.3 This Article provides for the temporary stopping up, diversion or alteration of streets. It refers to Schedule 4 (*Streets to be stopped up*), Part 1 in the event of scenario 1, or Part 2 in the event of scenario 2, which lists those streets which may be stopped up temporarily. These are the streets which the Applicant anticipates it will need to temporarily stop up, alter or divert. Due to the nature of the works associated with the cable pull through under Scenario 1, the extent of the temporary stopping up under Scenario 1 (Part 1 of Schedule 4) involves fewer streets and private tracks compared to that under Scenario 2 (Part 2, Schedule 4).
- 9.3.4 Where the street is specified in Part 1 and Part 2 of Schedule 4, there is a requirement to consult the street authority, but there is no need to obtain its consent. In addition, Article 11 allows for the stopping up, alteration or diversion of any other street not referenced in Schedule 4 for the purposes of carrying out the authorised project, subject to the consent of the street authority.
- 9.3.5 In the event of Scenario 1, Article 11 also includes the power to permanently stop up a private access track at the Necton National Grid Substation. This is needed in the event of Scenario 1 as the footprint associated with the National Grid extension under Work No. 10A and 10B will need to be extended in an easterly direction as the Norfolk Vanguard extension will occupy land to the west.
- 9.3.6 Article 11 refers to Part 3 of Schedule 4 (permanent stopping up of private means of access for which a substitute is to be provided) and provides that the private access track can only be stopped up if a new private access track is first constructed and substituted for it, or a temporary route is provided whilst the alternative route is constructed.
- 9.3.7 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.

- 9.3.8 The exercise of Article 11 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 under the Article. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

Article 16 (Authority to survey and investigate land)

- 9.3.9 This article would enable the Applicant, for the purposes of the Order, to enter onto any land shown within the Order limits with or without vehicles and equipment 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 21 (Private rights)

- 9.3.10 Article 21 provides for private rights over land to cease to have effect subject to compulsory acquisition, or be suspended and temporarily unenforceable where the Project takes temporary possession of land. The exercise of those powers amounts to an interference with property rights.

- 9.3.11 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 21(6) of the Order to preserve the right of access. If a right of access ceases to have effect or is 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 26 (Temporary use of land for carrying out the authorised project)

- 9.3.12 Article 26 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.
- 9.3.13 The land to which the Article applies is the land specified in columns (1) to (2) of Schedule 8, Part 1 in the event of scenario 1 and Part 2 in the event of scenario 2 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 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.
- 9.3.14 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.
- 9.3.15 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 27 (temporary use of land for maintaining the authorised project)

- 9.3.16 Article 27 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.
- 9.3.17 The land to which Article 27 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.
- 9.3.18 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 28 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)

- 9.3.19 Article 28 would enable the Applicant, where it is carrying out works on behalf of National Grid to remove redundant apparatus belonging to National Grid.
- 9.3.20 This Article provides that where apparatus belonging to National Grid is removed from any land taken under temporary possession powers only, the parties can elect to agree that all private rights or restrictive covenants in relation to it will be extinguished from the date on which the Applicant (or the undertaker as defined by the DCO from time to time) gives up temporary possession of the land. The default position in absence of such agreement is that the rights remain intact. This will allow the Applicant to more easily provide a "clean" property title in respect of any land in which National Grid apparatus has been removed, but only with the agreement of National Grid.

Article 35 (Felling or lopping trees and removal of hedgerows)

- 9.3.21 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 authorised project or any apparatus used in connection with it. 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.



## **10. Other consents and licences**

Additional consents and licences are required under other legislation in addition to the Order. These are listed in Document 5.4 (Consents and licences required under other legislation).

- 10.1 The principal consents that might impact on the timetable for the commencement of construction are as follows:
  - 10.1.1 European Protected Species Licence – this will be sought, if required, from Natural England or the MMO after the Order is made;
  - 10.1.2 Appropriate Assessment and Habitat Regulations Assessment - The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive and the 2017 Habitats Regulations. The Applicant has submitted a Habitat Regulations Assessment report with the Application.
  - 10.1.3 Safety Zones – if required, an application will be made to the Secretary of State after the Order is made, under the Energy Act 2004;
  - 10.1.4 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;
  - 10.1.5 Energy Generation Licence - The Applicant will apply for a generation licence pursuant to section 6(1)(a) of the Electricity Act 1989 which authorises the Applicant to generate electricity in a specified area for the purposes of giving a supply to any premises in a specified area or enabling a supply to be so given.
- 10.2 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.

## **11. Conclusions**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 The Applicant has set out clear and specific proposals of how the Order Land will be used.
- 11.7 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.
- 11.8 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.

## 12. Further Information

### Funding

- 12.1 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.
- 12.2 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

Owners and occupiers of property affected by the Project who wish to negotiate or discuss matters of compensation should contact Pete Gettinby on the following details:

Pete Gettinby  
Land Manager  
Vattenfall Wind Power  
3rd Floor, The Tun Building  
4 Jackson's Entry  
Holyrood Road  
Edinburgh  
EH8 8PJ  
Tel: 0131 526 3143

### Compensation

- 12.3 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.
- 12.4 Copies of these booklets are obtainable, free of charge, from:
- dclg@theapsgroup.com
- 12.5 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>

## Schedule 1

### List of Application Documents

Reference	Document
<b>1 Application form</b>	
1.1	Cover letter to the Planning Inspectorate
1.2	Application Form
1.3	Copies of newspaper notices
1.4	Guide to the Application
1.5	Draft Section 55 Checklist
<b>2 Plans</b>	
2.1	Location plan
2.2	Land plan (Onshore and Offshore)
2.3	Special category land plan
2.4	Works plan
2.5	Access to works plan
2.6	Plan showing public rights of way to be temporarily stopped up
2.7	Plan showing streets to be temporarily stopped up
2.8	Plan of statutory/non-statutory sites or features of nature conservation
2.9	Plan(s) showing statutory or non-statutory historic or scheduled monument sites/features of the historic environment
2.10	Plan showing any Crown land (Onshore and Offshore)
2.11	Important hedgerows plan
2.12	Plan showing private access track to be permanently stopped up
<b>3 Development Consent Order</b>	
3.1	Draft Development Consent Order
3.2	Explanatory Memorandum
3.3	Note on Requirements and Conditions in the Development Consent Order
3.4	Inter-relationship Document

Reference	Document
<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	Statement of Engagement with Section 79(1) of the Environmental Protection Act 1990
5.3	Report to inform Habitat Regulations Assessment
5.4	Consents and licences required under other legislation
<b>6 Environmental Impact Assessment</b>	
6.1	Environmental Statement
6.2	Figures
6.3	Technical Appendices
6.4	Non-Technical Summary
6.5	Scoping Opinion
6.6	Schedule of Mitigation
6.7	EIA and DCO reconciliation document
<b>7 Additional information for specific types of infrastructure</b>	
7.1	Cable Statement
7.2	Safety Zone Statement
<b>8 Other documents</b>	
8.1	Outline Code of Construction Practice
8.2	Planning Statement
8.3	Design and Access Statement
8.4	Public Rights of Way Strategy
8.5	Outline Written Scheme of Investigation (Onshore)
8.6	Outline Written Scheme of Investigation (Offshore)

<b>Reference</b>	<b>Document</b>
8.7	Outline Landscape and Ecological Management Strategy
8.8	Outline Traffic Management Plan
8.9	Outline Travel Plan
8.10	Outline Access Management Plan
8.11	Outline Offshore Operations and Maintenance Plan
8.12	Offshore In Principle Monitoring Plan
8.13	Draft Marine Mammal Mitigation Protocol
8.14	Outline Project Environmental Management Plan
8.15	Site Characterisation Report
8.16	Outline Scour Protection and Cable Protection Plan
8.17	In Principle Norfolk Boreas Southern North Sea Special Area of Conservation (SAC) Site Integrity Plan
8.18	Outline Marine Traffic Monitoring Strategy
8.19	Outline Fisheries Liaison and Co-existence Plan
8.20	Outline Norfolk Boreas Haisborough, Hammond, and Winterton Special Area of Conservation Site Integrity Plan
8.21	Outline Operational Drainage Plan
8.22	Outline Skills and Employment Strategy
8.23	Development Principles