

# REPORT

## **Boston Alternative Energy Facility**

### Statement of Reasons

Client: Alternative Use Boston Projects Ltd  
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**Document reference 3.1**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure) 2009**

**Regulation 5(2)(h)**

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## **1 Introduction**

- 1.1 This Statement of Reasons has been prepared on behalf of Alternative Use Boston Projects Limited (the Applicant). It relates to the application for a development consent order (DCO) by the Applicant to the Planning Inspectorate (PINS) under the Planning Act 2008 (the 2008 Act) for their proposal for powers to construct, commission, operate and maintain a power generation plant known as the Boston Alternative Energy Facility (the Facility).
- 1.2 The Facility will generate 102 MW (gross) of renewable energy. It is proposed that it will deliver approximately 80 MW (net) to the National Grid. The energy recovery plant will be a combustion-based thermal treatment facility. The energy recovery plant will process up to 1.2 million tonnes of refuse derived fuel (RDF) as the feedstock (i.e. the fuel) to generate energy.
- 1.3 The scheme (referred to as the Proposed Development throughout this Statement) constitutes a project falling within the definition of a Nationally Significant Infrastructure Project (NSIP) under the sections 14(1)(a) and 15(2) of 2008 Act by virtue of the Proposed Development requiring the construction, commissioning and operating of a generating station in England with an energy generating capacity greater than 50 megawatts electric (MWe).
- 1.4 As a NSIP, the Proposed Development requires a DCO under the 2008 Act. This statement forms part of the application for a DCO that has been submitted to PINS for their consideration.
- 1.5 This Statement is one of a number of documents required to support the application submitted to the Secretary of State. It supplements, and should be read alongside, the following documents relating to the compulsory acquisition powers:
  - 1.5.1 the Funding Statement (Document Reference 3.2) which confirms the Applicant's ability to fund the construction, operation and maintenance of the Facility and the provisions contained within the draft Order;
  - 1.5.2 the Land Plan and Crown Land Plan (Document Reference 4.2) showing all of the land within the Order limits that is required for the Facility;
  - 1.5.3 the Book of Reference (Document Reference 3.3) identifying the persons with an interest in land affected by the Facility;
  - 1.5.4 The draft Order (Document Reference 2.1) that includes the consents, authorisations and powers that are being sought by the Applicant in respect of the Facility; and
  - 1.5.5 the Explanatory Memorandum (Document Reference 2.2) that explains the purpose and effect of the draft Order.
- 1.6 This Statement is required because the DCO will authorise the compulsory acquisition of land and temporary use of land, as described in section 4 and Appendix A of this document.

- 1.7 This Statement has been prepared in accordance with Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) and in accordance with the guidance issued by the Department for Communities and Local Government Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (2013) (the Guidance).
- 1.8 Paragraphs 31 and 32 of the Guidance acknowledge that the APFP Regulations require a statement of reasons and Paragraph 32 advises that:
- “The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant’s opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights”*
- 1.9 This Statement sets out the reasons for seeking powers for the compulsory acquisition of land and or for the temporary use of land. These powers are being sought to ensure that the Applicant has the requisite powers to construct, operate and maintain the Facility.
- 1.10 This Statement shows that there is a compelling case in the public interest for the relevant land to be subject to the powers of compulsory acquisition and certain other powers within the DCO.
- 1.11 The use of powers of compulsory acquisition in these circumstances is legitimate and proportionate, and any interference with the human rights of those with interests in the land proposed to be acquired is justified.
- 1.12 The following chapters contained within this Statement of Reasons provide the justification for the application, including a description of the proposal and the need for the development. The document provides further detail about the compulsory powers being sought under the DCO and the reasoning behind those powers being sought.
- 1.13 It should be noted from the outset that the majority of the land to be used by the Proposed Development is not subject to compulsory acquisition powers.

## **2 Description of the Proposed Development**

- 2.1 Chapter 5 of the Environmental Statement (ES) (Document Reference 6.2.5) sets out the full project description. The Proposed Development comprises the following main elements:
- 2.1.1 a wharf and associated infrastructure (including re-baling facility, workshop, transformer pen and welfare facilities);
  - 2.1.2 a RDF bale contingency storage area, including sealed drainage, with automated crane system for transferring bales;
  - 2.1.3 conveyor system running in parallel to the wharf between the RDF storage area and the RDF bale shredding plant. Part of the conveyor system is open and part of which is under cover (including thermal cameras);
  - 2.1.4 bale shredding plant;

- 2.1.5 RDF bunker building;
  - 2.1.6 thermal treatment plant comprising three nominal 34 MWe combustion lines (circa 120 megawatts thermal (MWth)) and associated ductwork and piping, transformer pens, diesel generators, three stacks, ash silos and ash transfer network; and air pollution control residues (APCr) silo and transfer network;
  - 2.1.7 turbine plant comprising three steam turbine generators, make-up water facility and associated piping and ductwork;
  - 2.1.8 air-cooled condenser structure, transformer pen and associated piping and ductwork;
  - 2.1.9 Lightweight Aggregate (LWA) manufacturing plant comprising four kiln lines, two filter banks with stacks, storage silos for incoming ash, APCr, and binder material (clay and silt), a dedicated berthing point at the wharf, silt storage and drainage facility, clay storage and drainage facility, LWA workshop, interceptor tank, LWA control room, aggregate storage facility and plant for loading aggregate / offloading clay or silt;
  - 2.1.10 electrical export infrastructure;
  - 2.1.11 two carbon dioxide (CO<sub>2</sub>) recovery plants and associated infrastructure, including chiller units;
  - 2.1.12 associated site infrastructure, including site roads, pedestrian routes, car parking, site workshop and storage, security gate, control room with visitor centre and site weighbridge; and
  - 2.1.13 habitat mitigation works for Redshank and other bird species comprising of improvements to the existing habitat through the creation of small features such as pools/scrapes and introduction of small boulders (Habitat Mitigation Works) within a Habitat Mitigation Area (defined at paragraph 3.4 below)
- 2.2 The construction period for the whole development is anticipated to be between 46 and 48 months. The Facility is proposed to operate 24 hours a day, seven days a week, and expected to commence operation in 2026. There would be approximately 125 permanent workers employed at the Facility.
- 2.3 The Facility would be designed to operate for an expected period of at least 25 years, after which ongoing operation will be reviewed and if it is not appropriate to continue operation the plant will be decommissioned. The wharf structure would replace a section of the current primary flood defence bank (without impacting on the integrity of the bank) and would form a permanent structure that is not anticipated to be decommissioned.

### **3 Description of the Order Land**

- 3.1 This section describes the land which is proposed to be subject to the compulsory acquisition powers that are sought in the DCO. The majority of land required for the Proposed Development is not subject to compulsory acquisition powers. All of the land within the Order limits is shown on the Land Plan and Crown Land Plan (Document Reference 4.2) and the works for which the land is required are represented on the Works Plans (Document Reference 4.3). Descriptions and ownership information for each plot shown on the Land Plan and Crown Land Plans are set out in the Book of Reference at Part 1 (Document Reference 3.3).
- 3.2 A visual representation of the Order land (the 'Application Site') is set out on the Location Plan (Document Reference 4.1).
- 3.3 A description of the Application Site is also set out in the Chapter 5 of the ES (Document Reference 6.2.5).
- 3.4 The Application Site for the Facility is located approximately 2 km to the south east of Boston town centre. The Application Site covers 26.8 hectares (ha) and is split in to two components: the area containing operational infrastructure for the Facility (the 'Principal Application Site'); and an area containing habitat mitigation works for wading birds (the 'Habitat Mitigation Area'). The Principal Application Site covers 25.3 ha and is neighboured to the west by the Riverside Industrial Estate and to the east by The Haven, a tidal waterway of the River Witham between The Wash and the town of Boston. The A16 public highway is located approximately 1.3 km to the west. The Habitat Mitigation Area covers 1.5 ha and is located approximately 170 m to the south east of the Principal Application Site, encompassing an area of saltmarsh and small creeks at the margins of The Haven.
- 3.5 The Principal Application Site is accessed by road via the Riverside Industrial Estate's existing road network from Nursery Road. Access to the site from the west to Marsh Lane is gained from Bittern Way.
- 3.6 The Boston Biomass UK No.3 Ltd gasification plant is located on the eastern boundary of the Principal Application Site. A waste management facility (previously operated by Mick George, but having ceased operation at the time of submission) which processed construction and demolition waste is located to the east of Nursery Road and is bounded by the Principal Application Site on all sides (but not included within the proposed Application Site itself).
- 3.7 A Household Waste Recycling Centre (HWRC) (built in 2018) is located to the west of the Principal Application Site, south of the junction with Nursery Road/Callen Road. Public access to the HWRC is from Bittern Way.
- 3.8 A Waste Transfer Station (WTS) operated by Lincolnshire County Council (LCC) is located to the south of the Principal Application Site, off Slippery Gowt Lane. The WTS receives all of the residual household waste from Boston Borough Council (BBC) and South Holland District Council (SHDC) areas, and some residual household waste from East Lindsey Council area.
- 3.9 The Principal Application Site comprises undeveloped and previously developed land enclosed by a network of drainage ditches and forms part of a wider emerging industrial/commercial area.

- 3.10 The eastern site margins of the Principal Application Site are defined in part by a primary flood defence bank along The Haven. Large and small industrial business units are located to the north, west and south of the site. A 132 kilovolt (kV) overhead powerline on pylons traverses the site from north to south and bisects the Application Site.
- 3.11 The Habitat Mitigation area comprises the margins of The Haven, predominantly saltmarsh with several small tidal creeks. A small portion of this area extends below Mean High Water Springs (MHWS) and is therefore covered with estuarine water around high water on some tides.
- 3.12 The Haven is contained within flood banks (in good condition) which are located within the Principal Application Site at approximately 6.3 m Above Ordnance Datum (AOD). Typical dimensions across the river directly to the east of this site, are as below:
- 3.12.1 From the edge of the flood defence to the centre of the channel is approximately 80 m;
- 3.12.2 The width of base of channel is approximately 20 m; and
- 3.12.3 From edge of the flood defence bank to MHWS is approximately 30 m.
- 3.13 The navigation channel is not dredged at this point. The bed level changes over time. Under normal conditions it gradually silts up but erodes when large water volumes are discharged from the sluices upstream. This will not occur at high tides, so will not affect vessel manoeuvring.
- 3.14 A water main runs across the Principal Application Site from Bittern Way to the north-eastern corner of the Principal Application Site where it then crosses The Haven. This piece of infrastructure will be avoided by the proposed wharf infrastructure. Where the water main would cross the Principal Application Site it will be diverted, and this is subject to a separate application to Anglian Water on behalf of the landowner. The route of the diversion will be determined in accordance with advice provided by Anglian Water. The diversion will be completed before construction of the Facility.
- 3.15 There are no existing buildings within any part of the Application Site that will require demolition.
- 3.16 The Application Site is located within National Character Area 46: The Fens (Natural England, 2013), the Reclaimed Saltmarsh Landscape Character Type and Welland to Haven Reclaimed Saltmarsh Landscape Character Area (LCA) (ECUS Ltd, 2009). However, the area is significantly influenced by urban/industrial features including electricity pylons, industrial units, cranes and gantries at the Port of Boston.
- 3.17 Policy SL3, of the Lincolnshire Minerals and Waste Local Plan (Site Locations) December 2017, identifies the 119 ha Riverside Industrial Estate as an allocated area, referenced as WA22-BO. The allocated area has been identified as a suitable location for waste management related development (Resource Recovery Park, Treatment Facility, Waste Transfer, Materials Recycling Facility, Household Waste Recycling Centre, Metal Recycling/End of Life Vehicles, Re-Use Facility, C&D Recycling, Energy Recovery).



- 3.18 The Principal Application Site is located predominantly located within the WA22-BO allocated area.
- 3.19 The majority of the land required for Principal Application Site falls within the control of one landowner (with whom the Applicant intends to enter into a commercial agreement with). Several parties have other interests in the land, although powers are not sought to extinguish those interests. The Habitat Mitigation Area is partially owned by the Crown Estate and partially unregistered land in unknown ownership. Further details of land ownership are set out in the Book of Reference (Document Reference 3.3).

#### **4 Scope of Compulsory Acquisition powers**

4.1 The DCO (Document Reference 2.1) includes the following articles that relate to compulsory acquisition or the interference with third party rights:

4.1.1 Article 25 – Compulsory acquisition of land

The Applicant would have the power to compulsorily acquire so much of the Application Site which is necessary to construct, operate and maintain the authorised development or is incidental to it or necessary to facilitate it.

On the Land Plan and Crown Land Plan (Document Reference 4.2), land which is proposed to be acquired compulsorily is shaded pink.

4.1.2 Article 27 – Time limit for exercise of authority to acquire land compulsorily

This limits the ability to serve a notice to treat or a general vesting declaration to a period within five years from the granting of the order.

4.1.3 Article 28 – Private rights

This article allows for the extinguishment of private rights over land required for the Proposed Development.

4.1.4 Article 29 – Power to override easements and other rights

This article authorises the Applicant's works within the Order limits when they interfere with an interest or right, or breach a restriction as to the user of the land.

4.1.5 Article 32 – Acquisition of subsoil or airspace only

This article permits the Applicant to acquire so much of the subsoil and air-space, or rights over these areas as required, instead of acquiring the whole of the land.

4.2 Temporary powers which the draft DCO confers on the Applicant are:

4.2.1 Article 34 – Temporary use of land for carrying out the authorised development

This article permits the Applicant to take temporary possession of the land specified in Schedule 7 to the draft DCO, and any other land within the Order limits, provided that the Applicant has not already made a declaration to vest the land in itself or to enter the land following a notice of entry in advance of acquisition.

4.2.2 Article 35 – Temporary use of land for maintaining the authorised development

This article permits the Applicant to enter on and take temporary possession of any land within the Order limits, which is reasonably required for the purpose of maintaining the authorised development at any time during the maintenance period (i.e. a period of five years from the date of final commissioning of the Proposed Development).

## *Other Powers*

4.3 The draft DCO would also confer on the Applicant other rights and powers the exercise of which may result in an interference with property rights and private interests in land. These additional powers are summarised below and are subject to various conditions, as set out in the DCO and explained in the Explanatory Memorandum (Document Reference 2.2):

### 4.3.1 Article 10 – Street works

This article allows the Applicant to interfere with and execute works in or under any streets for the purposes of the authorised development.

### 4.3.2 Article 14 – Permanent stopping up of streets

This article enables the Applicant to permanently stop up specified streets.

### 4.3.3 Article 15 – Access to works

This article allows works the Applicant to create accesses to public highways.

### 4.3.4 Article 16 – Use of private roads

This article permits the Applicant to use any private road within the Order limits in connection with the authorised development.

### 4.3.5 Article 20 – Discharge of water

This article permits the Applicant to use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development, and its exercise is subject to certain conditions.

### 4.3.6 Article 21 – Authority to survey and investigate the land

This article permits the Applicant to enter any of the land within the Order limits for the purposes of (amongst other things) surveys.

### 4.3.7 Article 23 – Felling or lopping of trees

This article allows the Applicant to fell or lop trees or shrubs within, or overhanging, the Order limits under certain circumstances. It also enables the Applicant to remove hedgerows within the Order limits.

### 4.3.8 Article 36 – Statutory undertakers

This article allows the Applicant to exercise compulsory powers over land belonging to statutory undertakers and interfere with rights of statutory undertakers, in so far as such interests fall within the Order limits. Statutory undertakers receive the benefit of protective provisions in Schedule 8 to the DCO. No statutory undertaker land is subject to compulsory acquisition.

- 4.4 All the above-mentioned articles in the DCO, which would provide powers enabling the Applicant to acquire land permanently or to use land temporarily, are required to enable the construction, operation and maintenance of the Proposed Development.
- 4.5 A detailed explanation for each of the above mentioned articles is set out in the Explanatory Memorandum (Document Reference 2.2).

## **5 Justification for Powers of Compulsory Acquisition**

- 5.1 Section 120 (3) of the 2008 Act provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 5.2 Schedule 5 to the 2008 Act contains a non-exhaustive list of the ancillary matters for which provision may be made. These include:
- 5.2.1 the acquisition of land, compulsorily or by agreement;
  - 5.2.2 the creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement;
  - 5.2.3 the abrogation or modification of agreements relating to land; and
  - 5.2.4 the payment of compensation.
- 5.3 Section 122 of the 2008 Act provides that a DCO that includes compulsory acquisition powers may be granted only if the conditions in sections 122(2) and 122(3) of the 2008 Act are met.
- 5.4 The first condition (s.122(2)) requires one of three criteria to be met, as follows:
- 5.4.1 (a) the land is required for the development to which the development consent relates; or
  - 5.4.2 (b) the land is required to facilitate or is incidental to that development; or
  - 5.4.3 (c) the land is replacement land to be given in exchange under section 131 or 132 of the 2008 Act.
- 5.5 The second condition (s.122(3)) is that there is a compelling case in the public interest for compulsory acquisition. This is dealt with in paragraphs 5.28 – 5.41 (inclusive) below.
- 5.6 Paragraphs 12 and 13 of the Guidance also identify that for the second condition to be met the Secretary of State will need to be persuaded that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 5.7 Paragraph 14 of the Guidance states that in determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

- 5.8 The Guidance, at paragraphs 8-10 (inclusive), sets out the following general matters which a promoter of the proposed development must be able to demonstrate to the satisfaction of the Secretary of State so as to justify an order granting development consent:
- 5.8.1 that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored – this is dealt with in paragraphs 5.10 - 5.15 below;
  - 5.8.2 that the proposed interest in the land is for a legitimate purpose and is necessary and proportionate – this is dealt with in paragraphs 5.16 - 5.20 below;
  - 5.8.3 that it has a clear idea of how it intends to use the land which it is proposing to acquire – this is dealt with in paragraphs 5.21 - 5.23 and Appendix 1 to this Statement;
  - 5.8.4 that there is a reasonable prospect of the requisite funds becoming available – this is dealt with in paragraphs 5.24 - 5.25 below and further funding information is set out in the Funding Statement (Document Reference 3.2); and
  - 5.8.5 there is justification for interfering with the human rights of those with an interest in the land affected – this is dealt with in paragraphs 5.26 - 5.27 and in section 8 of this Statement.
- 5.9 The following paragraphs explain how the section 122 conditions are met in the case of the proposed development.

*Alternatives to compulsory acquisition*

- 5.10 Chapter 4 Site Selection and Alternatives of the ES (Document Reference 6.2.4) describes the reasonable alternatives that have been studied by the Applicant and explains the main reasons for selecting the chosen option.
- 5.11 In order to construct, operate and maintain the Proposed Development, land and rights in the ownership of parties other than the Applicant would need to be acquired. Given the location and the nature of the site, acquisition and/or use of third party land cannot be avoided.
- 5.12 The Applicant considers the Application Site to be highly advantageous for the following reasons:
- 5.12.1 the location is directly adjacent to a navigable watercourse (to allow for the Refuse Derived Fuel and other materials to be transported by water rather than road)
  - 5.12.2 the location benefits from being allocated within the development plan as a waste management area (including for the generation of power by energy recovery) as well as part of the Riverside Industrial Estate which is allocated for employment uses;
  - 5.12.3 the location has the significant benefit of an existing on-site grid connection;
  - 5.12.4 the Applicant team has the benefit of experience and history in the development of power generation in Riverside Industrial Estate, having secured planning permission for the adjacent gasification plant which is now being developed by Aviva Investors;

- 5.12.5 The Applicant has strong and established links with the sole onshore freehold landowner where the proposed Facility will be located. As a result, the Applicant anticipates being able to secure the land necessary to construct and operate the Facility.
- 5.13 Were development not to take place, then the Principal Application Site would be available for some other form of waste management related development in accordance with the adopted Lincolnshire Minerals and Waste Local Plan (2017). Part of this area is also allocated for B1, B2 and B8 development as set out within the South East Lincolnshire Local Plan (2019). If the Facility were not developed then there would be opportunity for some other form of development to be undertaken in accordance with the development plan.
- 5.14 The Principal Application Site is owned by Alchemy Farms Limited with whom the Applicant is currently engaged in positive discussions with for a land transfer or lease of the whole site. The Applicant hopes to acquire all of the land required for the Facility by way of voluntary agreement prior to grant of the DCO, and as such, the majority of land required for the Proposed Development is outside the scope of compulsory acquisition powers. As set out below, notwithstanding the prospective voluntary agreement, compulsory acquisition powers are still required over unregistered land with unknown ownership. This ensures that the Applicant has all necessary powers to bring forward the Proposed Development.
- 5.15 The Applicant seeks compulsory powers over a limited number of plots to acquire land under the DCO from the relevant interest holders. A voluntary agreement is not possible in respect of these plots given that the owners are unknown. The land is included within the scope of compulsory acquisition powers as:
- 5.15.1 A general vesting declaration (GVD) is effective even against unknown interests. This approach therefore avoids the risk of a failure to disclose a relevant interest and ensures that if an unknown or unregistered owner later asserts an interest in the land which the Applicant believes it owns, the Applicant will not need to take further steps to clear the title; and
- 5.15.2 Compulsory acquisition by GVD is effective against all interests in the land. This permits the Applicant to supersede existing unknown third party interests within the land that are not readily acquirable.

*The proposed interest in the land is for a legitimate, necessary and proportionate*

- 5.16 The 'need' that exists for new power generating infrastructure, such as the proposed the Facility is confirmed in the National Policy Statements (NPS) for energy infrastructure that were designated by the Secretary of State for the Department for Business, Energy and Industrial Strategy (BEIS) (then the Department of Energy and Climate Change) in July 2011. These NPS form the primary basis for decisions by the Secretary of State on nationally significant energy infrastructure that fall to be considered under the 2008 Act.
- 5.17 The need for the Proposed Development has been explained in Chapter 2 (Project Need) of the ES (Document Reference 6.2.2) and compulsory acquisition of land is necessary to enable the Applicant to meet that need and deliver the Proposed Development.

- 5.18 Without the compulsory acquisition of the necessary interests in land, the delivery of the Proposed Development cannot be guaranteed. As contemplated by the 2008 Act it is a proportionate use of compulsory acquisition powers to acquire land for the Proposed Development.
- 5.19 Steps have been taken to ensure that the land and interests acquired are proportionate. The only land included within the scope of compulsory acquisition powers is unregistered and has unknown ownership. Where appropriate, the Applicant has sought to take powers to temporarily use land, rather than the compulsory acquisition of land.
- 5.20 Compensation is payable for the compulsory acquisition of land or rights under the foregoing powers. Compensation is also payable for loss or damage caused by the exercise of any power of temporary use of land. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.

*Clear idea of intentions of how land proposed to be acquired will be used*

- 5.21 The Applicant has a clear idea of how the land is intended to be used. Table 1, Appendix A of this Statement of Reasons sets out the particular purposes for which each plot of land is proposed to be compulsorily acquired or used temporarily. These plots subject to compulsory acquisition powers form part of the wider works for the Proposed Development (see Table 2, Appendix A). The Works Plans (Document Reference 4.3) visually present how the land will be used. These areas reflect the current stage of design for the Proposed Development and provide some flexibility as to the precise location of the individual elements, as is usual for developments of this scale. Table 1 in Appendix A demonstrates, as advocated by the Guidance (at paragraph 9), that the Applicant has "a clear idea of how [it intends] to use the land which [it proposes] to acquire."
- 5.22 No more land than is reasonably required for the purposes described in Table 1 in Appendix A is included within the scope of compulsory acquisition powers. The Applicant's proposed use of land, for the purpose of delivering the Proposed Development, is therefore proportionate and justifiable.
- 5.23 Together with this Statement of Reasons, the Land Plan and Crown land Plan (Document Reference 4.2), Works Plans (Document Reference 4.3), and the Book of Reference (Document Reference 3.3) show how and why the land included in the draft DCO is required and how such land would be used. In the case of each plot of land, the powers sought by the Applicant are necessary to deliver the proposals and are proportionate to the degree of interference with any private rights.

*Availability of funds for compensation*

- 5.24 The Guidance indicates that an applicant should be able to demonstrate that there is a "reasonable prospect" of the requisite funds becoming available. The Funding Statement (Document Reference 3.2) which accompanies the application sets out how the Proposed Development would be funded and demonstrates that there is a reasonable prospect of the requisite funds being available both to pay any compensation arising from the exercise of the

compulsory purchase and temporary use powers and, indeed, to construct the Proposed Development.

- 5.25 The Applicant therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

*Justification for interfering with the human rights of those with an interest in the land affected*

- 5.26 In making the application for the draft DCO, including the seeking of powers to acquire land compulsorily and to use land temporarily, The Applicant has had regard to the relevant provisions of the European Convention on Human Rights (see section 8 below).
- 5.27 In particular, as is explained in this Statement of Reasons, the Applicant has given consideration to the purposes for which the land is required, namely the delivery of the Proposed Development, in the context of the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and Article 8 of the Convention. The particular reasons why the proposed acquisition of land and interference with private property rights are considered to be legitimate and proportionate, and therefore justified, are set out in section 8 below, and are matters on which the Secretary of State will need to be satisfied in deciding whether powers of compulsory acquisition should be included in any grant of development consent for the proposals.

*Compelling case in the public interest*

- 5.28 As the Guidance makes clear (at paragraph 12), in addition to establishing the purpose for which compulsory acquisition is sought (see paragraphs 5.42 - 5.43 below), section 122 of the 2008 Act requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land included in the DCO to be acquired compulsorily. The documents forming the submitted Application, demonstrate that there is a compelling case in the public interest for the land required for the Proposed Development to be acquired compulsorily. The Planning Statement (Document Reference 5.2) and Chapter 2 of the ES (Document Reference 6.2.2) set this out in detail.
- 5.29 DCO applications must be determined in accordance with the relevant National Policy Statement (NPS). The NPS of most direct relevance to the Facility are EN-1 Overarching National Policy Statement for Energy) and EN-3 (National Policy Statement for Renewable Energy) (DECC, 2011a; 2011b).
- 5.30 NPS EN-1 and EN3 establish an urgent and substantial need for new energy generation infrastructure, with the desire for it to be renewable or low carbon, to achieve climate change targets established and made legally-binding under the Climate Change Act 2008.
- 5.31 The Secretary of State will use the policy of both NPSs as determinative of the merits of the DCO application in the absence of compelling reasons to the contrary. The Proposed Development has been developed to meet the relevant policy objectives of the NPSs.
- 5.32 Part 2 of EN-1 provides the policy context for the development of nationally significant energy infrastructure. EN-1 states (Paragraph 2.1.2) that



*'energy is vital to economic prosperity and social well-being. Therefore, it is important to ensure that the UK has secure and affordable energy. Producing the energy that the UK requires necessitates a significant amount of infrastructure, both large and small scale.'*

5.33 The UK had a target to generate at least 15% of energy demand from renewable energy sources by this year. In June 2019 the UK committed to (via the Climate Change Act 2008 (2050 Target Amendment) Order 2019) reduce carbon emissions by 100% (relative to 1990 levels) by 2050. The proposed Facility will provide a sustainable and renewable form of energy recovery, to contribute towards meeting renewable targets and carbon emissions and is in line with the requirements of NPS EN-1 and EN-3 (DECC, 2011a; 2011b).

5.34 EN-1 (Paragraph 3.3.10) further states:

*'As part of the UK's need to diversify and decarbonise electricity generation, the Government is committed to increasing dramatically the amount of renewable generation capacity... increasingly it may include plant powered by the combustion of biomass and waste'.*

5.35 EN-1 (Paragraph 4.1.2) confirms that given the level and urgency of need for infrastructure of the types covered by the energy NPSs, there is a presumption in favour of granting consent to applications for energy NSIPs.

5.36 Paragraph 2.5.2 of EN-3 (DECC, 2011b) states that:

*'The recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs. Where the waste burned is deemed renewable, this can also contribute to meeting the UK's renewable energy targets. Further, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales.'*

5.37 Approximately 2.9 million tonnes of waste derived fuel are exported from England alone (Environment Agency, 2018), to northern continental Europe and Scandinavia for energy recovery by incineration. Therefore, in line with the proximity principle, the proposed Facility seeks to move the recovery of energy to closer to the point of production and ensure that England is more self-sufficient in managing its own waste.

5.38 The amount of UK biodegradable municipal waste sent to landfill fell from approximately 7.4 million tonnes in 2017 to around 7.2 million tonnes in 2018 (20% of the baseline 1995 value). The UK is therefore still on track to meet the EU target to restrict the amount of biodegradable municipal waste landfilled to 35% of the 1995 baseline by 2020.

5.39 The UK's total waste arisings are made up of Local Authority Collected Waste (LACW) and private sector Commercial and Industrial (C&I) waste. Of this waste, a proportion is recycled or requires special treatment for disposal. The remainder is termed 'residual waste', and a proportion of this waste has a sufficient calorific value for use as refuse derived fuel (RDF).

5.40 RDF would be sourced for the proposed Facility from the residual waste element (non-recyclable) from materials recycling facilities (MRF). This represent a 13.6 Mt waste market, of which 3.5 Mt is exported from the UK and the majority of the remainder is landfilled. The Facility would therefore contribute to the reduction in the export of waste from the UK and associated

emissions; and divert material from landfill. There are nine counties which already have no landfill capacity and five English regions are set to run out within the next 10 years (Biffa, 2017). Furthermore, recovery of energy from residual waste is a preferential option on the waste hierarchy compared to landfill; and managing the UK waste within the UK, rather than exporting it, promotes the proximity principle at a national scale.

- 5.41 Accordingly, the Applicant is satisfied that the condition in Section 122(3) of the 2008 Act is met and that there is a compelling case in the public interest for compulsory acquisition.

*Purpose for which powers are sought*

- 5.42 In broad terms, the purpose for which compulsory acquisition and temporary possession powers are sought is to enable the Applicant to construct, operate and maintain the Proposed Development. The need for the Facility is explained in the previous section and in Chapter 2 of the ES on need (Document Reference 6.2.2).
- 5.43 For that purpose, it is necessary for the DCO to include a range of compulsory acquisition-related powers. Without the powers to acquire rights and interests in land compulsorily (required as explained on a plot by plot basis in Table 1 of Appendix A to this Statement of Reasons), there would be insufficient certainty about the Applicant's ability to deliver the Proposed Development within the necessary timescales. The Applicant therefore requires such powers to be included in the DCO, notwithstanding the Applicant's efforts to identify the owners of the relevant plots (with the intention of then negotiating the acquisition of the necessary interests in land by agreement).
- 5.44 The land over which full compulsory acquisition powers are sought in respect of the freehold is shown shaded pink on the Land Plan and Crown Land Plan (Document Reference 4.2). Article 25 of the draft DCO is relied upon in this respect. At Table 1 of Appendix A, the Applicant has identified the purpose for which this land is required by connecting each of these plots to specific works as described in Schedule 1 to the draft DCO.
- 5.45 The Applicant is in discussions with the Crown Estate on obtaining rights on a voluntary basis and intends to acquire such rights/interests voluntarily. No Crown Estate land is included within the scope of compulsory acquisition powers.
- 5.46 Plots 19, 19b, 21 and 23 are being compulsorily acquired in the draft Order as the owners of these unregistered plots remain unknown. It is therefore not possible to negotiate with any party for the land. It would not be sufficient to only acquire rights over this land as there is no owner to enforce these rights against, and only full title acquisition will grant the Applicant sufficient control over the land in order to implement the Proposed Development. Such rights are therefore proportionate and no more than reasonably required for the Proposed Development.
- 5.47 The land over which the Applicant is seeking a power to take temporary possession for the purposes of constructing the works authorised by the draft DCO is shown shaded blue on the Land Plan and Crown Land Plans (Document Reference 4.2). Article 34 of the draft DCO is relied upon in this respect. At Table 1 of Appendix A, the Applicant has identified the purpose for which this land is required by connecting each of these plots to specific works as described in Schedule 1 to the draft DCO. This is limited to a small drain located in Plot 3 which is

unregistered. Temporary powers are sought in order to prevent unknown interests impacting the works in this area during construction or maintenance.

- 5.48 As noted in section 4 of this Statement, the power of temporary possession in Article 34 also provides a power for the Applicant to take possession of any other land included within the Order limits, provided that the Applicant has not already made a declaration to vest the land in itself or to enter the land following a notice of entry in advance of acquisition. This provision may enable the Applicant, if necessary, to initially take temporary possession of parts of the Application Site for the purposes of constructing the works, and subsequently acquire a more limited width of the land (in case of possible reduced land requirements following detailed design).

## **6 Engagement and Negotiations**

### *Negotiations to acquire by agreement*

- 6.1 The Applicant is seeking to acquire any interests in the land by agreement wherever practicable. However, given that compulsory acquisition powers are only sought over unregistered land with unknown ownership, it is not possible to negotiate for the land. Were an owner to come forwards and prove title to the land, the Applicant would seek to engage with them. The Applicant continues to maintain site notices on/near the land in order to identify the unknown owners.
- 6.2 The vast majority of the land required for the Proposed Development is outside the scope of compulsory acquisition powers and will be acquired by the Applicant through a voluntary agreement with the main freeholder of the Principal Application Site. Discussions are ongoing between the parties. The sole landowner is aware of the Proposed Development and that the compulsory acquisition powers sought in the draft DCO are restricted to plots in unknown ownership. Both parties expect a formal land agreement to be reached in due course.
- 6.3 No Crown Estate interests are subject to compulsory acquisition powers. Discussions with the Crown Estate have commenced in respect of the dredging and land interests (including part of the Habitat Mitigation Area) required and are expected to progress in parallel with the DCO application and implementation. These will form part of a commercial agreement. On the principle of the Proposed Development itself, the Applicant has received confirmation that the Crown Estate has no objections to its proposals.

### *Land referencing approach*

- 6.4 In preparing the DCO application, the Applicant has carried out diligent inquiry in order to identify all persons with an interest in the land as defined in section 44 of the 2008 Act.
- 6.5 Those persons who were identified by the Applicant are listed in the Book of Reference (Document Reference 3.3) and have been consulted about the application in accordance with section 42 of the 2008 Act as described in the Consultation Report (Document Reference 5.1).

- 6.6 Diligent inquiry to identify affected landowners, those with interests in land, and those with a potential claim was undertaken by the Applicant's expert land referencing supplier. The categories of persons identified, and the methods used to identify them are described below and in the Consultation Report (Document Reference 5.1) by reference to the categories in the Book of Reference (Document Reference 3.3).
- 6.7 Category 1 includes owners, lessees, tenants and occupiers of the land within the Order limits. Category 2 includes parties that are interested in the land or have the power to sell, convey or release the land within the Order limits. Category 3 includes parties who the Applicant thinks would or might, if the DCO were made and fully implemented, be entitled to make a relevant claim for compensation under section 10 of the Compulsory Purchase Act 1965 and/or Part I of the Land Compensation Act 1973 (LCA 1973) and/or section 152(3) of the 2008 Act.

#### *Category 1 and 2 parties*

- 6.8 Identification of Category 1 and 2 persons was initially undertaken at the early stages of development of the Facility, in order to inform the design of the Facility and preparation of the application
- 6.9 Land referencing has been undertaken throughout the pre-application period to ensure any changes in ownership or new interests have been identified, consulted and subject to engagement. Land referencing will continue to be undertaken following DCO submission and throughout the DCO process to ensure that any changes in ownership (and/or interests in land) are identified and to ensure that any new interests will be consulted and subject to engagement.
- 6.10 Land Registry data was received in the form of a digital shape file (a GIS layer) and digital copies of the Official Copy Registers and Title Plans were obtained. All relevant freehold, leasehold, mortgagee, beneficiary, other charges and restrictive covenant information was extracted and stored in a land referencing database. Further Land Registry searches have been used to ensure that any changes in title in respect of land potentially required for or affected by the Scheme were identified. Additional checks were carried out pre-submission of DCO to ensure information was up to date.
- 6.11 From this data, land ownership parcels were created. The land ownership parcels were drawn to reflect unique ownership information and geographical features and stored spatially on a GIS application. On completion of the initial, desk-based Land Registry exercise described above, the extent of unregistered land interests became known.
- 6.12 Where land was not registered, additional parcels to complete these gaps were created based on land registry title boundaries, OS mapping, adopted highways boundaries and site data.
- 6.13 The Proposed Development impacts unregistered land with unknown ownership, specifically plots 19, 19b, 21, and 23. The Applicant has sought to identify the owners of this land through desktop and contact referencing. Site notices have been erected on/near these plots. In order to establish ownership of unregistered land, direct contact was made with a number of parties including adjacent landowners. Public sources of information were used, including the Companies House website, the relevant highways authority, records held by statutory undertakers, electoral registers and other online resources. Category 3 parties

- 6.14 Category 3 interests mainly relate to those whose land may be injuriously affected (i.e. its value would be diminished) as a result of the Proposed Development. The land itself does not need to necessarily be acquired in order for its owner to fall within Category 3.
- 6.15 Identification of Category 3 persons was initially undertaken at the early stages of development of the Facility, in order to inform the design of the Facility and preparation of the application.
- 6.16 In order to identify potential Category 3 persons who may be entitled to make a claim pursuant to section 10 of the CPA 1965, a desk-based assessment was carried out to identify properties with a potential claim. In addition, site visits were used in order to assess properties for potential claims which were not identified from the desk based assessment.
- 6.17 In assessing potential claimants under Part I of the LCA 1973, physical factors and the impact of the Scheme were considered, including proximity to the Order limits.
- 6.18 The Applicant's land referencing team were provided with guidance from environmental specialists involved in the compilation of the noise chapter of the ES (chapter 10) (Document No 6.2.10). This guidance was based on the likely significant effects arising from the proposed development. For example, the noise assessments had regard to information available at that time regarding:
- 6.18.1 Background noise levels; and
- 6.18.2 Distances to receptors.
- 6.19 Based on the above information, professional judgement was used to ascertain whether a person may have a relevant claim for compensation, based on a worst-case assessment. Following an assessment by the Applicant's environmental consultants, it was established that there were no parties which would or might be able to claim under Part 1 of the Land Compensation Act 1973. This is confirmed in Part 2b of the Book of Reference (Document Reference 3.3).
- 6.20 Following the initial non-contact methods above, persons identified as having an interest in the land or a potential claim were issued with a letter and claim were issued a letter with a plan describing the extent of the Proposed Development, and a questionnaire requesting return of information about their interests in the land.
- 6.21 The Applicant's land referencing team regularly review information held at HM Land Registry and will continue to refresh their data as the DCO application progresses.

#### *Consultation with Statutory Undertakers*

- 6.22 The Applicant and its advisors have been liaising with Statutory Undertakers through the process of issuing Request For Information forms (RFIs), chaser RFIs, follow up calls and section 42 consultation. Through this process they have confirmed that they either do or do not have assets within the area affected by the Proposed Development.
- 6.23 Where appropriate, those Statutory Undertakers who have confirmed that they have assets within the area have been issued with draft protective provisions, to protect their assets. Where

Statutory Undertakers also hold an interest in land, the Applicant has also contacted them to understand the impacts upon their land, although no Statutory Undertaker owns or occupies land subject to compulsory acquisition powers.

- 6.24 Further details on the Applicant's consultation with Statutory Undertakers is set out in the Consultation Report (Document Reference 5.1).

## **7 Special Considerations affecting Land**

### *Crown Land*

- 7.1 The Application Site includes Crown Land but this land is excluded from the scope of compulsory acquisition powers – see Land Plan and Crown Land Plans (Document Reference 4.2) and Part 4 of the Book of Reference (Document Reference 3.3). Title checks at HM Land Registry and discussions with the Crown Estate confirm that such land belongs to the Crown Estate.
- 7.2 The Applicant is engaged with agents for the Crown Estate in order to voluntarily acquire the necessary interests/rights over the Crown Estate's land. This process will run in parallel with the application for development consent.
- 7.3 There is no Open Space within the Application Site.
- 7.4 There is no National Trust land or other inalienable within the Application Site.

### *Statutory undertaker land*

- 7.5 Section 127(3) of 2008 Act provides that a DCO may only authorise the compulsory acquisition of statutory undertaker land where a representation has been made by the statutory undertaker objecting to the acquisition if the Secretary of State is satisfied that:
- 7.5.1 The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- 7.5.2 If purchased, the land can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.
- 7.6 Section 127(6) of the 2008 Act provides that a DCO may only authorise the compulsory acquisition of rights over Statutory Undertaker land where a representation has been made by the Statutory Undertaker objecting to the acquisition if the Secretary of State is satisfied that:
- 7.6.1 the rights can be acquired without any serious detriment to the carrying on of the undertaking or
- 7.6.2 any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by using of other land belonging to or available for acquisition by the undertaker.

- 7.7 The Applicant has, during preparation of the DCO application, been in discussions with various Statutory Undertakers. Through these discussions it has been established that, the land in which these Statutory Undertaker assets exist are in private ownership.
- 7.8 None of the land to be acquired for the Scheme is therefore Statutory Undertakers land for the purposes of sections 127(3) or 127(6) of the 2008 Act.
- 7.9 Statutory undertakers' and other apparatus owners that are known to have equipment on, in or over the land are included in the Book of Reference. Section 138 of the 2008 Act applies if a DCO authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a 'relevant right', or there is 'relevant apparatus' on, under or over the land.
- 7.10 For the purposes of section 138, 'relevant right' means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land which
- 7.10.1 is vested in or belongs to statutory undertakers for the purpose of carrying on their undertaking; or
- 7.10.2 is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network
- 7.11 "Relevant apparatus" means:
- 7.11.1 apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking; or
- 7.11.2 electronic communications apparatus kept installed for the purposes of an electronic communications code network.
- 7.12 In accordance with s138(4) 2008 Act, a DCO may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
- 7.13 The DCO includes provision to authorise the extinguishment of a relevant right, or the removal of relevant apparatus belonging to statutory undertakers, in connection with the delivery of the Scheme.
- 7.14 The exercise of such powers will be carried out in accordance with the protective provisions contained in Schedule 8 of the DCO (Document Reference 2.1). The protective provisions (as set out in Schedule 8 of the draft DCO (Document Reference 2.1)) contain constraints on the exercise of the powers in the DCO, with a view to safeguarding the Statutory Undertakers' and electronic communications apparatus owners' interests, whilst enabling the Proposed Development, as authorised by the DCO, to proceed. The Applicant therefore considers that the test set out in Section 138 of the Act is satisfied.

#### *Other Consents*

7.15 The List of Other Consents and Licences ((Document Reference 5.4) sets out the other consents that will be required and the current position as to the status of securing those consents. This list will continue to be updated as necessary during the Examination. The Applicant is satisfied that all necessary consents to enable the Scheme to proceed have been identified and that there is no reason why such consents should not be secured or granted pursuant to the DCO.



## **8 Justification for interference with Human Rights**

### **8.1 The Human Rights Act: Relevant Convention Rights**

- 8.1.1 The European Convention on Human rights (the Convention) was applied within UK domestic law by the Human Rights Act 1998 (the HRA).
- 8.1.2 The articles of the Convention that are relevant when determining whether a DCO should be made which includes powers of compulsory acquisition are Article 1 of the First Protocol to the Convention, Article 6 and Article 8.
- 8.1.3 The Secretary of State must be persuaded that the purposes for which an order authorises the compulsory acquisition of land are sufficient to justify interfering with the human rights of those with an interest in the land.
- 8.1.4 Article 1 of the First Protocol to the Convention protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the conditions provided by relevant national and international laws. Any interference with possessions must be proportionate and in determining whether a particular measure is proportionate, a “fair balance” should be struck between the demands of the general interest and the protection of the individual’s rights.
- 8.1.5 Article 6 entitles those affected by powers sought for the proposed development to a fair and public hearing by an independent and impartial tribunal. These requirements could be secured by the availability of judicial review if the decision making is not considered to be independent within the meaning of Article 6.
- 8.1.6 Article 8 protects the right of the individual to respect for his private and family life, his home and his correspondence. No public authority may interfere with these interests except if it is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic well-being of the country. As with Article 1 of the First Protocol to the Convention, any interference if justified, must be proportionate.

The proposed development has the potential to infringe the human rights of persons who own property within the Order limits or have rights over the land within the Order limits. Such infringement is authorised by law provided that:

- (a) The statutory procedures for making the DCO are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO; and
- (b) Any interference with any Convention right is proportionate to the aim served.

### *Compliance with the Convention and the Human Rights Act*

- 8.2 The Applicant is satisfied that, although Convention rights are likely to be engaged, the proposed development will not conflict with Convention rights and will be proportionate in that there is a compelling case in the public interest for the proposed development which outweighs the impact on individual rights. In this context, it is relevant that those affected will be entitled to compensation.
- 8.3 With regard to Article 1, First Protocol and Article 8, the Applicant has weighed any interference with these Convention rights as a result of including compulsory powers within the DCO with the potential public benefits if the DCO is made. First, the Applicant considers that there would be very significant public benefit arising from the grant of the DCO. That benefit can only be realised if the DCO includes the grant of powers of compulsory acquisition and temporary use. the Applicant has concluded that the significant public benefits outweigh the effects of the DCO upon persons who own property in the Order limits such that there would not be a disproportionate interference with their Article 8 and Article 1, First Protocol rights. The need for the Proposed Development is clear, as detailed in Chapter 2 of the ES ((Document Reference 6.2.2). Those affected by the exercise of compulsory acquisition or temporary use powers will be entitled to compensation and the Applicant has the resources to provide such compensation.
- 8.4 As for Article 6, third parties have been able to make representations on the application for the DCO whilst it is being prepared. In accordance with Part 5 of the 2008 Act, the Applicant consulted persons set out in the categories contained in section 44 of the 2008 Act. This included the known owner, occupiers and other interest holders in the land within the Order limits and those who might be able to make claims either under section 10 of the Compulsory Purchase Act 1965 in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973. The beneficiaries of restrictive covenants and other rights that would be overridden by the exercise of powers in the DCO would be capable of making claims under section 10 of the Compulsory Purchase Act 1965.
- 8.5 Furthermore, representations can be made by way of objections to the application in response to any notice given under section 56 of the 2008 Act ('Notifying persons of accepted application'). The 2008 Act provides for a detailed examination of any application for a DCO by an independent Examining Authority. The examination includes careful scrutiny of any powers of compulsory acquisition or other compulsory powers, to ensure that they are justified and proportionate. Although the examination is a process mainly conducted in writing, where the Examining Authority received one or more requests for a compulsory acquisition hearing from affected persons within the date specified, it must cause a hearing to be held. All affected persons are invited to these compulsory acquisition hearings, and have the opportunity to make oral representations about the compulsory acquisition requests.
- 8.6 Should the DCO be made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out. In relation to disputes about compensation, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), an independent tribunal.

8.7 For these reasons, the Applicant considers that the inclusion of powers of compulsory acquisition would not breach the Convention rights of those whose are affected and that it would be appropriate and proportionate to make the DCO, including the grant of powers of compulsory acquisition.

## **9 Conclusions**

- 9.1 The Applicant submits, for the reasons explained in this Statement, that the inclusion of powers of compulsory acquisition in the DCO for the purposes of the Proposed Development meets the conditions of Section 122 of the 2008 Act as well as the considerations in the Guidance.
- 9.2 The acquisition of land and rights (including restrictive covenants) and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights is no more than is reasonably required to facilitate or is incidental to the Proposed Development.
- 9.3 Furthermore, the land identified to be subject to compulsory acquisition is no more than is reasonably necessary for that purpose and is proportionate, as is shown in the DCO (Document Reference 2.1), the Works Plans (Document Reference 4.3) and other information both in this Statement and in other document accompanying the Application. The Applicant has included the smallest amount of land possible within the scope of compulsory acquisition powers. If the unknown owners are identified and verify their status as owners, the Applicant will seek to conclude voluntary agreements in order to reduce the scope of this land further.
- 9.4 The need for the Proposed Development, suitability of the Order limits, the benefits that the Proposed Development would bring (as set out in Chapter 2 (Project Need), Chapter 20 (Socio-Economics) of the ES (Document Reference 6.2.2 and 20) and the support for such project in the relevant policy (as set out in Chapter 3 Policy and Legislation of the ES (Document Reference 6.2.3)) demonstrate that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 9.5 All main reasonable alternatives to compulsory acquisition have been explored. There is only a small amount of land within the scope of compulsory acquisition powers and all of this land is currently unregistered and has unknown ownership. The Applicant is currently negotiating a voluntary agreement with the freeholder of the Principal Application Site in respect of their interest.
- 9.6 Given the need for the Proposed Development and the support for it found in policy, as well as the suitability of the Application Site (for the reasons outlined above), compulsory acquisition of the land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of matters affecting the Application Site identified by the Applicant for the Proposed Development is justified.
- 9.7 The proposed interference with the rights of those with an interest in the Application Site is for a legitimate purpose, namely the Proposed Development, and is necessary and proportionate to that purpose. The Applicant considers that the very substantial public benefits to be derived from the proposed compulsory acquisition of the Application Site would decisively outweigh the private loss that would be suffered by those whose land is to be acquired.
- 9.8 The Applicant has set out clear and specific proposals regarding how the Application Site will be used.

## APPENDIX A: PURPOSE FOR WHICH COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS ARE SOUGHT

Notes:

1. See Schedule 1 to the draft DCO (Document Reference 2.1) for descriptions of the works.
2. This Appendix should be read alongside the draft DCO (Document Reference 2.1) Book of Reference ((Document Reference 3.3), the Land Plan and Crown Land Plan (Document Reference 4.2) and Works Plans (Document Reference 4.3).
3. Only the plots in Table 1 are subject to compulsory acquisition powers.
4. Table 2 is provided as a guide to make clear where other works (as set out in the Works Plans) occur.

**Table 1 – Land subject to compulsory acquisition powers**

| Plot Number(s): | Owner                             | Extent of Acquisition:<br>(Permanent land,<br>permanent rights,<br>temporary possession) | Purpose for which<br>Plots are required:<br>(Work No.)                                |
|-----------------|-----------------------------------|--|---|
| 3               | (1) Alchemy Farms;<br>(2) Unknown | Temporary possession   | 7   |
| 19              | Unknown                           | Permanent land   | 4   |
| 19b             | Unknown                           | Permanent land   | 4   |
| 21              | Unknown                           | Permanent land   | (i) biodiversity<br>enhancement measures<br>and environmental<br>mitigation measures; |
| 23              | Unknown                           | Permanent land   | (i) biodiversity<br>enhancement measures<br>and environmental<br>mitigation measures; |

**Table 2 – Land not subject to compulsory acquisition powers**

| Plot Number(s): | Purpose for which Plots are required:<br>(Work No.) |
|-----------------|---|
| 1               | 7   |
| 2               | 6 and 7   |
| 4               | No Work Number. Land to be used for access          |
| 4a              | 5   |
| 4b              | No Work Number. Land to be used for access          |
| 5               | No Work Number. Land to be used for access          |
| 6               | 7   |
| 7               | No Work Number. Land to be used for access          |
| 8               | 5, 6  |
| 9               | 5, 6,   |
| 10              | 4, 5, 6   |
| 11              | 7   |
| 11a             | 4, 5, 6   |
| 11b             | 5, 6  |

| Plot Number(s): | Purpose for which Plots are required:<br>(Work No.)                          |
|-----------------|--|
| 12              | 4, 5, 6  |
| 13              | 4, 5, 6  |
| 16              | 1, 3, 5, 6   |
| 17              | 5, 6   |
| 18              | 2, 4, 5, 6   |
| 18a             | 7  |
| 19a             | Required for works in connection with scour protection and wharf.            |
| 20              | Required for dredging.   |
| 22              | (i) biodiversity enhancement measures and environmental mitigation measures; |
| 24              | (i) biodiversity enhancement measures and environmental mitigation measures; |
| 25              | (i) biodiversity enhancement measures and environmental mitigation measures; |