

**Statement of Reasons**

**Thurrock Flexible Generation Plant**

**Application document number A4.2**

Deadline 7 Rule 17 response: to accompany tracked change dDCO showing changes required for causeway removal



# The Thurrock Flexible Generation Plant Development Consent Order 202[ ]

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## Statement of Reasons

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| Planning Act 2008  |                    |
| The Infrastructure Planning<br>(Applications: Prescribed Forms and Procedure) Regulations 2009 |                    |
| Regulation Number  | Regulation 5(2)(h) |
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# 1 SUMMARY

1.1 This Statement is submitted by Thurrock Power (“the Applicant”) to set out the reasons and justification for seeking powers of compulsory acquisition in the application for a development consent order (“DCO”) under the Planning Act 2008 for the construction and operation of a flexible generating station comprising:

- reciprocating gas engines with a net electrical output<sup>1</sup> totalling 600 MW;
- batteries with a net electrical output of 150 MW and storage capacity of up to 600 MWh<sup>2</sup>;
- gas and electricity connections;
- creation of temporary and permanent private access routes for construction and access in operation, including a new access road for the delivery of abnormal indivisible loads (AILs) by road ~~and a permanent causeway for the delivery of abnormal indivisible loads (AILs) by barge~~;
- works to create exchange Common Land; and
- habitat creation or enhancement for protected species translocation and biodiversity gain.

1.2 This Statement has been prepared in accordance with the provisions of Regulation 5(2) (h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

1.3 This Statement is required because the DCO, if made, would authorise the compulsory acquisition of interests or rights in land. The Order would also confer on the Applicant the additional powers below, which are further described in Section 7 of this Statement:

- (a) Extinguishment of private rights over land;
- (b) Acquisition of subsoil only;
- (c) Rights under or over streets;
- (d) Temporary use of land for carrying out the authorised development; and
- (e) Temporary use of land for maintaining the authorised development.

1.4 This Statement forms part of the suite of documents submitted with the Application for a DCO including powers of compulsory acquisition. This Statement should be read in conjunction with the other DCO application documents that relate to the compulsory acquisition powers sought by the Applicant, including<sup>3</sup>:

- Draft Order (document reference REP6-003)

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<sup>1</sup> electricity exported at the point of grid connection, including exhaust energy recovery, after parasitic load

<sup>2</sup> i.e. storing up to four hours’ power at the rated discharge capacity

<sup>3</sup> The document references included in this Statement are for the most recent versions of the documents accepted into the Examination at the time of writing.

- Explanatory Memorandum (document reference: REP5-006)
- Land Plans (including Special Category Land Plan) (document reference AS-015)
- Works Plans (document reference: AS-016)
- Funding Statement (document reference: AS-027)
- Book of Reference (document reference: AS-029)
- Statement of Case (document reference: APP-135)

1.5 The Applicant's rationale and justification for seeking powers of compulsory acquisition are set out herein. The Applicant consider that there is a clear and compelling case in the public interest for the inclusion of powers of compulsory acquisition within the Order to secure the land and interests which are required for the Project. The public benefit of allowing the Project to proceed outweighs the infringement of private rights which would occur should powers of compulsory acquisition be exercised.

1.6 The proposed Project includes acquisition of common land within the meaning of section 131 of the Planning Act 2008. The scope of compulsory acquisition therefore includes exchange land to be designated as common land. The proposed Project also includes the acquisition of rights over common land within the meaning of section 132 of the Planning Act 2008. The acquisition and rights are necessary for the construction and operation of the Project. This Statement at Section 12 sets out why the proposed Project need not be subject to Special Parliamentary Procedure.

## **2 INTRODUCTION**

2.1 This Statement:

- (a) sets out the background against which the Order is made, and provides a description of the Project;
- (b) explains the need for the Project;
- (c) provides a statement of the statutory authority for the proposed acquisition of land and rights by the Applicant;
- (d) describes the Order land;
- (e) sets out the policy background;
- (f) explains the relationship between the Order and the Human Rights Act 1998;
- (g) considers alternatives to compulsory acquisition and sets out the Applicant's justification for making the Order;
- (h) considers special categories of land and the common land case;

- (i) describes the nature of related consent/applications which will be required for the Project;
  - (j) describes the case for acquisition of individual interests and rights and explains the Applicant's engagement with affected landowners and third parties;
  - (k) outlines potential barriers to implementation; and
  - (l) considers the funding and financial implications of the Project.
- 2.2 The purpose of the Order is to authorise the construction and operation of a flexible generating station which will help to meet the identified national need for a diverse mix of energy generating capacity.
- 2.3 The Applicant has attempted to acquire the land and rights required voluntarily. The Applicant has been unable to acquire all plots and rights, and accordingly requires to seek powers of compulsory acquisition.
- 2.4 The granting of powers of compulsory acquisition are necessary to allow the Applicant to deliver a nationally significant infrastructure project for which there is a clear, identified, national need and a defined and specific need to provide this facility on the Order Land.

### 3 DEFINITIONS

3.1 In this Statement the following definitions shall apply;

|                               |           |   |
|-------------------------------|-----------|---|
| <b>Act</b>                    |           | means the Planning Act 2008.  |
| <b>Application</b>            |           | means the application for development consent made to the Secretary of State for Business, Energy and Industrial Strategy by Thurrock Power to construct and operate a flexible generating station at Tilbury, Thurrock, Essex. |
| <b>Book of Reference</b>      |           | means the document in five parts produced in accordance with the provisions of Regulation 7.  |
| <b>Convention</b>             |           | means the European Convention on Human Rights.  |
| <b>Common<br/>Common Land</b> | <b>or</b> | means land registered as a common under the provisions of the Commons Act 1965.   |
| <b>ES</b>                     |           | means the Environmental Statement forming part of the Application, which is in seven volumes.   |
| <b>Guidance</b>               |           | means the Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land published by the   |

Department for Communities and Local Government,  
September 2013.

|                      |   |
|----------------------|---|
| <b>National Grid</b> | means National Grid Electricity Transmission Plc (company registration number 02366977), whose registered offices is at 1 to 3 Strand, London, WE2N 5EH.  |
| <b>NGG</b>           | “NGG” means National Grid Gas Plc (company registration number 02006000), whose registered offices is at 1 to 3 Strand, London, WCN 5EH.  |
| <b>NPS EN1</b>       | means the overarching National Policy Statement for Energy (EN-1) published by the Department of Energy and Climate Change, 2011.   |
| <b>NPS EN2</b>       | means the National Policy statement for Fossil Fuel Electricity Generating Infrastructure, published by the Department of Energy and Climate Change, 2011.  |
| <b>Order</b>         | means the Thurrock Flexible Generation Plant Development Consent Order 202[X].  |
| <b>Order Land</b>    | means the land and rights over land for which compulsory powers of acquisition are sought in the Order as set out in the Book of Reference.   |
| <b>Order Limits</b>  | means the limits shown on the Work Plans within which the development authorised by the Order may be carried out.   |
| <b>Plot</b>          | means each piece or area of land identified individually in the Book of Reference and any reference to Plots or a numbered Plot shall be construed accordingly.   |
| <b>Project</b>       | means the construction and operation of flexible generation station comprising up to 600MW net export capacity of gas generating engines and 150MW net export capacity (600MWh storage capacity) of battery storage, together with ancillary infrastructure including connections to electrical and gas grids, access roads, landscaping and carbon capture readiness land. |
| <b>PRoW</b>          | means Public Right of Way.  |

|                       |  |
|-----------------------|--|
| <b>Regulations</b>    | means the Infrastructure Planning (Applications; prescribed forms and procedure) Regulations 2009 and “Regulation” shall be a reference to the appropriate part of those Regulations.                              |
| <b>Thurrock Power</b> | means Thurrock Power Limited, a company registered in England under company number 10917470 and having its registered office at 1st Floor 145 Kensington Church Street, London, England, W8 7LP.                   |
| <b>Statement</b>      | means this Statement of Reasons.   |
| <b>Zone</b>           | means any of Zones A to I, which Zones group the works authorised in the Order by function or type and are set out in Volume 2, Chapter 2 (Project description) of the ES and shown on figure 1.5 of that chapter. |

#### **4 BACKGROUND TO PROJECT**

- 4.1 The Applicant proposes to develop a flexible generation plant on land north of Tilbury Substation in Thurrock. The flexible generation plant will provide up to 750 megawatts (MW) (net) of electrical generation capacity on a fast response basis when called by the National Grid, together with up to 600MWh of battery storage capacity.
- 4.2 The flexible generation plant is needed to provide resilience to the electricity grid when that is required due to unplanned outages and intermittent generation from renewable sources, particularly wind power, or short term demand from consumers (typically in the morning and evening, particularly in the winter). It will do so through providing peaking generation capacity from the fast-start gas engines, which will typically run for short periods. The battery storage facility will provide both electricity balancing and frequency management services for the grid.

#### **5 PROJECT DESCRIPTION**

- 5.1 The Project comprises the construction and operation of:
- reciprocating gas engines with a net electrical output of 600 MW;
  - batteries with a net electrical output of 150 MW and storage capacity of up to 600 MWh;
  - gas and electricity connections;



- creation access routes for construction and operation, including a new access road for the delivery of abnormal indivisible loads (AILs) by road ~~and a permanent causeway for the delivery of abnormal indivisible loads (AILs) by barge~~; and
- creation of exchange Common Land; and
- habitat creation or enhancement including for protected species translocation.

5.2 A full Project description is included in Chapter 2 of the Environmental Statement (document reference: PDC-015).

5.3 The ES sets out the areas of the Project in Zones which group works by type or function:

| <b>Zone</b> | <b>Work (s) <sup>4</sup></b> | <b>Description</b>   |
|-------------|------------------------------|--|
| A           | 1, 2, 3, 4, 8                | Main Development site where the gas fired generating facility, the battery storage facility and Project substation will be located                                     |
| B           | 3                            | Electrical connection to the existing Tilbury Substation   |
| C           | 4, 6, 7, 8                   | Corridor for permanent access route, gas pipeline route and a utility (water) connection.<br><br>Will also be used during construction as a compound and laydown area. |
| D           | 4                            | Gas pipeline and above-ground installation for connection to NGG transmission system.  |
| E           | 13, 14                       | Replacement Common Land  |
| F           | 2                            | Habitat creation and enhancement   |
| G           | <del>10, 11,</del> 12        | Corridor for access road <del>and causeway</del>   |
| H           | 12, 15                       | Access to public highway using existing and consented private roads and a stretch of new road linking Fort Road with the Port's road                                   |
| I           | n/a                          | Suspension of existing traffic regulation order  |
| J           | n/a                          | Temporary use as a diversionary route for footpath   |

5.4 The Zones are shown in figure 1.5 of Chapter 2, Volume 2 of the ES, Project description (document reference PDC-015).

5.5 No compulsory acquisition is required or proposed in Zones I and J.

<sup>4</sup> see Schedule 1 of the draft Order, application document REP2-014

## **Gas engines**

- 5.6 The electricity export capacity of the gas fired generation element of the Project (600 MW net) will be provided by 33 to 48 individual gas engines of between 12.5 and 18.4 MW capacity (with appropriate de-rating), each comprising the engine itself, electrical generator, air cooling system and exhaust flue.
- 5.7 The gas engines and associated equipment will either be in buildings or grouped in encasements up to 50m wide, 125m long and 20m high. The engine exhausts may be individual flues for each engine or aggregated into stacks with groups of flues, in either case up to a maximum of 40m in height from ground level (43m aOD).
- 5.8 The flexible generation plant may operate continuously or at intervals during the day, evening and infrequently at night, depending on the power generation and storage requirements of National Grid. The maximum annual operating time of the gas engines will not exceed 4,000 hours and will be subject to further control by the Environment Agency through the environmental permitting requirements.

## **Battery storage system**

- 5.9 The battery storage system will comprise battery cells, cooling systems, inverters to convert the direct current to alternating current and electrical transformers. Battery technology, which can import or export large amounts of electricity with no time lag, helps National Grid with the balancing market (balancing transmission requirements as large generation and consumption sources come on- or off-line), the energy market (storing excess generation until it is needed) and with maintaining the narrow frequency range around 50Hz required for safe transmission network operation.
- 5.10 Depending on the technology provider, the battery systems may be located within a purpose-built building or buildings, or may be freestanding pre-fabricated units similar in appearance to shipping containers, which could be stacked up to two high. In total, batteries with net electrical output of 150 MW and storage capacity of up to 600 MWh will be installed.

## **Gas and electricity connections**

- 5.11 The Project will connect to the existing National Grid Tilbury 275kV substation, which is immediately adjacent to the southern boundary of the main development site, via a short section of underground cable(s) lying within the boundary of the main development site and the existing National Grid substation site (Zone B). No changes are proposed to the existing high-voltage overhead lines crossing the main development site or other land within the application boundary.

- 5.12 A new gas pipeline connection to the existing high-pressure NGG national transmission system (NTS) at Feeder 18 will be required. Feeder 18 is approximately 2 km away from the main development site to the north east. Zones C and D1 (as set out in the ES) provide a corridor for routing the gas pipeline through agricultural land as far as Station Road. In Zone D1 the pipeline route will avoid impinging on Low Street Pit local wildlife site and will cross under Public Footpath 200. The pipeline will make two crossings of Station Road in Zone D2 and will connect to Feeder 18 where it runs across the field of Zone D3. The connection itself will comprise an above ground installation (AGI) for the junction point, with instrumentation kiosks and emergency pressure release valve set in a compound no greater than 50m square and with structures no more than 5m in height. It will include a perimeter security fence, screening planting, and vehicular access to the public highway.
- 5.13 The Applicant requires flexibility in the Order for the final location of the NTS connection point, as land along the route of Feeder 18 is subject to a third-party residential development option and is also in proximity to the proposed Lower Thames Crossing development. Zone D3 allows flexibility in the final determination of the AGI location along the south-eastern boundary of the field.
- 5.14 The gas pipeline route corridor in Zones C and D has also been designed to allow flexibility in routing the pipeline trench and working area around existing overhead power line pylons/poles and underground utility assets that are present.

#### **Access**

- 5.15 Two permanent vehicular accesses will be provided. The first will be through Zone C to the public highway at Station Road. The second will be via Zones H and G from the public highway A1089 constructed as part of the Tilbury2 development. Up to 30 car parking spaces will be provided within the main development site.
- 5.16 There will be a permanent access road link, from a new junction with the public highway at Fort Road, to enable delivery of abnormal indivisible loads (AILs) that are too large or heavy to transport on other parts of the highway network (for example due to the presence of low bridges).
- 5.17 ~~The addition of this alternative AIL access road has resulted from discussions during the Examination with the Port of Tilbury London Limited (PoTLL) and RWE Generation plc (RWE) who have both objected to the use of the causeway (detailed below) for delivery of AILs. Whilst the Applicant believes that the causeway is acceptable in marine and planning terms, it wishes to reach agreement on this matter with affected parties and, in line with the CA Guidance, it wishes to avoid the use of compulsory acquisition where possible.~~

- 5.18 ~~However, in order to be able to rely on the alternative AIL access route, and avoid use of the causeway, the Applicant needs certainty that the alternative AIL access route can be delivered (as set out in the Applicant's response to PoTLL's Deadline 2 submission REP3-011). For that reason, the Applicant has not removed the causeway from the application.~~
- 5.19 ~~A causeway will be constructed to enable delivery by barge of certain abnormal indivisible loads (AILs) that are too large or heavy to transport on the highway network. The causeway will be located at the south of the former Tilbury B power station site, south of the flexible generation plant main development site.~~
- 5.20 ~~The causeway will be approximately 195m long, approximately 12.5m wide on its running surface and 24m wide at its base, sloping upwards towards shore to meet ground level at the top of the foreshore where there is an existing sea defence wall. A new gate will be required in that wall. A deemed marine licence for the construction and operation of the causeway is sought in the draft Order.~~

### **Exchange Common Land and habitat creation or enhancement**

- ~~5.21~~5.20 The Order Land includes areas for the creation of exchange Common Land and habitat creation or enhancement for protected species translocation and biodiversity gain. Further discussion on Common Land is included in Section 12 of this Statement.

### **Carbon capture readiness**

- ~~5.22~~5.21 The proposed Project is required to be 'Carbon Capture Ready' (CCR) under the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013, which entails setting aside sufficient land for future carbon capture and storage (CCS) technology to be installed.

- ~~5.23~~5.22 Construction of possible future CCS technology on the development site does not form part of the application and current development design. However, as the land reserved for possible CCS is a requirement of the current application, this land-take does form part of the design. A minimum of 32,100 m<sup>2</sup> of land will be reserved as secured in requirement 4 of the draft Order, this land is situated in the areas shown hatched in blue in the work plans.

## **6 NEED FOR AND BENEFITS OF THE PROJECT**

- 6.1 The statement of case for the Project (document reference APP-135) sets out in detail the Applicant's case for the need for the Project and the contribution it would make towards achieving the objectives of policy, including Government policy as set out in the

National Policy Statements. That case is not repeated in full here and this Statement should be read alongside the statement of case.

- 6.2 There is a cascade of international and national obligations, directives and policy statements that combine to place the UK on a legally binding path to reduce carbon dioxide emissions on an incremental basis.

#### *Legislation*

- 6.3 The Climate Change Act 2008 (as amended) commits the UK government to reducing greenhouse gas emissions by 100% of 1990 levels by 2050 and created a framework for setting a series of interim national carbon budgets and plans for national adaptation to climate risks. The 2011 Carbon Plan is the UK's national strategy under the Climate Change Act 2008 for delivering emissions reductions through to the Fourth Carbon Budget period (2023-27) and preparing for further reductions to 2050. The Carbon Plan notes at paragraph 2.146 the need for some flexible fossil fuelled electricity generation for security of supply.

#### *National Policy Statements*

- 6.4 The Government has set out its aim to have a diverse mix of electricity generating technologies and fuels. As the UK introduces more low carbon sources of electricity generation, such as onshore and offshore wind, more storage will be needed to manage electricity demand. Solar, wind and tidal energy do not produce electricity consistently and cannot readily respond to changes in demand. NPS EN1 Provides (at 3.3.2) that “(t)he Government needs to ensure sufficient electricity generating capacity is available to meet maximum peak demand, with a safety margin or spare capacity to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events”.
- 6.5 Whilst the gas and storage component of the Project is not in and of itself a renewable energy generation scheme, it nevertheless provides a very important role in integrating renewable schemes effectively into the UK energy network and provides important generation capacity in this location.
- 6.6 Gas is recognised as the cleanest and most reliable fossil fuel. It is likely to continue to be a central part of Great Britain's energy mix during the transition to a low carbon economy. In the power generation sector, gas is a reliable source of flexible power generating capacity, to back-up intermittent renewables, so underpinning security of supply and price stability in the electricity market (NPS EN-1, 3.8.19).

#### *National and Local Planning Policy*

- 6.7 The core planning principle of the NPPF is that the planning system should “support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure” (paragraph 148).
- 6.8 The Thurrock Borough Local Plan 1997 was adopted in September 1997 and there are saved policies which continue to apply. The application site lies in an area of countryside and in the Green Belt. It does not benefit from any allocation. The Thurrock Core Strategy 2015 was originally adopted on 21 December 2011 and subsequently updated on 28 January 2015 following an independent examination. Policy CSTP26 (Renewable or low carbon energy generation) of the Core Strategy states that “as part of the shift to low-carbon future and to tackle climate change, the Council will encourage opportunities to generate energy from non-fossil fuel and low-carbon sources”. While the Project is not itself renewable it facilitates and supports the transition to renewables and will be able to displace more costly and more polluting ‘spinning reserve’, coal plant and less efficient gas plants that are currently used to meet periods of system stress. The Project accordingly complies with the NPPF and the Core Strategy by supporting the decarbonisation of the electricity network.
- 6.9 Whilst there is a need for this type of flexible generation across the UK, there is a very specific need for additional generation capacity on the 275kV electricity network around London and the south east. There have been significant reductions in generating capacity in and around London; this proposal will help redress that reduction. The Project will provide a very valuable replacement generating facility for the London region.
- 6.10 It is acknowledged that there is a policy presumption against development in the Green Belt under the National Planning Policy Framework unless very special circumstances can be demonstrated to apply. The Applicant has considered other suitable, available and viable points of connection in proximity to London to the 275kV network but all these would also require development within the Green Belt. The process followed in selecting the site for the Project is set out in detail in Chapter 3 Consideration of Alternatives of the ES (document reference: APP-046) and the statement of case (document reference: APP-135).
- 6.11 The Applicant has demonstrated that there will be limited conflict with the purposes of including land within the Green Belt. Whilst substantial weight must be given to this identified Green Belt harm, in this case there are significant benefits and very specific locational needs that outweigh the identified harm, sufficient to demonstrate that very special circumstances exist and that the Project is acceptable in Green Belt terms. This

is discussed in detail in the Green Belt statement contained in the statement of case (document reference: APP-135).

- 6.12 The need for and the benefits of the Project have been set out in the statement of case and summarised in this section. Together, they demonstrate that there is a very strong and compelling case in the public interest for the Project to be delivered. In order to ensure delivery of the Project, powers of compulsory acquisition are required and proportionate.

## **7 POWERS OF COMPULSORY ACQUISITION**

- 7.1 The Application has been made under the Act for a DCO granting consent to construct and operate the Project, including powers of compulsory acquisition for the land necessary to do that. The Act provides in section 120 what may be included within DCOs and provides that such orders may include provisions on matters ancillary to the development consented. Those ancillary matters may include the acquisition of land and the creation, suspension and extinguishment of interests in or rights over land as set out in Schedule 5 to the Act.

- 7.2 The draft Order contains the following provisions:

- (a) Article 19 authorises the compulsory acquisition of any interest in land;
- (b) Article 20 provides statutory authority to override easements and other rights;
- (c) Article 22 authorises the compulsory acquisition of rights over land, including by creation of rights;
- (d) Article 23 provides for the extinguishment of private rights in land which is compulsorily acquired; and
- (e) Article 25 allows the Applicant to compulsorily acquire the subsoil of land only.

- 7.3 The exercise of compulsory powers is limited by Article 21 which provides that notices under such powers must be served within 5 years of the date of the Order being made. The draft Order also amends the compensation enactments to extend their provisions to cover acquisition of rights in land only as well as the land itself.

- 7.4 Section 122 of the Act sets out the purposes for which compulsory acquisition may be authorised and lists the conditions which must be met. This provides that the Secretary of State must be satisfied that the land; —

- (a) is required for the development to which the development consent relates,
- (b) is required to facilitate or is incidental to that development, or

- (c) is replacement land which is to be given in exchange for the order land under section 131 or 132

and that there is a compelling case in the public interest for the land to be acquired compulsorily.

- 7.5 As required by the Guidance, this Statement sets out the use to which each plot subject to powers of compulsory acquisition would be put (see Section 11).

### **Consideration of alternatives to compulsory acquisition**

- 7.6 The objective to avoid or minimise compulsory acquisition was a consideration in selecting the current location for the Project. Negotiations are ongoing with affected parties and are detailed in Section 10 of this Statement.

- 7.7 In the absence of compulsory acquisition all of the land required to allow the Project to be constructed and operated may not be acquired and the Project will not proceed. The Applicant needs to have certainty that the required land can be obtained within a reasonable timeframe and to be able to evidence this certainty to its funders. Given the clear policy support for the development of Projects of this type, the granting of powers of compulsory acquisition to the Project represents a proportionate and legitimate interference with private rights or the public benefit.

## **8 THE ORDER LAND**

### **Site selection**

- 8.1 The Applicant has undertaken a logical, staged decision-making process to arrive at the Project location and design. The Project decision-making around alternatives is summarised in two stages which is outlined below.

- 8.2 Stage 1 - Setting out a 'Project requirements/imperatives statement' leading to an appraisal against agreed criteria for:

- (a) Connection point selection; and
- (b) Site selection and justification.

- 8.3 Stage 2 - Comparison of environmental and technical issues at the chosen site relating to:

- (a) Site arrangement/massing options;
- (b) Design/appearance options;
- (c) Phasing and future-proofing options; and



- (d) Access/construction method options.
- 8.4 Identification of potential development sites in the vicinity of Tilbury Substation considered the following deliverability issues in addition to the planning and environmental constraints.
- (a) Typical site arrangement / plot size - the approximate minimum site area was set at 15-20 hectares.
  - (b) Site acquisition issues – the landowners were canvassed for their willingness to sign a lease, with a preference to avoid compulsory acquisition.
  - (c) Engineering issues – high level land preparation and access considerations were examined.
- 8.5 Land to the south and west of the substation is constrained by existing land uses and development including Tilbury2 and future development possibilities for the former Tilbury B Power Station site (notwithstanding the withdrawal of the Tilbury Energy Centre proposal from the DCO application process). There are other considerations such as the proposed Lower Thames Crossing nearby to the east and the ongoing Ingrebourne Valley land-raising operation. A possible strategic release of Green Belt land at Tilbury could also increase the pressure of development on the surrounding area.
- 8.6 A single land holding was identified that satisfied the search criteria and was capable of providing all development land and access that was not affected by the above development proposals.

### **The site**

- 8.7 The site is immediately north of the existing National Grid substation and although heavily constrained by three high-voltage overhead power line routes (making it unattractive to other types of development), can be used for this Project.
- 8.8 Additional detail on the site selection and environmental decision-making processes used, the information collected, and the reasons given for the Project is in Chapter 3 of the Environmental Statement.
- 8.9 The Order Land is located wholly within the administrative boundary of Thurrock Council, a unitary authority. This includes land that would be required temporarily to facilitate the Project's construction, and all land proposed to mitigate the environmental impacts of the Project.

- 8.10 The Order Land is located on land south west of Station Road near Tilbury in Essex. The British National Grid coordinates are TQ662766 and the nearest existing postcode is RM18 8UL.
- 8.11 The main development site is a 20 hectare site located immediately north of the existing Tilbury Substation. This site would host the proposed gas engines, battery storage facility and carbon capture readiness land. It comprises open fields crossed by three overhead power lines with electricity pylons of a lattice structure, 1 x 400kv and 2 x 275kV. It is immediately to the north of the existing 275kV Tilbury Substation and 300m from the edge of the site of the decommissioned Tilbury coal fired power station which is currently undergoing demolition. The River Thames is located about 950m to the south. To the north is a section of the London, Tilbury and Southend Railway known as the Tilbury Loop. The rail line is located between 100m and 200m from the main development site, at different points.
- 8.12 The eastern edge of the settlement of Tilbury is approximately 720m from the edge of the main development site, the village of West Tilbury is approximately 1.05 km to the north and East Tilbury village is approximately 2.09 km to the east. There are a number of individual or small groups of houses within around 800m of the main development.
- 8.13 The nearest European designated site is the Thames Estuary and Marshes Special Protection Area and Ramsar site, approximately 2.6km east of the main development site. The nearest Scheduled Monuments are Tilbury Fort (960m to the south west) and 'Earthworks near church, West Tilbury' (730m to the north).
- 8.14 The proposed Lower Thames Crossing, also a Nationally Significant Infrastructure Project, is being promoted nearby, and also lies within the Green Belt.

## **9 PLANNING POLICY POSITION**

- 9.1 The Applicant's assessment of planning policy is set out in detail in the statement of case (document reference: APP-135) and is only summarised in this Statement which should be read alongside the statement of case.

### *National Policy Statements (NPS)*

- 9.2 The statutory framework for determining applications seeking development consent is provided by section 104 of the Act. The section states that in deciding a DCO application, the Secretary of State must have regard to any national policy statements.
- 9.3 In deciding the Application, and as the Project contains a mixture of energy infrastructure, the relevant NPSs to which the Secretary of State must have regard in accordance with Sections 104(2) and 104(3) of the Act, are considered below.

*The Overarching NPS for Energy: EN-1*

- 9.4 Paragraph 4.1.2 states that given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the Secretary of State should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The Project is compliant with relevant national policy and as such should benefit from the presumption in favour of granting consent.
- 9.5 Paragraph 4.1.3 continues by stating that in considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account:
- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
  - its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.
- 9.6 Paragraph 4.1.4 states that in this context, the Secretary of State should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology-specific NPS, in the Application or elsewhere (including in local impact reports). The Applicant has addressed all of the relevant matters.
- 9.7 A number of generic impacts relating to the majority of energy infrastructure projects are listed in Part 5. The Applicant has considered and reported on all relevant environmental effects arising from the development.

*The NPS for Fossil Fuel Electricity Generating Infrastructure: EN-2*

- 9.8 This NPS is concerned with impacts and other matters which are specifically associated with fossil fuel generating stations or where, although the impact is generic and covered in EN-1, there are further specific considerations arising from this technology. The policies set out in this NPS are additional to those on generic impacts set out in EN-1 and do not replace them.
- 9.9 In particular, EN-1 sets out the Government's conclusion that there is a significant need for new major energy infrastructure. Section 3.6 of EN-1 includes assessments of the need for new nationally significant fossil fuel generation infrastructure. In the light of this, the need for the infrastructure covered by this NPS has been demonstrated. This

reaffirms that need for the infrastructure of the type proposed by the Applicant has been proven.

*The NPS for Gas Supply Infrastructure and Gas and Oil Pipelines: EN-4*

- 9.10 Guidance on the assessment of new gas pipelines is included in section 2.19 of EN-4. The Project proposes a new gas pipeline connection to the existing high-pressure National Grid Gas National Transmission System at Feeder 18 which is approximately 2 km away from the main development site to the north east. The Applicant took this NPS into account when considering the route of the gas pipeline.

*The NPS for Electricity Networks Infrastructure: EN-5*

- 9.11 This NPS contains guidance on assessing applications for new electricity transmission lines as well as associated infrastructure. The Applicant has secured a connection agreement and construction agreement with National Grid Electricity Transmission for a grid connection to the 275kV network at Tilbury. The Applicant considered this NPS as new electricity infrastructure forms part of the Project.
- 9.12 NPS EN-2, considered together with NPS EN-1, provides the primary basis for decisions by PINS on applications it receives for nationally significant fossil fuel electricity generating stations. NPS EN-2 sets out the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development, in particular by mitigating and adapting to climate change. The Project, once operational, would provide up to 600 MW of net electrical generation capacity together with up to 150 MW of net battery storage export capacity.
- 9.13 Paragraph 3.3.4 of NPS EN-1 notes that "fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing generation from nuclear and the intermittent generation from renewables". The proposed development's fast-start gas engines will be used intermittently, firing up when National Grid requires some or all of them to do so. Compared with conventional baseload electricity generation, which cannot increase or decrease output quickly, this plant will provide National Grid with the necessary flexibility it needs in transforming the electricity system. The problem of power intermittency is therefore directly addressed by the Project.
- 9.14 The battery storage facility proposed by the Applicant is considered to be a low carbon technology and has the advantage of storage and generation functions. The Applicant's proposal is one of the first energy infrastructure proposals that includes a nationally significant scale battery storage facility.

- 9.15 NPS EN-1 describes the national need for transition to a low-carbon electricity supply and notes the continued role of some fossil-fuelled generation to provide energy security, especially where flexibility and fast changes in generation are required. There is a continuing role for gas and increased recognition of the vital role storage can play as the UK decarbonises its electricity production and moves towards a low carbon economy. The relevant NPSs therefore support the provision of the energy infrastructure being proposed by the Applicant.
- 9.16 NPS EN-1 reiterates the importance placed on Green Belts by the government and refers back to Green Belt policy in Planning Policy Guidance Note 2 and its successors. Paragraph 5.10.17 of NPS EN-1 confirms that the determining authority will “attach substantial weight” to harm to the Green Belt.
- 9.17 In national policy terms considerable beneficial weight should be attributed to the Project. It is acknowledged that its location in the Green Belt creates a tension between policies, but the harm caused is considered to be low and in any event offset by very special circumstances as set out in the Green Belt statement within the statement of case (document reference: APP-135).

#### *National Planning Policy Framework (NPPF)*

- 9.18 The NPPF sets out the Government’s planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. It does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Act and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the NPPF). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.
- 9.19 The purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains by providing facilities which support the move to a low carbon economy).

#### **Local Planning Policy**

- 9.20 In deciding applications for development consent, section 104(d) of the Act requires the Secretary of State to have regard to other matters which the Secretary of State thinks are both important and relevant to the decision. In this regard, NPS EN-1 at paragraph 4.15 states “other matters that the Secretary of State may consider both important and relevant

to its decision-making may include Development Plan documents or other documents in the Local Development Framework”.

- 9.21 It is however important to recognise that whilst the provisions of the development plan documents may be matters to which the Secretary of State may have regard, there is no legal requirement to determine this application in accordance with the provisos of the development plan documents, as section 38(6) of the Planning and Compulsory Purchase Act 2004 is not applicable to applications for development consent.
- 9.22 The relevant documents of the statutory development plan are as follows:
- (a) Thurrock Borough Local Plan 1997 (September 1997)
  - (b) Thurrock Core Strategy 2015 (January 2015)
  - (c) Thurrock Design Guide: Design Strategy SPD (March 2017)
- 9.23 Policy E1 of the Thurrock Borough Local Plan encourages development within primary industrial and commercial areas. Within these areas, new industrial and commercial development will be permitted, provided the development meets policies protecting the environment. Tilbury South and Tilbury Power Station, North are listed here.
- 9.24 Policy E2 of the Thurrock Borough Local Plan promotes new industrial and commercial development in primary areas. Land is identified within primary industrial and commercial areas for new industrial and commercial development and the expansion of existing firms.
- 9.25 Policy CSTP26 of the Thurrock Core Strategy states that as part of the shift to a low-carbon future and to tackle climate change, the Council will encourage opportunities to generate energy from non-fossil fuel and low-carbon sources. Centralised renewable and low-carbon energy schemes at appropriate locations and standards will be promoted.
- 9.26 The Project's fast-start gas engines will be used intermittently, firing up when National Grid requires some or all of them to do so. This will contribute to a secure, diverse and affordable energy supply and supporting sustainable development, in particular by mitigating and adapting to climate change.

## **10 ENGAGEMENT WITH AFFECTED PARTIES**

- 10.1 As well as consulting all persons with an interest in the Order Land about the Project proposals in accordance with section 42 of the PA 2008, the Applicant has had regard to the requirement under paragraph 25 of the Guidance to seek to acquire land by negotiation wherever practicable.
- 10.2 The Applicant has entered into discussions with the relevant landowners and occupiers to secure the necessary interests over the land required for the Project by agreement

rather than seek powers of compulsory acquisition under the Order. Negotiations have taken place through letters, emails, phone calls and face to face meetings. Whilst negotiations with landowners have continued over a number of years, agreement for the acquisition of many of the rights over or under certain Plots of land have yet to be secured.

10.3 In order to provide certainty to the Project and ensure funding can be achieved, powers of compulsory acquisition are sought over such Plots. This parallel approach of making the Application (including powers of compulsory acquisition) and conducting negotiations to acquire land by agreement is in accordance with paragraph 25 of the Guidance.

10.4 Further detail of the discussions that the Applicant has had with landowners and occupiers to acquire the Order Land by agreement is included below. The Applicant is requesting compulsory acquisition powers for the acquisition of interests, rights and use of land not secured by the close of the examination of the Application or where any agreement reached is not complied with.

#### **Coles**

10.5 The Applicant first engaged with the Coles in November 2016. The parties entered into an Exclusivity Agreement in March 2017 and an Option to lease the land was signed in April 2019.

10.6 Following design evolution of the Project in response to consultation and engagement and in particular changes to access and the location of CCR land, the exclusivity agreement no longer covers all of the land and matters which require to be secured. The Applicant therefore commenced discussions to amend that agreement to reflect the Project design as submitted. The parties have reached agreement and the completion of a legal agreement is imminent.

#### **Motts**

10.7 Discussions between the Applicant and the Motts commenced in January 2017 and heads of terms for an option agreement are agreed. The option agreement is expected to complete during the Examination.

#### **Port of Tilbury London Limited**

10.8 In March 2017, the Applicant contacted Port of Tilbury London Limited about the proposals. A draft access agreement is under negotiation.

#### **Anglian Water**

10.9 Protective provisions and a SOCG have been agreed between the parties.

## **RWE**

- 10.10 The Applicant contacted RWE in December 2016 to enquire about potential sites including Tilbury. Both parties continued to consult each other on their respective plans; RWE's Tilbury Energy Centre Project (TEC) and the Applicant's proposals. In November 2018, RWE announced that it was freezing its plans for the TEC and met with the Applicant to discuss the use of RWE's land for access. In July 2019, the Applicant submitted an offer, subject to contract, to RWE. Both parties have continued to negotiate and consult each other on their respective intentions and heads of terms for an agreement are in progress.

## **11 CASE FOR POWERS OF ACQUISITION SOUGHT**

- 11.1 This section sets out the Applicant's proposals and case for the acquisition sought for each Zone, or where appropriate, sub-zone. This includes explaining where the Applicant is seeking flexibility for the detailed design stage and it is proposed that final land take will be reduced from that shown. It also explains where there are options.

### **Interaction with National Grid and NGG assets**

- 11.2 The Applicant notes that there is considerable National Grid infrastructure in the Order Land and potential to interact with NGG infrastructure. The Applicant confirms that is not seeking to acquire or extinguish any rights held by National Grid or NGG. For example, in Zones A and C there are existing overhead lines and pylons belonging to National Grid, the Project proposes to accommodate these existing installations and is not seeking to move or remove these.
- 11.3 In Zone A, the indicative arrangement of the Project has been produced within a parameter of accommodating the existing electrical infrastructure and demonstrates that appropriate set-off distances can be maintained from these installations in designing and delivering the Project. In Zone D3, flexibility for the route of the gas pipeline is sought partly in order to ensure that no conflict is created with National Grid's assets.
- 11.4 The Applicant confirms (and notes that the Protective Provisions in Schedule 9 of the draft Order secure) that there will be no compulsory acquisition of any interest held by National Grid or NGG without their consent. Where the Applicant acquires any land in which National Grid or NGG has an interest, that interest would be maintained and would not be extinguished. The Applicant is also in discussions with National Grid and expects to complete a legal agreement before the close of the Examination.

### **Zone A – main site, Zone E - replacement common land**

Plots Zone A: 01/12, 01/13, 01/16, 01/17, 01/18, 01/23 and 01/24



Plot Zone E: 01/05, 01/06, 01/07

- 11.5 The Applicant has an exclusivity agreement with the landowner of most of the land within these Zones. Powers of compulsory acquisition are therefore sought on a precautionary basis to ensure that the Project can be delivered should the landowner default on that agreement. Additionally, some of the land in these Zones is unregistered land (plots 01/12, 01/18, 01/23 and 01/24). There is accordingly potential for unknown interests in this land to emerge. While the Applicant has undertaken a thorough and diligent land referencing and investigatory exercise, this possibility cannot be excluded and the Applicant requires to be able to acquire such interests where they emerge.

### **Zone B – connection to Tilbury Substation**

Plots 1/09, 01/10 and 01/15

- 11.6 Acquisition of rights and creation of restrictive covenants is sought in this Zone to allow the installation, retention, protection and maintenance of electrical cables and associated infrastructure to connect the Project into Tilbury Substation. The Applicant has entered into negotiation with RWE as landowner but no agreement has yet been reached for this connection. The powers sought in this Zone are intended to address any gap between the area within which National Grid can grant the necessary rights and Zone A.
- 11.7 The Applicant has been in discussion with National Grid regarding this connection. That discussion has allowed the size of this Zone to be reduced from that consulted upon in the first consultation. The provision of the corridor is required to allow routing of the cable to meet National Grid's requirements and to allow a working area for installation and maintenance.

### **Zone C – gas pipeline, access and utility corridor**

Plots 01/17, 01/25, 02/06, 02/12, 02/13, 02/14, 03/01 and 03/01a

- 11.8 Zone C has been divided into two parts for the purposes of compulsory acquisition. Plots 02/12, 02/14 and 03/01a provide a corridor for a permanent access route which will be used in operation as well as construction, provision of a water supply to the generating facility and an option for the routing of the gas pipeline.
- 11.9 The Applicant will only require corridors through the northern half of this zone, which corridors will be narrower than the zone. The route is constrained by proximity to the railway, proximity to overhead electrical lines and the pylons supporting these, underground utilities and the need to tie into Station Road at the eastern end. Additionally some flexibility is sought to allow accommodation of any ecology in the area. These constraints means that flexibility is sought for the detailed routing of the final lines of the works so that the competing pressures can be accommodated – for example moving

further from the railway would move the access closer to the existing National Grid electrical infrastructure, so a suitable balance must be found. The ability to acquire the freehold in this plot is sought as the creation of a permanent access route will deprive the current owner of the existing arable use. The severance of any land to the north of the route will also make it unsuitable for arable farming. In those circumstances, the Applicant considers it fair and reasonable that ownership is taken and compensation is paid for the value of the land.

- 11.10 The water supply and gas pipeline can be installed and protected through the creation of new rights in favour of the Applicant to install and maintain such infrastructure, and the imposition of a restrictive covenant preventing interference with installed infrastructure (a 'no-dig' restriction). Where possible, the Applicant will seek to locate the water supply under or in close proximity to the access route to minimise interference with the landowner's rights.
- 11.11 Plots 02/13 and 03/01 provide for the acquisition of rights for the alternative route for the gas pipeline only. The gas pipeline can be installed and protected through the creation of new rights in favour of the Applicant to install and maintain such infrastructure, and the imposition of a restrictive covenant preventing interference with installed infrastructure.
- 11.12 Zone C will also be used to provide construction compound and laydown areas during construction through temporary possession.

**Zones D1, D2 and D3 Gas connection pipeline and above-ground installation compound**

Plots Zones D1 and D2: 03/02, 03/03, 03/04, 03/05, 03/06, 03/08, 03/09

Plot Zone D3: 03/11

- 11.13 Zones D1 and D2 provide a corridor for the installation and maintenance of the gas pipeline. The route is constrained by proximity to the highway and some flexibility is sought to allow accommodation of ecology in the area. The corridor is wider across the public highway than the final route will be to allow for micro-siting. That micro-siting will include determining the most appropriate crossing points for Station Road following pre-construction ecology surveys for features such as trees with bat roosting potential.
- 11.14 Plots 03/05 and 03/08 form part of the public highway. While rights to install infrastructure under highways can be obtained through means other than acquisition from the subsoil owner, (for example through the provisions of the New Roads and Street Works Act), the ability to acquire rights is sought here. This is because where, for any reason, including avoiding ecological receptors, it is decided to use Horizontal Direction Drilling to install

the pipeline, that installation could be below the extent of the highway and private rights would therefore be required to be obtained from the subsoil landowner.

- 11.15 The gas pipeline in Zones D1 and D2, will not prevent the current arable use of the land subject to a depth restriction for the protection of the pipeline (a no-dig restriction). It is therefore considered appropriate that only rights are sought as once installed, any interference with the owner's use would be very occasional for maintenance only and the existing use can be resumed.
- 11.16 The Applicant has engaged with the landowners of plots 03/02 and 03/03 and entered into an agreement for some of the land in 2019. The Applicant has reached agreement in principle for the full acquisition of rights required in this Zone but this has not yet been documented.
- 11.17 The Applicant has engaged with the landowners of plots 03/04, 03/05 and 03/06 and has reached agreement in principle with them for the acquisition of rights in these plots but this has not yet been documented.
- 11.18 Zone D3 will accommodate the above-ground installation (AGI) connecting the Project to the gas main. This will require a 50m by 50m compound, vehicular access to that compound and gas pipeline connections. The AGI would comprise two parts, the Minimum Offtake Connection (MOC) facility and the PTF (Pipeline Inspection Gauge (PIG) Trap Facility). The MOC would be operated by National Grid Gas. The PTF would be operated by the Applicant. Further details of this facility are given in the Grid and Gas Connection Statement (document reference APP-124). The draft Order provides for National Grid Gas to be able to take the benefit of the Order in relation to works required for the construction and operation of the MOC element of the AGI and the connection to Feeder 18.
- 11.19 The construction and use of the compound will deprive the owner of the existing use of the land permanently. It is therefore considered reasonable that powers of full acquisition are sought for this area.
- 11.20 The Applicant has engaged with the landowners of Zone D3 but has so far been unable to reach agreement with them for the acquisition of land in this Zone.

**Zones F1, F2 and F3, habitat creation and enhancement, landscaping**

Plots 01/08, 02/01, 02/02, 02/03, 02/04, 02/05, 02/07, 02/08, 02/09, 02/10 and 02/11

- 11.21 These areas are necessary to deliver landscaping and habitat areas which are required to make the Project acceptable in environmental and ecology terms as set out in the ES. These areas have been selected to provide appropriate mitigation for the Project by providing replacement or enhancement of habitat as close as practical to the main site.

Provision of these areas will provide some bio-diversity net gain from the Project. However, that has been achieved through the outline design of proposals on those areas not through adding land. For example, landscaping proposals will also create habitat through selection of trees and hedgerow species, rather than land being acquired solely to deliver net gain.

- 11.22 The Applicant has an exclusivity agreement with the landowner of most of the land within these Zones. Not all of the access routes are included within that agreement and negotiation is currently ongoing to seek to amend that agreement to include the access routes as shown in the Application. Powers of compulsory acquisition are therefore sought on a precautionary basis to ensure that the Project can be delivered should the agreement not be amended, or the landowner defaults on that agreement. Additionally, some of the land comprised in these Zones is unregistered land. There is accordingly potential for unknown interests in this land to emerge.

*Access to F1 – plots 02/01 and 02/02*

- 11.23 Access to F1 is proposed along existing agricultural access tracks. The access to Zone F1 has been rerouted to the north following consultation to make use of existing tracks around the fields and minimise the crossings that need to be taken over Parsonage Common. As the access sought can coexist with the existing use by the landowner and will not impede their use, it is appropriate to seek rights only.

*Access to F2 (and Zone E) – plots 02/10 and 02/11*

- 11.24 The access to Zone F2 makes use of an existing agricultural access. As the access sought can coexist with the existing use by the landowner and will not impede their use, it is appropriate to seek rights only.

- 11.25 The landowner requested that the small area of land between Zone F2 and the public highway to the west of the access (which appears to be severed from the rest of the landholding) be retained by them. That area is accordingly outside the red line boundary of the Project and no compulsory acquisition is proposed. The landowner can continue to access that area from the access in plots 02/10 and 02/11 and the Applicant will provide access through Zone F2 if it is acquired.

- 11.26 Access will be taken through Zone F2 to access the route for crossing Parsonage Common to reach Zone E. This access will be occasional, for maintenance only and does not require any hard surfacing to be installed. The access can co-exist with the proposed use as habitat enhancement as Zone F2 will be designed to facilitate that use along an appropriate route.

*Access to Zone E – plots 01/14, 02/04, 02/07, 02/08, 02/09, 02/10, and 02/11*

- 11.27 This access would be used to access Zone E to carry out works to create replacement common land, for example topsoil stripping and planting to ensure that the land quality is equivalent to that of Walton Common. Access will be taken across Parsonage Common by suitable vehicles only and no hard surfacing will be required. During construction, marshalling of use of this route will be provided to ensure that there is no conflict with persons using Parsonage Common.
- 11.28 Following construction, this access will be occasional for maintenance only. This access reflects the existing use by the landowner and is therefore considered reasonable to seek only rights as this access can co-exist with the use as a common and the landowner's current use.
- 11.29 It is not proposed to access Zone E from Zone F1 as there is no connection between them. Creating an access from Zone F1 would require works to create a suitable route, removal of vegetation including hedgerows, and earthworks to create suitable levels for use by vehicles. This would create a higher impact than taking access from the west which requires no physical works and can utilise existing gaps in hedgerows for access points as currently used by the landowner.

#### **Zone F4 habitat creation and enhancement area**

Part of Plot 01/20

- 11.30 Zone F4 will be required during construction to allow for relocation of reptiles from Zone A. This zone will be managed to improve the habitat for reptiles through changes to the management regime, including grass cutting. While the landscaping and habitat planting proposals for the main site means that suitable habitat will be created for many reptiles to return to Zone A post construction, they will not be actively moved out of Zone F4 but allowed to migrate naturally into Zone A. This is to prevent unnecessary interference with the reptiles. The Applicant would therefore seek to ensure that Zone F4 was undisturbed for a period post-construction to ensure that the reptile population has an opportunity to establish and expand back into Zone A without interference. The use as a receiving site for reptiles and a period of non-disturbance could be secured through use of temporary possession powers.
- 11.31 Zone F4 is surrounded on three sides by land which is proposed to be acquired for the Project. To the south, Zone F4 adjoins Tilbury Substation, there is no access to this Zone from the substation. This area will accordingly be severed from the current owner's wider landholdings by the Project, leaving it isolated and landlocked. The Applicant has accordingly sought the acquisition of this area due to the degree of interference the Project will cause to the owner and the severing of this area from connecting land and the owner's existing uses.

- 11.32 The Applicant has been engaging with the landowner of Zone F4 (RWE) since 2016. Although no agreement has yet been reached, this is still considered to be possible and discussion is continuing.

**Zone G – ~~routes to causeway and~~ connection to public highway**

Permanent acquisition – plots 01/19, 01/20, 01/22, 01/27, 01/28, 01/32, ~~04/02~~ and 4/05

Acquisition of rights – 01/11, 01/21, 01/30, 01/31, 04/01 and 04/03

- 11.33 Zone G contains two alternative route proposals for reaching the main site of which only one will be taken forward. The area within which Zone G is located has recently<sup>5</sup> experienced unstable ground conditions and ground-heave. This was significant enough to damage electrical cables and towers which were required to be rebuilt. The affected landowners are investigating the cause of this incident and the Applicant remains in active discussion with them regarding that. The Applicant therefore requires options in this location to ensure that a suitable route can be provided having regard to the outcome of the investigation into the cause of the ground-heave.
- 11.34 While land stability and the engineering assessment of creating a suitable route will be the key criteria, the selection of the final route will be made also having consideration to (inter alia) the impact on other uses in the area, including the proximity of one option to Tilbury Substation, interaction with Ingrebourne Valley land raising proposals and interaction with RWE's proposals. The eastern option for the northern section of the route has been located to the east of an existing ditch following discussion with the current landowner.
- 11.35 The corridor for the route in Zone G is wider than the running surface of the proposed route in places as there is a need to allow space to construct earthworks to address level changes. In particular, the Applicant would require to construct embankments in some locations. The corridor of Zone G to the immediate east of Tilbury Substation is therefore wide enough to allow the construction and retention of embankments, as is the area in plot 01/28.
- 11.36 To the south of Zone G, ~~the area where the corridor turns west to access the causeway,~~ adjacent to the sea wall, has been sized to ensure that large vehicles can turn the corner. That requires the access being wider than the current route. The area into which this access will be widened is currently vacant, the structures which previously occupied that adjacent area having been demolished.
- 11.37 The Applicant is seeking full acquisition of plots 01/19, 01/20, 01/22, 01/27, 01/28, 01/32, ~~04/02~~ and 4/05 because the works required, including the building of embankments to

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<sup>5</sup> Mid-2019

create suitable levels and construction of an access suitable for use by very heavy loads, would deprive the current owner of the existing use of the land permanently.

11.38 It is noted that there are existing accesses on part of the route for which full acquisition is sought. The Applicant is in active discussion with the affected parties (RWE and Ingrebourne Valley) regarding their use of and need for such access. Where access is required by affected landowners, the Applicant will grant them access rights over the new route.

11.39 Acquisition of rights only is sought in plots 01/11, 01/21, 01/30, 01/31, 04/01 and 04/03. These plots are mainly existing private roads, with some areas of verge and an area of hardstanding (currently used for parking). It is considered proportionate to seek only rights to improve, maintain and use these existing accesses. The Applicant considers that its proposed use of these areas are consistent with the landowner's current use, and can therefore coexist with the landowner's current use.

11.40 The size of Zone G has been reduced post consultation to remove a ditch to which no works require to undertaken

11.41 The Applicant has sought to engage with the landowner of Zone G and although parties have been in discussion, no agreement has yet been reached.

~~11.42 The Applicant is not seeking any compulsory powers over the land in the river Thames required for the causeway. The necessary rights will be secured through the grant of a licence by the Port of London Authority.~~

#### **Zone H – connection to public highway**

Permanent acquisition – Plot 05/05

Acquisition of rights - Plots 01/04, 01/11, 01/33, 01/34, 01/35, 01/36, 01/37, 05/01, 05/02, 05/03, 05/04 and 05/07

Temporary possession – Plots 05/06 and 05/08

~~11.43~~ 11.42 Zone H connects to the public highway at the western end and then follows the route of private roads constructed as part of the Tilbury2 development and which are designed to accommodate high numbers of heavy goods vehicles (HGVs) accessing the Port. The Applicant is accordingly seeking only a right of access to use these roads. The Applicant's use in construction would be a maximum of 160 HGV movements per day plus a small number of smaller vehicles<sup>6</sup> such as cars. In operation, access by HGVs would be occasional for maintenance needs only ~~(including maintaining the causeway).~~

<sup>6</sup> For details please see the traffic and transport chapter of the ES, document number A6.3.5

Acquisition of permanent rights over the land belonging to Port of Tilbury is also being sought to enable the delivery of AILs. The access route has been agreed in principle with Port of Tilbury and RWE.

~~11.44~~ 11.43 The ~~alternative~~-AIL access ~~now proposed~~ would use Port of Tilbury docks for delivery of AILs by ship. From the Port, a short length of public highway (Fort Road) would be used. Before Fort Road rises to pass over the Port's internal road, a new junction would be formed to the east connecting Fort Road to the already proposed construction access route to the east of the Fort Road overbridge. This new stretch of road is necessary as the AILs could not pass under the Fort Road overbridge to access the Port's internal road. The new road requires the addition of plots 05/04, 05/05, 05/06, 05/07 and 05/08. Temporary possession only is sought of the Fort Road public highway (plots 05/06 and 05/08) to allow the construction of the new junction and to allow the undertaker to put in place traffic management. The new junction would be gated to prevent access being taken to the Port over this route.

~~11.45~~ 11.44 Around the new access road, the landscaping and planting would be relocated to incorporate the new road, with some planting moved north closer to the Port's boundary fencing. The current drainage pond would be retained in situ.

~~11.46~~ 11.45 Once on the Port road, the AIL access would follow the existing construction access route through PoTLL's land until the boundary with RWE land. At this point, overhead electrical lines cross the route and there would be insufficient clearance to safely transport the AILs under them. A change to the route to add a new southern section bypassing this constraint is required (Plots 01/33 – 01/37).

~~11.47~~ 11.46 The Applicant's proposed use is considered to be insignificant in comparison to the traffic numbers anticipated by the Port and would not interfere with the owner's use. It is accordingly reasonable and proportionate to seek only rights in this Zone.

~~11.48~~ 11.47 Permanent acquisition of Plot 05/05 is sought as this land is registered common land and in order to be able to deregister this land, the Applicant must be the registered freehold owner. A full explanation of the Applicant's approach to common land is set out in section 12 of this Statement.

~~11.49~~ 11.48 Temporary possession is sought over Plots 05/06 and 05/08, which are adopted highway to enable the construction of the new junction required for the access route for AILs and traffic management, including the suspension and moving of a bus stop. The Applicant does not require any permanent rights once the junction has been constructed due to this being adopted highway.

#### **Zone J – area for temporary diversion of footpath**



~~11.50~~11.49 Temporary possession only is sought in this Zone. No compulsory acquisition is sought and this Zone is accordingly only included in this Statement for clarity. Zone J is a length of road which the Applicant proposes to use to provide a diversionary route for the temporary closure of a footpath during installation of the gas pipeline. Some of the road forming Zone J is public highway, however it is unclear from the records which the Applicant has been able to access that the full length required is public. The ability to use private sections is sought on a precautionary basis to prevent any gap being created.

~~11.51~~11.50 Temporary possession would only be taken to the extent required to allow use of any private sections of the road as a diversionary route for pedestrians. The Applicant would not seek exclusive possession, instead opening this route temporarily to the public on foot as well as retaining access to existing users for adjacent properties. No other rights would be interfered with, and physical works would comprise only erection of temporary signage of the diversion whilst it was in operation.

## 12 SPECIAL CONSIDERATIONS

### Common land

- 12.1 As shown in Part 5 of the Book of Reference (document reference: REP2-020) and the Land Plans (document reference: REP2-004), the draft Order includes provisions for the compulsory acquisition of land to which the provisions of the Act relating to special category land apply. The land within the draft Order which is special category land is land forming part of a registered common (CL228 and CL411).
- 12.2 The acquisition of the common land is required to enable delivery of the Project. In particular, the permanent acquisition of common land is required for the main site and part of the access route for AILs, while common land will be temporarily affected for a gas pipeline, creation of a junction with the adopted highway at Fort Road for the access route for AILs and vehicular access for the purposes of establishing the replacement common land and for habitat creation and enhancement.
- 12.3 The main plant will be located on Walton Common (plots 01/13 and 01/16) which forms part of a wider parcel of common land registered as parcel CL228. Part of the access route for AILs is also located on Walton Common (plot 05/05). This would result in the permanent loss of circa 11 hectares (110,000 square m) of registered common land. Walton Common lies at approximately 2m AOD and is slightly uneven in its levels. It comprises mown grassland, with reed filled ditches on some of its boundaries. There are a few scrubby bushes, mainly hawthorn associated with the edges of the common. There are no rare landscape features or elements on Walton Common, which is visually

dominated by the adjacent National Grid 400kV Tilbury Substation and associated overhead power lines.

- 12.4 The replacement common land is to be provided in Zone E, comprising plot 01/07. This plot extends to 11.6 hectares and is currently agricultural land. The Order would authorise works to change the use of this land to provide a suitable alternative to Walton Common, including topsoil strip and planting to provide pasture.
- 12.5 While not concluded, negotiations with the landowner of Zones A and H (which includes Walton Common being plots 01/13, 01/16 and 05/05) and Zone E which forms the replacement common land (plot 01/07) have been progressing positively. In this circumstance the Applicant does not consider it reasonable to compulsorily acquire Zone A simply to effect the release of the common land from the rights trusts and incidents to which it is subject and attach these to the replacement land in Zone E.
- 12.6 The Applicant has, with the authority of the current landowner, submitted on 20 April 2021 an application under section 16 of the Commons Act 2006 to effect the release and exchange of the Common Land required to allow the construction of the Project. Any section 16 consent would require that the replacement common vest in the current landowner of Walton Common and be subject to all of the same rights, trusts and incidents as the current common. That determination process will be run in parallel with the examination of the Order.
- 12.7 However, as no agreement is yet in place it is necessary to include this land within the scope of compulsory acquisition on a precautionary basis to prevent an impediment being created should the voluntary negotiation with the landowner not be successful or where there is a future dispute over the exercise of that voluntary agreement. For example only the owner of common land can make an application under section 16 of the Commons Act 2006. Should the current landowner for any reason decline to make such an application or withdraw any such application, the Applicant requires to be able to take ownership of the land. In the case where the Applicant acquires the land compulsorily, the Order provides that the common land exchange would be effected on the taking of ownership through the provisions of the Order. This provides certainty to the Secretary of State that, should compulsory powers be used, the exemption set out in section 131(4) would be met by providing replacement land which will vest in the current owners subject to all of the rights, trusts and incidents attaching to the current common.
- 12.8 Powers of temporary possession are also sought over a small area of Walton Common (Plot 05/06) in highway verge to allow for traffic management and the suspension and/or temporary relocation of a bus stop.

12.9 The installation of the gas pipeline will temporarily affect a small area, approximately 0.08 hectares (800sqm) of Tilbury Green, common land Unit CL411. The installation of the pipeline under the common will result in short and minor closures. Once installed, the surface will be restored such that there would be no permanent impact on the Common or access over it. Consent under section 38 of the Commons Act will be required for these works if they are undertaken from the surface however the Applicant is exploring undertaking these by HDD to minimise impacts on the common.

12.10 Two areas of Parsonage Common, part of unit CL228 will need to be used for vehicular access for the purposes of establishing the replacement common land and for habitat creation and enhancement. The vehicular access route will cross the common land at its junction with Cooper Shaw Road (highway verge) and it will also cross Parsonage Common (agricultural grassland) just north of the railway line. In total, both access routes amount to 0.25 hectares (2500 sq m). No works are proposed to surface the access although traffic management measures may need to be employed during construction for safety purposes where necessary.

*Freehold ownership*

12.11 The commons register for Walton Common, CL228, was established in 1968 pursuant to an application made by Charles Henry Cole of Hatchetts, West Tilbury, Essex – who also claimed ownership of the underlying freehold title. There was a challenge in relation to the registration of this ownership, which was heard by the Commons Commissioner on 22 February 1979, however the decision confirmed Charles Henry Coles' registration as owner of the whole of the common land now registered under CL228 for the purposes of registration on the commons register.

*Rights of common*

12.12 Walton Common currently comprises agricultural grassland with grazing and public access rights. The grazing rights are not actively used. It forms part of the alluvial coastal marshes along the Thames Estuary and its agricultural land classification is lower quality Subgrade 3b land.

12.13 The Project would result in a loss of land from Mill House Farm. This is a large arable land holding and the loss of land on Walton Common would represent a negligible magnitude of change to the holding.

12.14 Consultation has been undertaken with the landowner, those who have registered rights of common and the commons association. None have objected to the proposed works. There are currently no active commoners who exercise their rights on Walton Common.

- 12.15 The public has a right of access over Walton Common by virtue of the provisions set out in the Law of Property Act 1925, subject to the rights contained in the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893. This access land comprises an area of agricultural grassland.
- 12.16 Walton Common is located to the south of the existing railway line and links to the other parts of The Green, Hall Hill, Fort Road, Parsonage, Walton and Tilbury Fort Commons via an at grade crossing over the railway and padlocked gates to either side of the tracks. The Applicant observed during site surveys that this crossing did not exhibit any signs of regular use. There are no existing public rights of way connecting to Walton Common, although there is an aspiration to provide a new right of way connecting to coastal path to the south to Walton Common as part of the land profiling works on the adjoining Ingrebourne Valley site.

### **Common Land deregistration and exchange**

#### *Section 131 criteria*

- 12.17 Section 131 of the Act applies to the compulsory acquisition of any land forming part of a common. Section 132 of the Act applies to the compulsory acquisition of any rights over land forming part of a common. They make provision for Special Parliamentary Procedure (SPP) to apply where a DCO authorises the compulsory acquisition of, or rights over, such land. This means that the Order will be subject to SPP unless the Secretary of State is satisfied that section 131(4) applies as none of the other available exemptions applies.
- 12.18 Section 131(4) states that replacement land has been, or will be, given in exchange for the land being compulsory acquired and that replacement land has been, or will be, vested in the prospective seller of the existing special category land and subject to the same rights, trusts and incidents.
- 12.19 The Order will engage section 131 as the powers of outright acquisition are being sought over the special category land, albeit on a precautionary basis. The Applicant considers that the exemption to the application of the SPP which is provided by section 131(4) would apply to the area of common land which is proposed to be acquired because replacement land will be provided in exchange of the existing common land to be acquired under the Order.
- 12.20 Section 131(12) defines replacement land as land which is:
- Not less in area than the order land (the area proposed to be acquired);
  - No less advantageous to the persons entitled to the rights of common or other rights; and

- No less advantageous to the public.

*Not less in area than the order land*

- 12.21 It is proposed that an agricultural field north of the railway line (Zone E), which comprises 11.6 hectares of land, will be used as replacement common land. The area of permanent exchange land in Zone E covers the permanent loss of common land (11 hectares) and provides an additional 0.6 ha.

*No less advantageous to the persons entitled to the rights of common or other rights*

- 12.22 There are a number of grazing rights are registered in respect of CL288 but none are currently being actively exercised.

- 12.23 Zone E comprises soils of a similar type to those found on Walton Common and is therefore considered to be of equivalent quality. Zone E is currently being cropped and would be established with a suitable grassland mix prior to works commencing on Zone A. This grassland will be, as a minimum, of the same quality as that existing in Zone A. The new common land would be very similar in character to that existing on Walton Common.

- 12.24 This new area of common would be contiguous with the remaining common land parcels making up The Green, Hall Hill, Fort Road, Parsonage, Walton and Tilbury Fort Commons (adjoining and having direct access from Parsonage Common) and would also have the advantage of being located to the north of the railway, negating the need for pedestrians or livestock to cross the railway lines.

- 12.25 In addition, it is proposed that pedestrian access would be provided to Zone E from the Fort Road Common (situated on the opposite side of Fort Road). The creation of a permissive footpath between Zone E and Fort Road would provide a link between the common land and the residential areas to the west, a distance of approximately 110 metres. Without this link Zone E would still be able to be accessed by walking northwards along the roadside to meet the common land alongside Cooper Shaw Road and then via Parsonage Common, a distance of approximately 1.7 km to the northern extent of Zone E. This is the route which would currently need to be taken to access the existing common land

*No less advantageous to the public*

- 12.26 The same rights of public access would apply to the new area of common land in Zone E as those extant on Walton Common under the provisions of the Countryside and Rights of Way Act 2000.

*Guidance*

12.27 Paragraph 8 of Annex A to the Guidance related to procedures for the compulsory acquisition of land states that the Secretary of State will have regard to such matters as the relative size and proximity of the replacement land when compared to the land that is being acquired. As stated above, 10.5 hectares of common land is proposed to be acquired permanently and temporarily, and it is proposed to be replaced with 11.6 hectares of common land. This is in close proximity to the existing common land.

#### *Summary*

12.28 It is considered that the replacement land complies with the definition contained in section 131(12) of the Act as it is not less than the common land that is to be acquired by the Order and will not be any less advantageous to the persons entitled to rights of common, other rights, or the public.

12.29 It is considered that the Secretary of State can be satisfied that the provision of replacement common land meets the requirements of section 131(4) of the Act and that the Order should not be subject to SPP.

#### **Acquisition of rights over common land**

##### *Section 132 criteria*

12.30 Section 132 of the Act applies to the compulsory acquisition of right over land forming part of a common. As with section 131 it makes provision for Special Parliamentary Procedure (SPP) to apply where a DCO authorises the compulsory acquisition of rights over such land. This means that the Order will be subject to SPP unless the Secretary of State is satisfied that section 132(3) or (4) applies as none of the other available exemptions are relevant.

12.31 Section 132(3) applies if the order land, when burdened with the order right, will be no less advantageous that it was before to the persons in whom it is vested, other person, if any, entitled to rights of common or other rights and the public.

12.32 Section 131(4) applies if replacement land has been, or will be, given in exchange for the order right and that 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.

12.33 The Order will engage section 132 as the acquisition of rights are being sought, albeit on a precautionary basis. The Applicant considers that the exemption to the application of the SPP which is provided by section 132(3) would apply but if the Secretary of State was not satisfied that s132(3) applies the Applicant would rely in section 132(4) in the alternative.

*Access rights – plots 01/14, 02/01, 02/04*

- 12.34 The Applicant seeks the acquisition by creation of rights to take vehicular access over common land (Parsonage Common) to access the replacement common land for the purposes of undertaking works to ensure that replacement common land is of the same standard as the common for which deregistration is sought (Walton Common) and to maintain that replacement common land. The access to be taken across Parsonage Common would not require any alteration to the common, and, in particular, no hard surfacing is required. The access rights sought reflect existing use by the current landowner and therefore do not change or affect the current use of Parsonage Common. The access sought would be routed through plots 01/14 and 02/04.
- 12.35 Access is also sought through common forming a strip between the highway and arable land in plot 02/01. This makes use of an existing field access and would not require any new hard surfacing to be installed. The access rights sought reflect existing use by the current landowner and therefore do not change or affect the current use of this strip.
- 12.36 Regular access for maintenance is only anticipated to be required on two occasions per annum for vegetation cutting. Other access would be taken in response to events; for example to repair damaged fences or facilitate clearance of fly-tipped material.

*Gas pipeline rights, plot 03/03*

- 12.37 Plot 03/03 is mainly occupied by the public highway. The Applicant's gas pipeline would be installed under the surface to run under the highway. This will require temporary suspension and diversion of public rights of access over the common which connects to a public footpath to allow a safe working area. A diversionary route for this temporary interference has been identified and included in the draft Order. Once installed, there would be no impact on use of the common and no impediment to access. Access for maintenance of the gas pipeline would be exceptional in response to a failure (such as a crack in the pipeline) only and routine access is not required.
- 12.38 Section 132 of the 2008 Act requires that in order to authorise the compulsory acquisition of rights over common land, the Secretary of State must be satisfied that, when burdened with the new rights, the land will be no less advantageous to the holders of rights and the public. The proposed access rights have been selected to reflect existing use and create no new impediment to use by rights holders. The installation of the gas pipeline once complete will have no impact on users of the common.
- 12.39 In the alternative, if the Secretary of State is not satisfied that section 132(3) applies the Applicant seeks to rely on section 132(4) as the area of permanent exchange land in Zone E covers the permanent loss of common land (10.5 hectares) and provides an additional 1.1 ha, which would fully mitigate for any impact caused by the acquisition of

the rights. Also if additional land is required, a further area of approximately 1 hectare has been identified to the north and immediately adjacent to Zone E, which would bring the replacement area available to mitigate the rights acquired to 2.1 hectares.

#### **Crown land**

12.40 No Crown interests are included in or affected by the Order Land.

#### **National Trust land**

12.41 No National Trust land is included in or affected by the Order Land.

#### **Statutory Undertakers' Land and Apparatus**

12.42 The Order, if made, will authorise the compulsory acquisition of statutory undertaker's rights in land. The land rights are held by statutory undertakers for the purposes of carrying out their statutory undertaking.

12.43 Section 138 of the Act provides that a DCO may include provision for the extinguishment of a relevant right or removal of relevant apparatus only if the Secretary of State is satisfied that this is necessary for the purpose of carrying out the development to which the order relates.

12.44 The Applicant has, during preparation of the Application, been in discussions with all relevant undertakers about the proposed permanent compulsory acquisition and compulsory acquisition of rights. The Applicant has identified statutory undertakers or utility providers that may have land or apparatus belonging to them within the Order Limits and has been in contact with them.

12.45 The draft Order (document reference: REP2-014) includes protective provisions in respect of statutory undertakers (see Article 37 and Schedule 9). The Applicant is currently seeking to agree the form of protective provisions with the affected undertakers.

### **13 HUMAN RIGHTS**

13.1 The Human Rights Act 1998 incorporated the Convention into domestic law. The Convention includes provision in the form of Articles, the aim of which is to protect the right of the individual.

13.2 Section 6 of the Human Rights Act prohibits public authorities from acting in a way which is incompatible with the Convention and in exercising its powers of compulsory acquisition the Applicant is acting as a public authority for the purpose of the Human Rights Act 1998 so must be conscious of the need to strike a balance between the rights of the individual and the interests of the public.



- 13.3 Various Convention rights may be engaged in the process of making and considering compulsory acquisition, notably Article 1 which protects the right of everyone to the peaceful enjoyment of possessions. No-one can be deprived of possessions except if it is in the public interest and subject to relevant national and international laws. Further, in relation to Article 8 (right to respect for private and family life and home) rights may only be restricted if the infringement is for a legitimate purpose and is fair and proportionate in the public interest.
- 13.4 The Order has the potential to infringe the rights of the affected parties. Such infringement has to be weighed against the public benefit in allowing the Order. There would be significant public benefit brought about by the Project. As demonstrated by the statement of case (document reference APP-135) there is a clear public interest in granting the Order. The public benefit should be weighed against the limited land take, and as set out in section 11 of this Statement, the Applicant is seeking the minimum rights necessary to allow the Project to succeed.
- 13.5 The rights of owners of interests in the Order Land under the Human Rights Act 1998 have been taken into account by the Applicant when considering whether to make the Order and in considering the extent of the interests to be comprised in the Order. The Applicant considers that there is a compelling case in the public interest for confirmation of the Order and that the Order, if confirmed, would strike an appropriate balance between public and private interest. The Applicant has had due regard to the requirement to minimise interference wherever possible and is only seeking to acquire the minimum land take reasonably necessary to allow the Project to proceed.
- 13.6 The Applicant recognises that the Project may have an impact on individuals but considers that the significant public benefits that will arise from the Project as set out in this Statement outweigh any harm to those individuals. The draft Order strikes a fair balance between the public interest in seeing the Project proceed (which would not happen in the absence of the Order) and the private rights which will be affected by the compulsory acquisition in relation to both Article 1 and 8. The compelling case in the public interest for the compulsory acquisition powers included within the Order has been demonstrated in the statement of case (document reference: APP-135). The land over which compulsory acquisition powers are sought as set out in the draft Order is the minimum necessary to ensure the delivery of the Project. The Project has been designed to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.
- 13.7 It is also a right to have a fair and public hearing. As explained in above, appropriate consultation took place and is taking place in the planning process with an opportunity given for interested parties to make representations and the Applicant remains committed

to pursuing active engagement with landowners with regard to compulsory acquisition. Those directly affected by the Order will be entitled to statutory compensation.

## **14 COMPENSATION**

- 14.1 The Applicant has sufficient funding to compensate those with an interest in the Order Land. Further detail of this is included in the Funding Statement (document reference: APP-023).

### **Corporate structure**

- 14.2 Thurrock Power Limited is registered in England and Wales and is a wholly owned subsidiary of Statera Energy Ltd (incorporated in England and Wales with company number 09840486). Statera Energy Ltd is 73% owned and controlled by Statera Holding Ltd.
- 14.3 Statera Holding Limited is wholly owned and controlled by InfraRed Infrastructure V General Partner LLP in its capacity as general partner for and on behalf of each of InfraRed Infrastructure V (1) LP and InfraRed Infrastructure V (2) LP. InfraRed Capital Partners Limited is authorised and regulated by the Financial Conduct Authority in the UK (FRN:195766) and is the manager of the Limited Partnerships.

### **Project funding**

- 14.4 The Statera Energy Group is funded by its shareholders, through a mix of equity and shareholder loans, external debt as well as cashflows from its operational assets. Statera Energy Limited has equity and shareholder loan facilities of up to £190 million in place, of which £130 million is currently undrawn. The InfraRed Infrastructure V General Partner LLP fund has capital commitment of c\$1bn.
- 14.5 Project development costs sustained prior to the start of consultation will be funded from the cash reserves of the Statera Energy Group. Construction costs will be funded from a combination of these cash reserves, debt and equity finance, with the combination to be determined dependent on market conditions at the time of construction.
- 14.6 A variety of financial institutions and advisors, including those with existing strong relationships with Statera Energy Ltd, will be consulted to access their extensive experience of financing major capital projects.

### **Project cost**

- 14.7 The current cost estimate for the Project is circa £240-300 m. This cost estimate includes construction costs, preparation costs, supervision costs and land acquisition costs and an allowance for inflation and contingencies. The estimated compensation payable in

respect of any compulsory acquisition is included in this cost estimate and is anticipated to be circa £2-5m.

## **15 ABSENCE OF IMPEDIMENTS**

### **Other consents and licences**

- 15.1 All of the other consents and licences required to construct and operate the Project and an explanation of how the Applicant proposes to deal with each is set out in the Other Consents and Licences Statement (document reference: REP2-032). It is considered that none of these other consents or licences represents an impediment to the delivery of the Project.

### **Commons Act consents**

#### **Section 16 consent to deregistration of a common**

- 15.2 The Project cannot be built unless and until the common land in Zone A and Zone H (Walton Common) is deregistered. As part of the test for authorising deregistration, exchange land must be provided and this is included in the Order Land in Zone E.
- 15.3 As noted in the consideration of special category land above, only the owner can apply for consent under section 16. The landowner of Walton Common has stated that they will authorise the making of an application for consent under section 16 in their name by the Applicant. That application has been submitted on 20 April 2021.
- 15.4 The Applicant's proposals seek to replace the common to be deregistered with a larger area of equivalent land in close proximity to the common to be deregistered and with improved and safer access arrangements. The Applicant therefore considers that there is no impediment to the granting of section 16 consent.

#### **Section 38 consent to temporary works on a common**

- 15.5 This consent was included in case it was required to allow the installation of underground infrastructure in a strip of common which is primarily occupied by highway and verge. The Applicant now proposes to install infrastructure under this strip through horizontal directional drilling., There would be no interference with the surface of the land or rights of commoners.

### **Grid connection**

- 15.6 The Applicant has secured a connection agreement and construction agreement with National Grid Electricity Transmission (NGET) for a grid connection to the 275kV network

at Tilbury. As part of the connection process the Applicant has entered into a suite of contracts with National Grid. The two main contracts with National Grid are: The Bilateral Connection Agreement and the Construction Agreement. Further detail on the proposed grid connection is provided in the Grid and Gas Connection Statement (document reference: APP-124).

### **Gas connection**

- 15.7 A new gas pipeline connection to the existing high-pressure National Grid Gas National Transmission System (NTS) at Feeder 18 will be required.
- 15.8 A Planning and Advanced Reservation of Capacity Agreement (PARCA) is a bilateral contract that allows entry and/or exit capacity to be reserved for the customer while they develop their own Projects. In this instance, the Applicant has sought to reserve firm NTS capacity through two separate PARCA applications. The PARCA allows Thurrock Power to reserve capacity, but it does not provide a physical connection to the NTS. The Applicant will make a separate A20 Application which will allow a new connection to the NTS.
- 15.9 As the capacity process (PARCA) and the connection (A2O) processes are separate, there is flexibility to initiate these two processes independently. Further detail on the proposed gas connection is provided in the Grid and Gas Connection Statement (document reference: APP-124).

### **CONCLUSION**

- 15.10 The land, and other interests, together with the suspension and extinguishment of matters affecting the Order Land, required to be subject to compulsory acquisition represents the minimum level of interference reasonably required to facilitate the Project. The purpose of the powers of compulsory acquisition are to enable the delivery of the Project which is needed both locally and nationally, has numerous benefits and has substantial policy support. This justifies the interference with the rights of those persons with an interest in the land proposed to be acquired.
- 15.11 The land identified to be subject to compulsory acquisition is no more than is reasonably necessary for that purpose and is therefore proportionate.
- 15.12 The need for the Project, suitability of the Order Land and the support for such Projects in national policy statements demonstrates that there is a compelling case in the public interest for the land to be acquired compulsorily. All reasonable alternatives to compulsory acquisition have been explored. The Applicant has clearly set out what each Plot of the Order Land will be used for and why it is required. Given the national and local need for the Project and the support for it found in policy, as well as the suitability of the

Order Land, compulsory acquisition of the land, other interests together with the suspension and extinguishment of matters affecting the Order Land identified by the Applicant for the Project is justified.

15.13 The requisite funds to meet any costs of land acquisition and compensation payable as a result of the use of powers of compulsory acquisition have been included in the budget for the Project.

15.14 The Applicant therefore respectfully submits, for the reasons explained in this Statement, that the inclusion of powers of compulsory acquisition in the Order for the purposes of the Project meets the conditions of section 122 of the Act. For the reasons summarised in this Statement, the Applicant considers the Order to be within the necessary statutory powers and that a compelling case exists in the public interest which justifies the making of the Order.

## **16 FURTHER INFORMATION**

### **Inspection of documents**

16.1 Electronic copies may be inspected at:

- (a) The National Infrastructure Planning website:  
[www.infrastructure.planninginspectorate.gov.uk](http://www.infrastructure.planninginspectorate.gov.uk)
- (b) Thurrock Power's website: [www.thurrockpower.co.uk](http://www.thurrockpower.co.uk)

### **Negotiation of Sale**

16.2 The Applicant believes it is in contact with all relevant owners and occupiers. Owners and occupiers of property affected by the Order who believe they are affected and wish to negotiate a sale should contact Thurrock Power;

By mail at: Thurrock Power Limited  
1st Floor  
145 Kensington Church Street  
London  
W8 7LP

or by email to: [contact@thurrockpower.co.uk](mailto:contact@thurrockpower.co.uk)

or by telephone on: +44 (0) 20 7186 0580

### **Compensation**

16.3 Compensation for the compulsory acquisition of land is governed by statute. The Department of Communities and Local Government has published series of booklets on compensation which may be of interest to affect persons;

- (a) Booklet No. 1 - Compulsory Purchase Procedure;
- (b) Booklet No. 2 - Compensation to Business Owners and Occupiers;
- (c) Booklet No. 3 - Compensation to Agricultural Owners and Occupiers;
- (d) Booklet No.4 - Compensation for Residential Owners and Occupiers; and
- (e) Booklet No.5 – Reducing the Adverse Effects of Public Development: Mitigation Works.

16.4 Copies of these booklets are obtainable, free of charge, from:

Communities and Local Government Publications  
Camberton House  
Goldthorpe Industrial Estate  
Rotherham S63 9BL  
Tel: 0300 123 1124  
[www.gov.uk/government/collections/compulsory-purchase-system-guidance](http://www.gov.uk/government/collections/compulsory-purchase-system-guidance)