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Infrastructure Planning  
(Applications Prescribed  
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Regulation 5(2)(h)

# North Lincolnshire Green Energy Park

Volume 3

3.2 Statement of Reasons

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## 1. INTRODUCTION

- 1.1 This Statement of Reasons (the **Statement**) relates to the powers of compulsory acquisition sought and related powers in the application by North Lincolnshire Green Energy Park Limited (the **Applicant**) to the Secretary of State under the Planning Act 2008 (the **2008 Act**) for powers to construct and operate the North Lincolnshire Green Energy Park (the **Project**).
- 1.2 As the total export capacity of the electricity generating station will exceed 50 megawatts (**MW**), the Project is deemed to be a Nationally Significant Infrastructure Project (**NSIP**), and therefore the Applicant is submitting an application to the Secretary of State under Section 37 of the Planning Act 2008 for a Development Consent Order (**DCO**) for the construction and operation of the Project.
- 1.3 The Applicant is seeking to assemble in its ownership the land and associated rights over land included in the draft DCO (the **Order**) (**Document Reference 2.1**). This land is required for the Project and is referred to in this Statement as the **Application Land**.
- 1.4 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising compulsory acquisition of land (or rights over land), only if the decision maker in respect of the Application is satisfied that:
  - 1.4.1 The land is required for the development
  - 1.4.2 The land is required to facilitate or is incidental to the development; or
  - 1.4.3 The land is replacement land for commons, open spaces, etc.
- 1.5 The Application includes a request for the Secretary of State to grant powers of compulsory acquisition pursuant to section 122 of the 2008 Act.

### **Purpose of the Statement**

- 1.6 As part of the Application for the Project, the Applicant is required to submit to the Secretary of State a Statement of Reasons prepared in accordance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the **APFP Regulations**).
- 1.7 This Statement explains why the powers of compulsory acquisition sought in the draft Order are necessary to implement the Project. Throughout, this Statement demonstrates that there is a compelling case in the public interest to grant those powers.
- 1.8 The Department for Communities and Local Government's (as it was then called) guidance on compulsory acquisition for DCO applications published in September 2013 (the **Guidance**) provides advice on the content of the Statement. Annex 2 of the then Department for Communities and Local Government's now superseded general guidance on compulsory acquisition of February 2010 (the **2010 Guidance**) provided a detailed checklist of what a

Statement of Reasons should include. Whilst this 2010 Guidance has been superseded, the Applicant still considers that the 2010 Guidance is helpful to that extent, and this Statement has been drafted to reflect that advice. Paragraph 45 of the September 2013 guidance cross refers to the ODPM circular 06/2004 Compulsory Purchase and the Crichel Down Rules which contained further general guidance on matters related to compulsory acquisition. That guidance was replaced on 29 October 2015 (since updated in July 2019) and the Applicant has had regard to the replacement guidance which is of application to compulsory purchase more generally.

- 1.9 A substantial amount of information regarding baseline conditions, site selection, the proposed development, environmental impact and other relevant matters has been included in the documents which accompany the Application. This Statement should be read alongside these documents, which are listed in the Application Guide (**Document Reference 1.2**).
- 1.10 In relation to the compulsory acquisition powers sought as part of the Application, this Statement should be considered together with the following documents:
  - 1.10.1 **Document Reference 3.3** which contains an explanation of how the proposals contained in the Order for compulsory acquisition will be funded (the **Funding Statement**)
  - 1.10.2 The plans showing the land which would be acquired, (the **Land Plans**) (**Document Reference 4.2**); and
  - 1.10.3 The book of reference scheduling all owners, lessees, tenants and occupiers, those with other interests in the land and those entitled to make relevant claims (the **Book of Reference**) (**Document Reference 3.1**).
- 1.11 Articles 23 (*Compulsory acquisition of land*) and 25 (*Compulsory acquisition of rights*) of the Order (**Document Reference 2.1**) contain the operative provisions relating to compulsory acquisition and Schedules 10 and 12 set out which new rights may be compulsorily acquired in each plot, and which plots may be taken possession of temporarily.

## **2. STRUCTURE OF THE STATEMENT**

- 2.1 The following sections of this Statement reflect Annex 2 of the Guidance and include:
  - 2.1.1 A summary of the Applicant's purpose in seeking to acquire the Application Land for the Project (Section 3).
  - 2.1.2 A description of the Application Land (Section 4).
  - 2.1.3 Details of the relevant policy in support of the Project (Section 5).
  - 2.1.4 The Applicant's justification for compulsory acquisition, by reference to the Guidance and the requirements of Article 1 of the First Protocol to

the European Convention on Human Rights and Article 8 (Sections 6, 7 and 9).

- 2.1.5 Any special considerations affecting the land to be compulsorily acquired (Section 8).
- 2.1.6 Other powers of compulsory acquisition being sought under the Order (Section 10) and other consents (i.e. in addition to the Order) that would need to be obtained to implement the proposals for the use and development of the Project (Section 11).
- 2.1.7 Summary of conclusions (Section 12).
- 2.1.8 Any other information of interest to someone affected by the Order (Section 13).

### 3. SUMMARY

- 3.1 The Project, located at Flixborough, North Lincolnshire, is a NSIP with an Energy Recovery Facility (**ERF**) capable of converting up to 760,000 tonnes of non-recyclable waste into 95 MW of electricity at its heart and a carbon capture, utilisation and storage (**CCUS**) facility which will treat the excess gasses released from the ERF to remove and store carbon dioxide (**CO<sub>2</sub>**) prior to emission into the atmosphere.
- 3.2 The NSIP incorporates a switchyard and substation, to ensure that the power created can be exported either to the National Grid or to local businesses through a private wire network (PWN); and a water and condensate treatment facility, to take water from the mains supply or recycled process water to remove impurities and make it suitable for use in the boilers, the CCUS facility, concrete block manufacture, hydrogen production and the maintenance of the water levels in the wetland area.
- 3.3 The Project will include the following Associated Development to support the operation of the NSIP:
  - 3.3.1 a bottom ash and flue gas residue handling and treatment facility (**RHTF**)
  - 3.3.2 a concrete block manufacturing facility (**CBMF**)
  - 3.3.3 a plastic recycling facility (**PRF**)
  - 3.3.4 a hydrogen production and storage facility
  - 3.3.5 an electric vehicle (**EV**) and hydrogen (**H<sub>2</sub>**) refuelling station
  - 3.3.6 battery storage
  - 3.3.7 a hydrogen and natural gas above ground installations (**AGI**)
  - 3.3.8 a new access road and parking

- 3.3.9 a gatehouse and visitor centre with elevated walkway
  - 3.3.10 railway reinstatement works including, sidings at Dragonby, reinstatement and safety improvements to the 6km private railway spur, and the construction of a new railhead with sidings south of Flixborough Wharf
  - 3.3.11 a northern and southern district heating and private wire network (**DHPWN**)
  - 3.3.12 habitat creation, landscaping and ecological mitigation, including green infrastructure and 65-acre wetland area
  - 3.3.13 new public rights of way and cycle ways including footbridges
  - 3.3.14 Sustainable Drainage Systems (**SuDS**) and flood defence; and
  - 3.3.15 utility constructions and diversions.
- 3.4 The Project will also include development in connection with the above works such as security gates, fencing, boundary treatment, lighting, hard and soft landscaping, surface and foul water treatment and drainage systems and CCTV.
- 3.5 The Project also includes temporary facilities required during the course of construction, including site establishment and preparation works, temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking facilities, offices, staff welfare facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage.
- 3.6 The overarching aim of the Project is to support the UK's transition to a low carbon economy as outlined in the Sixth Carbon Budget (December 2020), the national Ten Point Plan for a Green Industrial Revolution (November 2020) and the North Lincolnshire prospectus for a Green Future. It will do this by enabling circular resource strategies and low-carbon infrastructure to be deployed as an integral part of the design (for example by reprocessing ash, wastewater and carbon dioxide to manufacture concrete blocks and capturing and utilising waste-heat to supply local homes and businesses with heat via a district heating network).
- 3.7 Within the Order Limits, the Project is divided into four distinct geographical areas relating to the specific elements of the Project:
- 3.7.1 **The Energy Park Land** – this contains the core elements of the Project (ERF; carbon capture, utilisation and storage facility; bottom ash and flue gas residue handling and treatment facility; concrete block manufacturing facility; plastic recycling facility; visitor centre, hydrogen production and storage facility; EV and H<sub>2</sub> refuelling station; battery storage and hydrogen and natural gas above ground installations) located north of Ferry Road West (B1216)

### 3.7.2 **The Northern District Heat and Private Wire Network (DHPWN)**

**Land** - this is an area within the Application Land on which the Northern DHPWN would be constructed. This runs from the ERF on the Energy Park Land down the new access road to the southern end of the Energy Park Land where the B1216 (Ferry Road West) meets the A1077 (Phoenix Parkway). The route follows the A1077 towards the North-East, passing the Skippingdale Retail Park on its south side and crossing the common land at Atkinsons' Warren / Foxhills Plantation. East of the common land, the route passes south of the Foxhills Industrial Park where the Northern DHPWN Land incorporates rough grassland with hedges to the north of the A1077 and agricultural land and use of highways land. From the roundabout junction with the A4130 (Normanby Road) there are two alternative route options, with both ending at the Warren Road junction with Normanby Road:

- (a) Option A - the route passes south towards the built-up urban centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas; or
- (b) Option B –the route continues on the A1077 until the junction with Bessemer Way to the south. The route will follow Bessemer Way until the junction with Warren Road turning due west to meet the Normanby Road.

### 3.7.3 **The Southern District Heat and Private Wire Network (DHPWN)**

**Land** - this is an area within the Application Land on which the Southern DHPWN would be constructed and runs from the southern end of the Energy Park Land where the B1216 (Ferry Road West) joins the A1077, and then heads south through the agricultural land on the west side of the A1077; and

3.7.4 **The Railway Reinstatement Land** - this is an area within the Application Land on which the railway line will be reinstated. The railway line passes immediately to the North of the Normanby Enterprise Park before winding around a long 's' bend to the south of Flixborough village, and looping around the northern edge of Flixborough Industrial Estate, where the line terminates at the wharf edge.

3.8 The Project directly responds to the urgent need to decarbonise the UK energy supply and reduce the amount of waste going to landfill. The Project will enhance the UK's energy security and diversity of supply identified in the Government's statement of national policy in NPS EN-1, EN-3 and EN-5. The Project would make a significant contribution towards the achievement of the Government's renewable energy targets.

3.9 All of the land within the Order Limits, shown on the Land Plans (save for the land shaded grey which is excluded) and described in the Book of Reference, **(Document Reference 3.1)** is required either for the purposes of the Project, to facilitate the same, or for purposes incidental thereto. In order to deliver the Project, the Applicant is seeking the acquisition of a combination of freehold

ownership, permanent new rights (such as rights of access as well as rights for the installation of pipes, electrical cables, fibre optic cables and ducts) and temporary rights during construction.

- 3.10 Rights to install and maintain apparatus for the DHPWN in the Northern DHPWN and Southern DHPWN with a width of 10 metres will be sought. The DHPWN cable and pipe route reflects the space required for the apparatus needed (being, in respect of the district heating network, pipes installed underground, (referred to in this Statement as **pipes**) required for the Project, and for the private wire network, electrical cables and fibre optic cables installed within cable ducts, referred to within this Statement as **wires**).
- 3.11 The Applicant will continue to seek to acquire rights and interests to deliver the Project by agreement where possible on appropriate commercial terms. Seeking compulsory acquisition powers whilst, in parallel, negotiations to acquire interests continue, is in accordance with both general practice and paragraph 25 of the Guidance. Land included in the Order will remain scheduled in the Book of Reference (**Document Reference 3.1**) even where agreement has been reached. This is to ensure that, if any minor interests such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, powers are available to override those interests. It also reflects the fact that minor interests may still be outstanding and not waived and therefore have to be extinguished or overridden by the available statutory process. In such circumstances a relevant claim may be made and accordingly scheduling of the interests in land is necessary.
- 3.12 The Applicant's purpose in acquiring the Application Land compulsorily, if required, in accordance with the provisions of the 2008 Act, is to secure the lands and rights required to construct and then operate the Project within a reasonable commercial timeframe.
- 3.13 The Applicant considers that a compelling case in the public interest for powers of compulsory acquisition exists. This is set out further in section 7 of this Statement.

### **The Application**

- 3.14 It is proposed that the Project will be constructed in six phases, over a six-year period as shown indicatively in Chapter 3 of the Environmental Statement (**ES**) (**Document Reference 6.2.3**) with a 2028 opening.
- 3.15 Prior to the commencement of all construction and demolition activities within the Application Land, all environmental and archaeological mitigation measures required in advance of construction as identified in the environmental assessment will be put in place and will remain in place until the completion of that particular phase of the works.
- 3.16 There are a number of buildings and structures that will require demolition prior to the commencement of construction of the ERF. It is currently anticipated that these buildings and structures will be demolished at the beginning of the first phase of construction when construction compounds are being established.

- 3.17 There are a number of existing services that will be located and diverted in the process of delivering the Project as shown in Chapter 3 of the ES (**Document Reference 6.2.3**) and on the Indicative Utility Drawings (**Document Reference 4.17**). These service diversions will be carried out in the first phase of the Project (year 1) when the alignment of the new access road and associated junctions are being constructed. The majority of the service diversions will involve exposing the existing service and establishing the new route. The services will be directly buried and marked in accordance with best practice. Where new and existing services are present, especially around the new access road, then ducts will be installed to accommodate all proposed services. Services will be installed within the access road service corridors for those parts of the project that will be delivered after the commissioning of the ERF, such as the district heat network, private wire network and communications network.
- 3.18 A more detailed description of the works in relation to the Project is provided in the ES Chapter 3 (**Document Reference 6.2.3**) but in brief the Project includes an ERF, the RHTF, the CBMF, PRF, hydrogen production and storage facility, electric vehicle and hydrogen re-fuelling station, battery storage, a hydrogen and natural gas AGI, a new access road and parking, a gate house and visitor centre with elevated walkway, railway reinstatement works, the DHPWN, habitat creation, landscaping and ecological mitigation, new public rights of way and cycleways including footbridges, SuDs and flood defences and utility constructions and diversions.

### **Approach to associated development**

- 3.19 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. The Secretary of State for Communities and Local Government (as was) has issued guidance on associated development<sup>1</sup> (the **AD Guidance**) which sets out its defining characteristics and illustrates the types of development that may qualify. Associated development must not be an aim in itself. In most cases, it is of a type normally brought forward with the primary development<sup>2</sup> and must be subordinate to and necessary for the effective operation of the NSIP, and may include measures necessary to mitigate the effects of the primary development. It should be of a proportionate scale to the primary development. Examples given in the AD Guidance include ash processing plants, energy storage, electricity networks, highway and rail route/junction improvements, and hard and soft landscaping<sup>3</sup>.

## **4. DESCRIPTION OF THE APPLICATION LAND**

### **The Application Land**

- 4.1 The Application Land represents the land and interests required for the Project. The key components of the Project and the Application Land are:

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<sup>1</sup> Planning Act 2008: associated development applications for major infrastructure projects (Published by Department for Communities and Local Government, April 2013)

<sup>2</sup> Guidance para. 5

<sup>3</sup> Guidance Annex B

#### 4.1.1 The ERF and Energy Park Land

- (a) The ERF which is to be constructed on the area of land north of Ferry Road West (B1216) which is to be the core of the Project. This area will also contain the CO<sub>2</sub> capture, ash and residue treatment, concrete block manufacturing, plastic recycling facility, visitor centre, hydrogen production and re-fuelling station (**Energy Park Land**).
- (b) The ERF will be capable of efficiently recovering energy stored within waste products. The ERF will have a capacity to convert up to 760,000 tonnes of waste per year, into electricity, with a maximum gross output of up to 95 MW. Energy is released through combustion of the waste. The heat released by the combustion process is utilised within a boiler to generate steam which is used to drive a steam turbine and electricity generator.
- (c) The main ERF building will house the following key components:
  - (i) tipping hall which will be situated at the southern end of the main building and will provide a reception area for incoming RDF;
  - (ii) bunker hall which will be situated within the main ERF building to the north of the tipping hall behind (to the south-west of) the administration building and north-east of the turbine hall. The bunker hall will be set into the ground with its floor 10m below finished floor level;
  - (iii) boiler hall which will be located immediately north of the bunker hall and will be the largest element of the ERF, no greater than 105 metres by 60 metres;
  - (iv) turbine hall will be located on the east side of the ERF and will measure no greater than 80 metres by 37 metres;
  - (v) flue gas treatment plant which will be housed within a flue gas treatment hall which will measure no greater than 41m by 60m;
  - (vi) stacks of which there will be a total of seven individual flues, contained within three separate stack windshields. The three ERF flues, which will be contained in a single stack windshield, will rise from the roof of the ERF and is proposed to be up to 120m in height<sup>4</sup>
  - (vii) district heating equipment which will be housed in a room to the north of the turbine hall and will include:

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<sup>4</sup> This is the maximum height from finished floor level

- (A) back-up boilers fired by either diesel or natural gas, complete with a dedicated stack windshield containing up to three flue pipes up to 53 metres<sup>5</sup> tall;
  - (B) shell and tube heat exchangers or air blast chillers;
  - (C) pumps to supply pressure for the district heating network;
  - (D) condensate pumps, used to return the condensed steam to the ERF steam cycle; and
  - (E) a water and condensate treatment system for the DHPWN circuit water.
- (viii) Switchyard and substation, the equipment for which will be split over two areas, one south of the ash hall and turbine hall, which contains the step-up transformers and equipment to supply the private wire network on site, and client and Distribution Network Operator (**DNO**) switchyards located northeast of the facility, close to the gas AGI;
  - (ix) water and condensate treatment facility which is to be located on the ground floor of the main ERF building;
  - (x) bottom ash hall which will be located to the east of the bunker hall and south of the turbine hall;
  - (xi) administration and control room offices which will be situated on the southern side of the ERF building;
  - (xii) exterior storage tanks for ammonia, diesel and fire water which will be situated west of the ERF building; and
  - (xiii) CCUS which will be located to the north and west of the main ERF building.

#### 4.1.2 Associated Development on the Energy Park Land

- (a) The residue handling and treatment facility (**RHTF**) will adjoin the ERF, and will be wholly contained in one building under negative pressure, comprising an ash maturation area, internal heaped storage areas for the storage of treated ash, silos for storage of cement, flue gas treatment residue facility (**FGTr**) and condensate residues, maintenance areas and a large (approximately 71 metres by 68 metres) area of hardstanding to allow safe vehicle access and egress, and movements between the facility and the concrete block manufacturing facility (**CMBF**).
- (b) The wet Incinerator Bottom Ash (IBA) will be transferred to the maturation building via conveyors. The IBA treatment area will

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<sup>5</sup> This is the maximum height from finished floor level

comprise covered bays for maturation of ash, and enclosed mechanical treatment building under negative pressure and storage bays for the aggregate product.

- (c) FGTr will be stored in the bulk storage area ready for transfer to and use in the concrete block manufacturing facility.
- (d) The CBMF is located to the south of the RHTF and receives up to 125,000 tonnes of treated IBA, FGTr and condensate residues per year.
- (e) The PRF will be constructed on land to the south and east of the residue handling and treatment facility and will have maximum dimensions of 130 metres by 80 metres and a maximum height of 25 metres<sup>6</sup>.
- (f) The Project will include two Hydrogen production facilities:
  - (i) The first facility will be located at the south of the Energy Park Land , adjacent to the Electric Vehicle (EV) and H<sub>2</sub> re-fuelling station. This facility will comprise a standalone building, housing Polymer Electrolyte Membranes (PEM) units, with additional ancillary equipment, including pumps, heat exchangers, fin-fan coolers, oxygen separators, buffer tanks, compressors, high pressure gas storage, gas AGI and pipework needed to feed H<sub>2</sub> to the distribution hub and PWN, outside of the electrolyser building.
  - (ii) The second H<sub>2</sub> production facility will be located to the north of the Energy Park Land, adjacent to the Gas AGI and will be of a similar design to the first, incorporating a standalone building housing an electrolyser and the additional ancillary buildings to incorporate the necessary ancillary equipment. However, at this location, the pipes will feed H<sub>2</sub> to the AGI for future distribution into the gas grid.
- (g) The EV and H<sub>2</sub> re-fuelling station will be located along the southern boundary of the Energy Park Land, adjoining the B1216 (Ferry Road West). This site will be made up of a hardstanding area with access roads, covering approximately 120 metres by 65 metres, with 13 electrical re-fuelling points for both domestic cars and light commercial vehicles and 5 HGV sized vehicle recharging bays. In addition, there will be a H<sub>2</sub> refuelling bay for buses and lorries.
- (h) The battery storage facility will have a storage capacity of 45MWh<sub>e</sub> and a peak discharge of 30MW and will be located to the east of the southern H<sub>2</sub> production facility. The battery storage facility will comprise an area of approximately 6,700m<sup>2</sup>.

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<sup>6</sup> This is the maximum height from finished floor level

- (i) The Project will include the construction of up to two (2) new gas above ground installations (**AGI**) which will facilitate the export of hydrogen to the gas grid at a point in the future when the concept has been validated. Each AGI would measure no more than 60 metres x 60 metres, with plant within each AGI no taller than 5 metres.<sup>7</sup>
  - (i) The ERF will utilise natural gas or heavy fuel oil for auxiliary firing. This provides flexibility depending on the market conditions of the fuel at any given time. The AGI will be located to the north of the Energy Park Land, on the east side of Flixborough Industrial Estate to the north of Stather Road; or
  - (ii) The second AGI if required, will be located to the south of the Energy Park Land, adjacent to the EV and H<sub>2</sub> re-fuelling station.
  - (iii) Future connection to the proposed East Coast Cluster dedicated hydrogen pipeline could be connected at either of the proposed AGI sites.
- (j) Road vehicle access to the Energy Park Land will be provided via a new purpose-built access road which will connect the Energy Park Land to the B1216 Ferry Road West and Stather Road. The new road will connect at a new roundabout located between the A1077 and Neap House Road. The new road will be approximately 1.3km long and will include a new 3-metre wide shared pedestrian/cycle footway along its route separated from the carriageway with a minimum 3 metre verge.
- (k) A gatehouse and associated weighbridges will control Heavy Goods Vehicles (HGVs) and other operational vehicles accessing the ERF and the RHTF. The Project will also include a visitor centre that will be located to the south of the gatehouse and the RHTF close to the main entrance to the site, lying to the west side of the new access road.
- (l) An elevated walkway will be constructed for both staff and the general public. General public visiting the facility will have access to the walkway controlled via the visitor centre and it will incorporate a canopy to provide rain shelter to those using it. From the visitor centre the elevated walkway will extend in two directions: north to access the RHTF, and following that the main ERF building; and to the east of the visitor centre spanning the access road to provide safe access to the PRF. The covered walkway will be approximately 700 metres in overall length, 4 metres wide, and will be elevated to no higher than 12 metres above finished floor levels. It is proposed to use the elevated walkway as a “living wall” to improve the visual impact and increase biodiversity gain.

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<sup>7</sup> This is the maximum height from finished floor level

#### 4.1.3 Northern DHPWN

- (a) The Northern DHPWN which is to be located along a route running from the ERF down to a new access road to the southern end of the Energy Park Land where the B1216 (Ferry Road West) meets the A1077 (Phoenix Parkway). The route follows the A1077 towards the east, passing the Skippingdale Retail Park on its south side and crossing the common land at Atkinsons Warren/Foxhills Plantation.
- (b) East of the common land, the route passes south of the Foxhills Industrial Park where the Northern DHPWN land incorporates rough grassland with hedges to the north of the A1077 and agricultural land and use of highways land.
- (c) There are two possible options for the route of the eastern most extent of the Northern DHPWN at this stage for the Examining Authority to consider. From the roundabout junction with the A1430 (Normanby Road), the route could take one of two routes:
  - (i) Option A- the route passes south towards the built-up urban centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas.
  - (ii) Option B – the route continues on the A1077 until the junction with Bessemer Way to the south. The route will follow Bessemer Way until the junction with Warren Road turning due west to meet Normanby Road.
- (d) Options A and B are shown on the Land Plans (**Document Reference 4.2**): Sheets 10A and 10B respectively.

#### 4.1.4 Southern DHPWN

- (a) The Southern DHPWN which is to be located along a route running from the southern end of the Energy Park Land where the B1216 (Ferry Road West) joins and A1077, and then heads south through the agricultural land on the west side of the A1077. It will pass under the Internal Drainage Board (**IDB**) drain north of the roundabout.
- (b) At Doncaster Road, the southern DHPWN will pass under the carriageway and continue south across the agricultural land, where it will pass under the Crowle to Scunthorpe railway line and terminate in the field to the north of the B1450 (Burringham Road).

#### 4.1.5 Railway

- (a) 6km of the currently disused privately owned and operated railway line between the main Network Rail line at Dragonby and the Wharf at Flixborough will be upgraded and re-instated. The line runs roughly east-west direction, weaving between the industrial settings of Normanby Industrial Estate, the mineral workings, industrial developments at Dragonby sidings, slag dumping zones, quarries,

and arable agricultural land, on a mix of embankments and cuttings that are lined with trees along much of the line length.

- (b) The line passes immediately to the north of the Normanby Enterprise Park before winding around a long 's' bend to the south of Flixborough village and looping around the northern edge of Flixborough Industrial Estate, where the line terminates at the wharf edge.
- (c) The Project will include for the provision of upgrades to the existing at grade infrastructure for the footpath (FLIX175) crossing to the southwest of Flixborough and re-establishment of the footpath (FLIX178) crossing to the southeast of Flixborough through the provision of a pedestrian bridge.
- (d) There is evidence that the branch line is currently used as an informal recreational walking route without consent. In order to provide the continued amenity access along the route of the branch line, the Applicant has included land within the Order Limits that it is seeking to acquire on a permanent basis in order to provide a footpath link from footpath FLIX178 along the southern side of the branch line to join the open access land. This would ensure the ongoing connectivity between the existing Public Rights of Way and would provide an enhancement of benefit to the public.

4.1.6 Habitat creation and other green infrastructure which is to be provided to the East and North-East of the Energy Park Land.

4.1.7 New public access and rights of way which will be provided adjacent to the existing public highway and across agricultural land to the south of Flixborough Industrial Estate. In addition, three new pedestrian access routes will be created across the Energy Park Land. All of these public access routes are intended to be enhanced to act as ecological corridors, incorporating structural planting to provide visual screening.

4.1.8 Sustainable drainage and flood defences will be provided on land to the south and east of the Energy Park Land, as well as on First Avenue where a flood wall will wrap around the west of Flixborough Industrial Estate. In addition, a flood embankment will be constructed to protect Park Ings Farm (the existing poultry farm) located to the north of Skippingdale Retail Park and a further flood bund to the west of the refuelling area will be constructed prevent flooding onto adjacent land; and

4.1.9 Highway works, associated access tracks, temporary site compounds and mobilisation areas.

4.2 The Application Land comprises 2,629,051m<sup>2</sup> or 262.905 hectares (2.629km<sup>2</sup>) including the DHPWN, the railway and the new PROW and wetlands area.

## **Ownership of the Application Land**

- 4.3 The Book of Reference (**Document Reference 3.1**) identifies those persons with an interest in the Application Land. Land is held by a number of individuals, corporations and companies. For all plots the Applicant has sought to obtain details of the relevant interests in land through diligent enquiry and served notices under section 42 of the Planning Act 2008 on owners, lessees, tenants and occupiers as well as those holders of rights over land it has identified.
- 4.4 Where the owner of interests in land or beneficiary of rights has not yet been ascertained after diligent enquiry, the Applicant will continue to seek details of the relevant party through ongoing discussions with neighbouring landowners and as part of the option agreements being negotiated with principal landowners.
- 4.5 All known principal owners of the Application Land have been approached and engaged in dialogue to ascertain if they would be willing to reach agreement with the Applicant for the use of their land by way of freehold acquisition; in addition the relevant landowners have been contacted in relation to the negotiation of easements for the construction and maintenance of the Northern DHPWN and the Southern DHPWN; and a combination of easements and temporary possession of land for temporary construction compounds and working areas.

## **5. LEGISLATIVE BACKGROUND AND POLICY SUPPORT FOR THE PROJECT**

- 5.1 The overarching aim of the Project is to support the UK's transition to a low carbon economy as outlined in the Sixth Carbon Budget (December 2020), the national Ten Point Plan for a Green Industrial Revolution (November 2020) and the North Lincolnshire prospectus for a Green Future. The national, regional and local planning policy and guidance relevant to the Project as well as an overview of the legislative framework are set out fully in the Planning Statement (**Document Reference 5.1**) and are summarised below.

### **International Framework**

- 5.2 International agreement regarding action on climate change was reached through the Kyoto Protocol to the United Nations Framework Convention on Climate Change. This agreement set binding targets for the reduction of greenhouse gas emissions over the period 2008 to 2012.
- 5.3 Within Europe, Directive 2001/77/EC on "the promotion of electricity produced from renewable energy sources in the internal electricity market" sets out the need to promote renewable energy sources in order to meet Kyoto targets. This Directive committed Member States to national targets for consumption of energy from renewable sources. The UK target was 10% of electricity to be produced from renewable sources by 2010.
- 5.4 European Directive 2009/28/EC on "the promotion and use of energy from renewable sources" (the **Renewable Energy Directive**) has amended and repealed earlier European Directives on renewable energy. Article 3 and Annex 1 set mandatory targets for the share of energy to be obtained from renewable sources for each European Member State. The UK's target is to equal or exceed

15% of gross final consumption of energy from renewable sources by 2020. To achieve this, UK Government policy since 2009 has been to achieve 30% of electricity generation from renewable sources by 2020<sup>8</sup>.

- 5.5 Article 4 of the Renewable Energy Directive requires Member States to produce national renewable energy action plans, setting out national targets for key sectors, including heating and cooling, transport and electricity, and measures to achieve these targets.
- 5.6 Following the United Kingdom's withdrawal from the European Union and the end of the transition period, EU law that existed at 11pm on 31 December 2020 was transposed into UK law through the European Union (Withdrawal) Act 2018.

## **UK Framework**

### **The Climate Change Act 2008**

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

### **UK Renewable Energy Policy**

- 5.8 In December 2011, the Government published its Carbon Plan<sup>9</sup>, which sets out the policies for meeting the commitment for an 80% reduction in greenhouse gas emissions made under the Climate Change Act 2008. The document also describes the measures proposed to meet the first four carbon budgets (from 2008 to 2027). The Carbon Plan states that:

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

- 5.9 The Department for Business, Energy and Industrial Strategy published the Clean Growth Strategy<sup>10</sup> in 2017 which sets out the government's policy and strategy on decarbonisation. This stated that:

*"The UK waste sector has become an important contributor to electricity generation. Waste helped to generate 14 per cent of UK renewable electricity in 2015, enough to power 2.3 million homes."<sup>11</sup>*

- 5.10 In the Clean Growth Strategy, the government states that their aim is that "the UK to become a world leader in terms of competitiveness, resource productivity and resource efficiency: maximising the value we extract from our resources, and minimising the negative environmental and carbon impacts associated with their

<sup>8</sup> DCLG (2010) Consultation Paper on a New Planning Policy Statement: Planning for a Natural and Healthy Environment; DCLG (2010) Planning Policy Statement 5: Planning for the Historic Environment.

<sup>9</sup> DECC (2011) *The Carbon Plan: Delivering Our Low Carbon Future*

<sup>10</sup> Department for Business, Energy and Industrial Strategy: *The Clean Growth Strategy: Leading the way to a low carbon future*

<sup>11</sup> BEIS (2017) Energy Trends: Renewables

extraction, use and disposal. We will work toward achieving zero avoidable waste by 2050.<sup>12</sup>" The government suggests that one of the ways they intend to become a zero avoidable waste economy by 2050 is:

*"by working in partnerships with businesses achieve even greater levels of recycling, improve the utilisation of our food and biowaste and incentivise activities such as reuse, repair and remanufacturing – protecting our environment and strengthening our economy in the long-term."<sup>13</sup>*

- 5.11 In the Clean Growth Strategy, the Government committed to publishing a Resources and Waste strategy<sup>14</sup>.
- 5.12 In November 2020, a Ten Point Plan for a Green Industrial Revolution was published by the Government. In this Plan, the Government details policies and commitments towards achieving the goal of reaching net zero by 2050.

### **National Waste Planning Policy**

- 5.13 At a national level, waste planning policy is driven by the 25-year Environment Plan which sets out government's long-term policy for improving the environment. The Environment Plan includes commitments to double resource productivity by 2050, reuse materials and to minimise and manage waste to reduce their impact on the environment.
- 5.14 The Resources and Waste Strategy (Our Waste Our Resources, A Strategy for England, 2018) builds on the waste objectives of the Environment Plan and sets out how the UK Government intend to preserve resources by minimising waste, promoting resource efficiency and moving towards a circular economy. The Resources and Waste Strategy informs both the Waste Prevention Programme for England and the Waste Management Plan for England. The Waste Prevention Programme for England articulates the actions for government and for others which will result in reduced waste arisings and increased resource efficiency. The Waste Management Plan for England provides an overview of waste management in order to fulfil the requirements of the Waste (England and Wales) Regulations 2011.
- 5.15 The Planning Statement includes more detail on the relevant waste legislation for the Project, but this can be summarised as follows:
  - 5.15.1 Waste Framework Directive 2008/98/EC
  - 5.15.2 The Waste (England and Wales) Regulations 2011
  - 5.15.3 Hazardous Waste (England and Wales) Regulations 2005 (as amended)

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<sup>12</sup> Department for Business, Energy and Industrial Strategy: The Clean Growth Strategy: Leading the way to a low carbon future (page 103)

<sup>13</sup> Department for Business, Energy and Industrial Strategy: The Clean Growth Strategy: Leading the way to a low carbon future (page 108)

<sup>14</sup> Department for Business, Energy and Industrial Strategy: The Clean Growth Strategy: Leading the way to a low carbon future (page 108)

- 5.15.4 Waste Management Duty of Care Regulations (pursuant to Section 34 of the Environmental Protection Act 1990)
  - 5.15.5 “Our Waste Our Resources”, A Strategy for England, 2018
  - 5.15.6 Waste Management Plan for England (2021)
  - 5.15.7 National Planning Policy for Waste (2014)
  - 5.15.8 National Planning Policy Framework (NPPF) and (PPG 2015 Onwards)
  - 5.15.9 Government Review of Waste Policy in England (2011)
  - 5.15.10 Waste Prevention Programme for England
  - 5.15.11 Department for Environment, Food and Rural Affairs (DEFRA) Guidance on Waste Hierarchy
- 5.16 At a local level the waste management strategy is driven by the Waste Management Strategy for Lincolnshire that was adopted in January 2019 as a regional strategy by Lincolnshire County Council and provides a Joint Municipal Waste Management Strategy (JMWMS) for the region.

### **Planning Act 2008**

- 5.17 The 2008 Act introduced a new planning system in England and Wales for NSIPs. The new consenting regime for major infrastructure under which a development consent order may be granted to permit NSIPs to be carried out and which, if granted, may incorporate a number of other consents from different consenting regimes. A key element is the designation of a series of National Planning Statements (**NPSs**) setting out national policy in relation to specified descriptions of development which shall be taken into account by the Secretary of State for Energy and Climate Change in their consideration of the development consent applications.
- 5.18 The three NPSs of relevance to the Project are NPS Overarching Energy (EN-1) and NPS Renewable Energy Infrastructure (EN-3) which, amongst other matters, identify the construction of generating stations in excess of 50MWe as NSIPs, and NPS Electricity Networks (EN-5) which covers the electrical infrastructure in connection with EN-1.
- 5.19 The policy context for the development of nationally significant energy infrastructure is outlined in Part 2 of EN-1. EN-1 notes that *“energy is vital to economic prosperity and social wellbeing and so it is important to ensure that the UK has secure and affordable energy”*.
- 5.20 Paragraphs 3.1.3 and 3.1.4 of NPS EN-1 advise that the decision maker:
- “should... assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the*

*scale and urgency of that need is as described for each of them in this (NPS)"*  
and;

*"should therefore give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008."*

### **Electricity Act 1989 – Schedule 9**

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

### **The Project**

- 5.22 The Project directly responds to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's statement of national policy in NPS EN-1, EN-3 and EN-5. The proposed development would make a significant contribution towards the achievement of the Government's renewable energy targets.

## **6. COMPULSORY ACQUISITION POWERS AND GUIDANCE**

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

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

- 6.2 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising compulsory acquisition of land (which may include rights in land), only if the decision maker in respect of the Application is satisfied that:

- 6.2.1 The land is required for the development;
- 6.2.2 The land is required to facilitate or is incidental to the development; or

- 6.2.3 The land is replacement land for commons, open spaces, etc (section 122(2)).
- 6.3 Section 122(3) states it is also necessary for the decision-maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order.
- 6.4 The Guidance makes it clear in respect of the section 122(2) condition that the decision maker must be in no doubt as to the purposes for which any land is to be compulsorily acquired. The Guidance requires:
- 6.4.1 In the case of land required for a project to which the development consent relates, the promoter must be able to demonstrate that the land is needed and the decision maker must be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development; and
- 6.4.2 In the case of land required to facilitate or land incidental to the proposed development, the land to be taken should be no more than is reasonably necessary for the facilitating or incidental purpose and must be proportionate.
- 6.5 For the section 122(3) condition the decision maker must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. The public benefits derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is proposed to be acquired.
- 6.6 The Applicant submits that this Statement, and the documents provided with the Application, show that the Applicant has a clear need for the powers of compulsory acquisition it seeks and has a clear purpose in its proposed acquisition powers. The Works Plans (**Document Reference 4.4**) and description of the authorised development in the Order demonstrate that the Applicant has a clear idea of what the relevant Application Lands are required for; and that the acquisitions proposed are required for the Project to be constructed and used for the purpose of supporting the conversion of non-recyclable waste into 95 MWe of electricity. The Project is in the public interest as demonstrated by the level of national policy support described in Section 5.
- 6.7 The Applicant has conducted searches and enquiries with the Land Registry in respect of ownership of land, franchises and rights; conducted numerous site visits; made enquiries of agents and surveyors acting for those owners known to the Applicant; completed searches with the local and highways authorities; and met with the landowners and occupiers in the process of negotiation and through public consultation. In respect of companies in the Book of Reference (**Document Reference 3.1**), the Applicant has regularly searched for registered details at Companies House up to the date of the Application. The Applicant has benefited from direct contact with agents and surveyors acting on behalf of the owners.

- 6.8 There are also a number of plots identified in the Book of Reference where it has not been possible to identify ownership. The statement "Unknown" is given in the Book of Reference when diligent inquiry has been exhausted and it has still not been possible to provide conclusive details. In these instances, where possible a site notice has been erected in the vicinity of the parcel to allow any interested parties to make contact with the project team. Neighbouring landowners have been contacted and other desktop searches have been conducted to determine the relevant interests.
- 6.9 The Guidance provides a number of general considerations that the promoter must demonstrate to the satisfaction of the decision maker:
- 6.9.1 All reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;
  - 6.9.2 The proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
  - 6.9.3 The promoter has a clear idea of how it intends to use the land which it is proposing to acquire;
  - 6.9.4 There is a reasonable prospect of the requisite funds becoming available;
  - 6.9.5 The compulsory purchase of land meets the two conditions in section 122 and is therefore justified in the public interest at that time;
  - 6.9.6 The purposes for which an order authorises the compulsory acquisition of land are legitimate and sufficiently justify interfering with the human rights of those with an interest in the land affected.

## **7. JUSTIFICATION FOR THE USE OF POWERS OF COMPULSORY ACQUISITION**

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

### **Requirement for the Application Land (sections 122(2) and 122(3))**

- 7.2 All of the Application Land, shown on the Land Plan and described in the Book of Reference, is required either for the purposes of the Project, or to facilitate the same, or for purposes incidental thereto.
- 7.3 The exercise of powers under Article 31 (*Temporary use of land for carrying out the authorised project*) to gain possession of the land for construction and the use of the vesting process or notices to treat/notices of entry to acquire permanent rights will be completed within a seven-year time period (Article 24 (*Time limit for exercise of authority to acquire land compulsorily*)).

- 7.4 The Applicant's justification for the inclusion of a seven-year period for exercising compulsory acquisition rights is that the construction phasing for the Project is intended to take place over a period of six years. This approach has been taken on the basis of the complexity and scale of the Project, as a result of which it is intended that the Project be delivered in six phases over those six years. As the Project is proposed to be carried out in phases, the Applicant needs to ensure that it has sufficient rights and interests in the land required for each deliverable phase of the Project. If the seven-year period were not included in the Order then the Applicant may need to acquire land or rights over a greater area than may be ultimately needed in order to ensure that there is sufficient land for the later phases to be delivered. Whilst there is an imperative for the Applicant to deliver its Project it is also necessary to do this in a cost-efficient way and having regard to the Guidance.
- 7.5 This is especially the case in relation to the DHPWN, which save for the section that is to be constructed within the Energy Park Land, is not intended to be constructed until the later phases of the Project, because end users need to be identified in advance of its construction. The Applicant does not wish to be in a position where it is forced to acquire rights in the land required for the DHPWN without having commitments from end users for the DHPWN.
- 7.6 The Applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of access, repair and maintenance) and temporary rights.

#### **NATURE OF LAND INTERESTS SOUGHT**

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

##### **Freehold title**

- 7.8 The Applicant seeks freehold title where permanent control of the land is required by the Applicant or the interference with the interests of the existing owners is such that acquisition of a lesser interest in land would not be appropriate. This applies in relation to the Energy Park Land, the Railway Reinstatement Land (excluding the land in the ownership of Network Rail) and permanent landscaping and ecological mitigation areas.

##### **Permanent Rights**

- 7.9 The Applicant is also seeking the acquisition of permanent rights over parts of the Application Land to ensure ongoing rights of access, repair and maintenance. This relates mostly to the works required for the construction, operation and maintenance of the Northern DHPWN, the Southern DHPWN and other associated development. These rights are set out in more detail in Schedule 10 of the Order:

##### **Full cable rights - permanent rights to construct, install pipes, cables, fibre optic cables and ducts and to retain, maintain and repair the same**

- 7.9.1 Permanent new rights are sought to permit the Applicant to enter onto and remain on the land for the purposes of construction, installation,

operation, maintenance and decommissioning of the authorised project. Full details of the rights sought are contained in Schedule 10 of the Order.

- 7.9.2 It is anticipated that the process to secure permanent rights compulsorily will commence only after temporary possession has first been taken of the surface and subsoil of the relevant Application Land, and construction of the relevant part of the authorised Project is complete.
- 7.9.3 Rights are sought in relation to Plots 1/4, 1/5, 1/9, 1/10, 2/1, 2/2, 2/4, 2/9, 2/14, 3/3, 3/9, 3/11, 3/12, 3/13, 3/14, 3/19, 3/20, 3/21, 3/26, 4/1, 4/18, 4/21, 4/22, 4/23, 4/106, 5/28, 5/31, 5/32, 5/33, 5/57, 5/58, 5/60, 5/62, 9/1, 9/4, 9/8, 9/11, 9/12, 9/14, 9/19, 9/20, 9/22, 9/23, 9/24, 9/25, 9/27, 9/28, 9/32, 9/35, 9/37, 10/35, 10/51, 10/53, 10/56, 10/57, 10/60, and 10/62.
- 7.9.4 Rights will also be sought over Plots 10/11, 10/19, 10/20, 10/21, 10/22 and 10/29, in the event that Option B is chosen for the Northern DHPWN.
- 7.9.5 A restrictive covenant will be sought over the above plots for the benefit of the remainder of the Applicant Land in order to prevent any buildings, hard surfacing, excavation, planting, or anything else being carried out on the land that interferes with the exercise of other rights sought for the Project.

### **Permanent rights of access**

- 7.9.6 For some plots pipe, cable ducting and fibre optic cables installation will not be required (as the pipes, cables and ducts will not need to be installed in these plots) but a right to access the route is necessary. This will be along existing routes where possible but will also require the creation of new routes where no existing infrastructure is currently laid. The Applicant has taken account of the location of existing farm gates and entrances, as well as highway infrastructure, to select entry points for the pipe, cable ducting and fibre optic cables route easement from the public highway. There are some points where temporary tracks are required to facilitate cable pulling. Whilst the track will be temporary in duration, the right of access sought is a permanent right over land to allow the Applicant or its successors to use the same route for occasional maintenance during the Project's operational period, as well as to secure a route for decommissioning activities. This includes both the right to improve existing access routes and to lay down hard standing.
- 7.9.7 Other than these rights of access, there will be limited interference with the surface of the Application Land along the Northern DHPWN and the Southern DHPWN routes during operation.

- 7.9.8 Rights of access will be sought over Plots 1/1, 1/2, 1/3, 1/11, 1/12, 1/13, 1/14, 2/12, 2/13, 2/15, 2/16, 2/17, 2/18, 3/3, 3/4, 3/5, 3/6, 3/7, 3/8, 3/17, 3/18, 3/22, 3/25, 4/33, 4/81, 6/2, 8/4, 8/5, 8/6, 8/7, 8/8. Permanent vehicular rights will also be sought over an existing public right of way for plots 5/66, 5/67.

### **Cable rights in highways**

- 7.9.9 For some sections of the Northern and Southern DHPWN, the installation of the pipe, cable ducting and fibre optic cables will take place within land that falls within highway. The Applicant will be seeking to use its rights under Articles 11 and 30 of the Order in order to carry out the installation of works within the highway.
- 7.9.10 Rights are sought over Plots 1/7, 1/8, 2/3, 4/2, 4/3, 4/6, 4/7, 4/13, 4/14, 4/16, 4/17, 4/19, 4/25, 4/27, 4/38, 4/39, 4/107, 4/108, 5/59, 5/61, 9/5, 9/18, 9/26, 9/29, 9/31, 10/7, 10/12, 10/13, 10/18, 10/37, 10/38, 10/50, 10/54, 10/61, 10/64, 10/73, 10/75, 10/76, 10/79, 10/80.
- 7.9.11 Depending on the option that is chosen in relation to the Northern DHPWN, rights will be sought in the following plots:
- (a) Option A - 10/1, 10/2, 10/3, 10/4, 10/5, 10/6, 10/10; or
  - (b) Option B - 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/30, 10/31, 10/32, 10/34.

### **Major Crossings**

- 7.9.12 A special category of rights are sought over major crossings (railway or highway) where the DHPWN interacts with these sections of infrastructure. This is in relation to Plots 2/6, 2/7, 3/23 and 3/24.

### **Highway Works**

- 7.9.13 Rights are sought over existing highway that is in the ownership of the North Lincolnshire Council (as highway authority), in order to carry out works required to improve the local highway network and to integrate the new access road into the local highway network (Work No. 5).
- 7.9.14 These rights are sought in Plots 4/2, 4/3, 4/4, 4/5, 4/6, 4/7, 4/8, 4/13, 4/21, 4/22, 4/23, 4/25, 4/27, 4/98, 4/105, 4/106, 4/107, 4/108, 5/23, 5/24, 5/25, 5/26, 5/27, 5/29, 5/30, 5/36, 5/37, 5/55, 5/58, 5/60 and 5/62.

### **Utility Works**

- 7.9.15 Works to divert existing utilities and for the construction, installation and maintenance of new utility apparatus are required in relation to Work No. 14.

- 7.9.16 These rights are sought over Plots 4/2, 4/3, 4/6, 4/7, 4/13, 4/14, 4/16, 4/17, 4/18, 4/19, 4/21, 4/22, 4/23, 4/25, 4/26, 4/27, 4/38, 4/39, 4/106, 4/107, 4/180, 5/23, 5/24, 5/25, 5/26, 5/27, 5/29, 5/30, 5/31, 5/32, 5/33, 5/36, 4/37, 5/55, 5/56, 5/57, 5/58, 5/59, 5/60, 5/61, 5/62, 5/64, 5/65, 5/68, 5/69 and 5/82.
- 7.9.17 A restrictive covenant will be sought over the above plots to protect the apparatus from excavation.

### **Drainage Rights**

- 7.9.18 Rights are sought to construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts, and drain on, in and/or through the relevant land to and from adjoining land.
- 7.9.19 These rights are sought in relation to Plots 4/34, 4/41, 4/42, 4/43, 4/44, 4/76, 4/81, 4/82, 4/87, 4/88, 4/95, 5/7, 5/8, 5/19, 5/90, 6/1, 6/2, 6/3, 6/5, 6/11, 6/12, 6/13 and 6/83.
- 7.9.20 A restrictive covenant will also be sought over the land to prevent anything being done that may interfere with the right to drain.

### **Landscaping Works**

- 7.9.21 Rights are sought for the access to carry out landscaping works and maintenance in relation to Work Nos. 12 and 12A in relation to Plots 5/76, 5/89 and 6/34. In particular the Applicant seeks the right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of landscaping works.
- 7.9.22 A restrictive covenant will also be sought over the above land to prevent any works that might interfere with access to the landscaping works, or to prevent anything being done that may render the Project in breach of any statute or regulation.

### **Railway Works**

- 7.9.23 Rights are sought by the Applicant in relation to the Railway Reinstatement Works in relation to Plots 8/1, 8/2, 8/3, 8/5 and 8/9.
- 7.9.24 In particular, the Applicant seeks rights to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:
- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove railway works and associated infrastructure;

- (b) retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of railway works.

### **Approach to Restrictive Covenants over land where rights are sought**

- 7.9.25 Restrictive covenants are sought for the lands that will have the pipes, cables, fibre optic cables and ducts installed, to protect apparatus from becoming exposed or damaged, or built over. This is necessary over the Northern DHPWN and Southern DHPWN to ensure apparatus is not damaged by construction or excavation works or made materially more difficult to access in case of emergency or routine works to the pipes, cables, fibre optic cables and ducts being necessary.
- 7.9.26 Furthermore, a restrictive covenant will be sought over the land that will be required for landscaping. This is to ensure that access can be maintained for the ongoing landscaping maintenance, and to ensure that no works can be carried out on the landscaping areas that would result in the Applicant being in breach of the Order. In addition, restrictive covenants are sought over land that is subject to drainage rights, to ensure that the right to drain remains unimpeded. Similarly a restrictive covenant is proposed to ensure that plots subject to utility works cannot be excavated.
- 7.9.27 It is submitted that this is a justifiable use of compulsory acquisition powers to protect the NSIP Project and to give the Applicant and its successors the comfort that the Works are appropriately protected and the transmission of energy and electricity will not be interrupted .
- 7.9.28 Restrictive covenants are not sought over areas that are owned or used by statutory undertakers or highway lands.

### **Temporary possession**

- 7.9.29 Powers of temporary possession of land are sought for two purposes. In land where activities will only be carried out during construction, or where construction plant, equipment and other apparatus will need to be laid down but no pipes, cables fibre optic cables and ducts or other apparatus are proposed to be installed, the draft Order permits the Applicant to take possession of this land temporarily, without the requirement to exercise permanent powers of compulsory acquisition.
- 7.9.30 Schedule 12 of the Order lists the plots scheduled for temporary possession only.
- 7.9.31 A second use of temporary powers is to allow construction activities on the land where pipes, cables, fibre optic cables and ducts are to be installed, prior to any permanent rights to retain, operate, and maintain

those pipes, cables, fibre optic cables and ducts being acquired compulsorily (or by agreement). The purpose of this second use is to allow the Applicant to complete the pipe, cable, fibre optic cables and duct installation works, including any micro-siting of apparatus within the land, before committing to acquiring permanent rights. This is intended to reduce the amount of land affected by permanent rights, and accordingly reduce the impact on landowners.

## **JUSTIFICATION FOR POWERS SOUGHT**

7.10 The nature of the Project is as follows:

### **Energy Park Land (Works Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, and 9, Work Nos. 12 and 13, and Work No. 15)**

- 7.10.1 The Energy Park Land is located north of Ferry Road West (B1216) and the A1077, and south of the Flixborough Industrial Estate. The Energy Park Land is bordered on the west by the River Trent and to the east, by the Skippingdale Retail Park.
- 7.10.2 Permanent freehold acquisition of all of the pink Plots on Sheets 4 and 5 of the Land Plans (**Document Reference 4.2**) within the Energy Park Land is sought for the construction, operation and maintenance of the main NSIP together with the associated development included within the Project (Work Nos. 1, 1A, 1B, 1C, 1D, 2 and 6 – 9). These works will primarily be carried out on the Energy Park Land. In addition the Energy Park Land will include habitat creation, together with hard and soft landscaping and the construction of landscape features (Work No. 12) as well as the provision of flood defence bunds and sustainable drainage systems, including swales, attenuation ponds and below ground tanks, and the diversion of ditches (Work No. 13). Parts of the Energy Park Land will also be used as laydown areas to allow for the storage of materials and prefabrication activities in connection with the Project (Work No. 15). In accordance with the phasing of the construction of the Project, these plots will then be used for permanent works under part of Work Nos. 1, and 2, and Work No. 12.
- 7.10.3 A small section of Plot 5-20 (adjacent to Plot 5-54 and running eastern towards Plot 5-55) is required on a permanent freehold basis for flood defences (Work No 13).
- 7.10.4 The Applicant considers that the freehold acquisition of the Energy Park Land is justified on the basis that all permanent works forming the NSIP and the majority of the associated development will be located on the Energy Park Land and is required for the Project.

## Railway Reinstatement (Work Nos. 3 and 4)

- 7.10.5 The Railway Reinstatement works will be carried out on a linear route between the main Network Rail line at Dragonby and the Wharf at Flixborough.
- 7.10.6 The line runs in a roughly east-west direction, weaving between the industrial settings of Normanby Industrial Estate, the mineral workings, industrial developments at Dragonby sidings, slag dumping zones, quarries, and arable agricultural land, on a mix of embankments and cuttings that are lined with trees along much of the line length.
- 7.10.7 The line passes immediately to the north of the Normanby Enterprise Park before winding around a long 's' bend to the south of Flixborough village and looping around the northern edge of Flixborough Industrial Estate, where the line terminates at the wharf edge.
- 7.10.8 The area of land required for permanent freehold acquisition for the Railway Reinstatement works has been significantly reduced as a result of better understanding of construction requirements, which is particularly so in relation to the agricultural land to the north and south of Hopeton Street, adjacent to Dragonby Sidings.
- 7.10.9 Permanent freehold acquisition of Plots (or part of Plots) 4-73, 4-77, 4-78, 5-4, 5-5, 5-6, 5-9, 5-13, 5-14, 5-15, 5-16, 5-20, 5-34, 5-71, 5-73, 5-74, 5-75, 5-78, 5-81, 6-17, 6-24, 6-33, 6-38, 6-41, 6-49, 6-54, 6-62, 6-63, 6-65, 6-82, 7-1, 7-2, 7-3, 7-5, 7-7, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, and 8-16 for the provision of the Railway Reinstatement works and for the ongoing operation and use of the same land as part of the Project.
- 7.10.10 New rights only are sought over Plots 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8 and 8-9. In relation to Plots 8-1, 8-2, 8-3, 8-5 and 8-9 rights to enter onto the land for the purposes of construction, installation, maintenance and decommissioning of the Project and to carry out the Railway Reinstatement works, including operating and maintaining signalling infrastructure, are sought for the ongoing operation and maintenance of the railway. Rights of access are required over Plots 8-4, 8-6, 8-7, 8-8.
- 7.10.11 Network Rail Infrastructure Limited (**Network Rail**) is the freehold owner of Plots 2-6 and 8-3. Discussions have been held with Network Rail and the Applicant has made it clear to Network Rail that no compulsory acquisition of Network Rail freehold land is required or sought, but the Applicant is seeking rights in land owned by Network Rail. The Applicant anticipates that it will be required to enter into a form of asset protection agreement with Network Rail and that protective provisions will be required.

## Northern and Southern DHPWN (Work Nos. 10 and 11)

### 7.10.12 Northern and Southern DHPWN routes

- (a) The district heating network element of the DHPWN (Work No. 11) commences within Plot 1-10, approximately 675 metres from the junction of the M181 and the B1450 (as the crow flies). Work No 11 consists of the works required to install the pipes, cables, fibre optic cables and ducts between the above location and the roundabout connecting the A1077 to Normanby Road (Plots 10-37, 10-38 and 10-50).

The works include the provision of soil storage, fencing and temporary bridges where necessary, temporary construction compounds and access routes to the DHPWN routes, and other activities to facilitate construction.

- (b) From Plot 1-10 the district heating network continues north, running adjacent to the M181. The route goes around the western edge of the Nuddock Wood Lakes and continues north across Brumby Common Lane. The district heating network continues north still, crossing the western unconnected arm of the roundabout that joins the M181 and A1077.
- (c) Approximately 90 metres south of the bridge crossing the A1077, the private wire network of the DHPWN starts (Plot 2-1) (Work No. 10).
- (d) From this point, Work Nos. 10 and 11 continue along the same route. The DHPWN route continues north, crossing the railway line between Scunthorpe and Althorp (Plot 2-6). At Plot 2-6 rights are sought to install, retain, maintain, repair and replace the pipes, cables, fibre optic cables and potential ducts for the DHPWN.
- (e) The DHPWN route continues further north, crossing the A18 at the western arm of the roundabout connecting the A18 and A1077 (at Plot 3-8), and then continues to run adjacent to the A1077 along the north easterly curve of the road. At the roundabout connecting the A1077 with Holyrood Drive and Luneburg Way, the DHPWN crosses the northern arm of the roundabout (Holyrood Drive) (Plot 4-38). The DHPWN route continues in an easterly direction within the highway boundary of the A1077. The route follows the highway boundary around the roundabout (excluding the centre point) that connects to Phoenix Avenue (Plot 9-31) and ends at the roundabout connecting the A1077 with Normanby Road (Plots 10-37, 10-38 and 10-50).
- (f) Depending on the Option chosen by the Applicant (or if an Option is chosen by the Secretary of State), the DHPWN will continue onto either Option A or Option B as follows:

- (i) Option A of the district heating network continues South along Normanby Road before turning East along Warren Road. Option A ends at Plots 10-7 and 10-8 (Sheet 10A of the Land Plans (**Document Reference 4.2**)), at the junction between Warren Road and Bessemer Way.
- (ii) Option B of the district heating network continues East along the A1077 from the roundabout connecting A1077 to Normanby Road, before heading South along Bessemer Way, and then heading further West along Warren Road, the Western end of Plot 10-7 (Sheet 10B of the Land Plans (**Document Reference 4.2**)).

### 7.10.13 Powers sought for the Northern and South DHPWN

- (a) Powers to enter land within an area of land to be used with a maximum width of 10 metres will be sought and to install, retain, maintain, repair and replace the pipes, cables, fibre optic cables and potential ducts at Work Nos. 10 and 11. The width of the DHPWN routes reflects the width of the works to install the pipes, cables, fibre optic cables and trenching, together with working room, required for the Project. The maximum width includes areas for working room, as well as the trenches.
- (b) The width of the easement corridor that will be permanently required for access and maintenance (including areas where restrictive covenants will apply) post-construction is 10 metres, save where construction processes or other reasons necessitate a wider permanent easement being required.
- (c) Acquisition of rights for the provision of the permanent DHPWN routes is justified on the basis that all the apparatus required for the Project would be laid within the permanent Northern DHPWN and Southern DHPWN. The Applicant's proposals to acquire rights in Plots (or part of Plots) 1-1 to 1-5, 1-7 to 1-14, 2-1 to 2-4, 2-6, 2-7, 2-9, 3-3 to 3-9, 3-11 to 3-14, 3-17 to 3-20, 4-1, 4-3, 4-13, 4-14, 4-16, 4-17, 4-18, 4-19, 4-22, 4-25, 4-27, 4-38, 4-39, and all of the Plots coloured blue on Sheets 9, 10 and either Sheets 10A or 10B (depending on the Option chosen for the Northern DHPWN) of the Land Plans (**Document Reference 4.2**) for the purpose of carrying out Work Nos. 10 and 11 demonstrate that the Applicant is seeking to acquire compulsorily only the minimum interests and extent of land within the Application Land as is required for carrying out the Project.
- (d) Options A and B are shown on the Land Plans (**Document Reference 4.2**): Sheets 10A and 10B respectively. Depending on the Option chosen by the Applicant (or if an Option is chosen by the Secretary of State), the Applicant would only seek to acquire the rights in land required for the chosen Option, as are split out on Land Plans 10A and 10B respectively.

- (e) Overall, the 10 metre maximum working width of the Northern DHPWN and Southern DHPWN during construction, with a 10 metre width being required permanently for the majority of the Northern DHPWN and Southern DHPWN, represents a clear, justifiable, proportionate and reasonable approach to compulsory acquisition whilst allowing for the delivery of the Project in a timely manner.
- (f) It is proposed that temporary possession of Plots (or part of Plots) 1-6, 2-5, 2-8, 2-10, 2-11, 3-1, 3-2, 3-10, 3-15, 3-16, 4-72, 5-1, 5-10, 5-54, 9-3, 9-6, 9-7, 9-9, 9-10, 9-13, 9-15, 9-17, 9-33, 9-34, 9-36, 9-40, 9-41, 9-42, 9-43, 9-44, 9-45, 10-8, 10-9, 10-14, 10-15, 10-41, 10-45, 10-46, 10-47, 10-52, 10-55, 10-58, 10-59, 10-63, 10-65, 10-66, 10-67, 10-71, and 10-72, will be taken as part of the construction of Work Nos. 10 and 11. These plots will be used as temporary laydown areas (Work No. 15) as well as working room area for proposed horizontal directional drilling (**HDD**) works for the installation of the DHPWN.
- (g) In the event that Option B of the Northern DHPWN is chosen, temporary possession of Plot 10-74 will also be required.

### **Minor crossings over publicly maintained highway**

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

### **Access rights**

7.10.15 Permanent new rights are sought to provide a large number of accesses into the cable easement through adjacent field boundaries. These will permit access to the Northern DHPWN and Southern DHPWN easement for the undertaker during the operational phase through existing gates and entrances from the publicly maintained highway, rather than having to create new entrances along the easement strip itself. By acquiring rights rather than freehold over these accesses, the land will remain in the ownership of the landowners and within their control except to the extent that access is required for the Project.

7.10.16 The majority of the plots on the Northern DHPWN and Southern DHPWN contain an additional right to create an access to the public highway. This power will not be utilised unless difficulties prevent access from being taken over the various permanent access routes to the cable easement contained in the Order, shown on the Land Plans (**Document Reference 4.2**) shaded blue.

- 7.10.17 The individual elements of the new rights sought for access are set out in Schedule 10 (*Land in which only new rights etc., may be acquired*) of the Order.
- 7.10.18 This is considered to be a proportionate approach to the requirement to maintain the Project while minimising the impact on the landowners and boundary features.

#### **New access road connecting the B1216 and Stather Road (Work No. 5)**

- 7.10.19 Powers of permanent freehold acquisition and acquisition of rights are sought for the provision of a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive and improvements to footpaths and the junction between the B1216 and A1077. The connections of the two new accesses to the Energy Park Land into the existing highways will be made at the end of the phase construction of the access road.
- 7.10.20 Acquisition of permanent rights are sought for the provision of works required under Work No.5 over the existing highway B1216, to the south of the Energy Park Land and over the southern end of Bellwin Drive, where it connects to Stather Road. It is not intended that the acquisition of rights over this highway should interfere with the Local Highway Authority's existing rights, and as such those have been carved-out of the rights sought (and as set out in the Book of Reference (**Document Reference 3.1**)).
- 7.10.21 Permanent freehold acquisition is sought over Stather Road from approximately 450 metres south of the existing pumping station where the road runs parallel to the River Trent (See Plots 4-58, 4-59, 4-60, 4-61, 4-62, 4-63, 4-64, 4-65, 4-66, 4-68, 4-69, 4-7, 5-2, 5-13, 5-14 and 5-22). Once the two new accesses are completed, Stather Road will be stopped up at this location and will no longer be accessible by the public.
- 7.10.22 The rights to be acquired for the works to the existing highway are set out in paragraphs 7.9.13 and 7.9.14 of this Statement.
- 7.10.23 Permanent freehold acquisition of land is sought over the plots coloured pink on Sheets 4 and 5 of the Land Plans (**Document Reference 4.2**) forming part of the Energy Park Land for the construction of the stretch of new road which is to be dedicated as highway and become highway maintainable at public expense from the B1216 to the north of the Energy Park Land, where it will connect into Stather Road. Following construction of the development and the new road, this road will serve as the access to the Energy Park Land. This will become highway maintainable at public expense and will be classified as a C road, with a 50 miles per hour speed limit.
- 7.10.24 Works to the existing highway at the Western end of First Avenue are also proposed under Work No. 5. This will be carried out on part of Plot

5-55. Acquisition of permanent rights are proposed over Plot 5-55 to carry out improvement works to the existing highway, including upgrades to the junction with Third Avenue, as well as some utility diversion works (see paragraph 7.10.26 below).

7.10.25 At the southern end of the Energy Park Land, along the existing A1077 Phoenix Parkway, permanent rights are sought for improvements to footpaths and works to the junction between the A1077 and the B1616 as part of Work No.5. It is not intended that the acquisition of rights over this highway should interfere with the Local Highway Authority's existing rights, and as such those have been carved-out of the rights sought (and as set out in the Book of Reference (**Document Reference 3.1**)).

#### **Diversion of existing utilities (Work No. 14)**

7.10.26 Work No. 14 consists of the diversions of existing utilities which conflict with the construction of Work Nos. 1, 1A, 1B, 1C, 1D, 2, 5, 6,10 and 11. These works are primarily to be carried out on the Energy Park Land and land to the north of the Energy Park Land within the existing highways in the vicinity of the Flixborough Industrial Estate.

7.10.27 The Applicant is not seeking to acquire any new land on a permanent basis for the purposes of carrying out Work No 14. However, some of Work No 14 will be carried out on land that is to be acquired for the purposes of carrying out another Work (namely Works required for the NSIP) that requires permanent freehold acquisition. Where the Applicant is not acquiring the freehold land for another purpose, it is seeking the acquisition of rights only for the purposes of carrying out any diversions required, and for future access and maintenance.

7.10.28 Save for the plots comprising the highway on First Avenue, Bellwin Drive, Stather Road and the unnamed road running north from Stather Road to First Avenue to the north-east of the Energy Park Land (parallel to Third Avenue) that are all shown coloured blue on Sheets 4 and 5 of the Land Plans, the plots required for the carrying out of the utility diversion works fall within plots already required for permanent freehold acquisition. Acquiring rights rather than the freehold of these areas means the land will remain in the ownership of the landowners and within their control except to the extent that access is required for the Project.

#### **Habitat creation measures (Work No. 12A)**

7.10.29 Work No 12A comprises the provision of habitat creation measures. The Applicant is mindful of the Guidance on the use of compulsory acquisition powers only where it is necessary and appropriate. The provision of enhancements for delivering biodiversity net gain would not satisfy these tests as the provision of biodiversity net gain is not yet a policy requirement. As such the Applicant is not proposing to seek compulsory powers over the land required for Work No. 12A (Plots 4-

97, 6-6, 6-7, 6-8, 6-9, 6-84 and 9-39). Instead, the Applicant is seeking a licence over this land from the landowner.

7.10.30 The carrying out of Work No. 12A is not required to make the Scheme acceptable in planning terms and as such if the Applicant is not successful in obtaining a licence over this land, that will not be an impediment to the Scheme proceeding, albeit it would prevent the delivery of these additional habitat creation and enhancement measures.

## **OTHER RELEVANT CONSIDERATIONS**

### **Negotiations with affected parties**

- 7.11 The Applicant will continue to seek to acquire rights and interests by agreement where possible on appropriate commercial terms. To date Heads of Terms (HoTs) have been negotiated and signed with landowners covering over 60% of the permanent land acquisition area. Seeking compulsory acquisition powers whilst, in parallel, negotiations to acquire interests continue is in accordance with both general practice and paragraph 25 of the Guidance.
- 7.12 The Applicant's purpose in acquiring the Application Land compulsorily, if required, in accordance with the provisions of the 2008 Act, is to secure the lands and rights required to construct and then operate the Project within a reasonable commercial timeframe.
- 7.13 The interests in land affected are described in the Book of Reference and Land Plans. The numbers and letters indicated on the Land Plans are cross-referred to the Book of Reference (**Document Reference 3.1**).
- 7.14 It is to be noted that land has been included in the Order as being scheduled in the Book of Reference even where agreement has been reached. This is to ensure that, if any minor interests such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, powers are available to override those interests. It also reflects that minor interests may still be outstanding and not waived and therefore have to be extinguished or overridden by statutory process. As a result of the application of the Applicant's statutory powers the beneficiary of an interest will be entitled only to a right to compensation and not to prevent the scheme from proceeding. Including land within the Book of Reference where agreement has been reached will also assist in the event that a negotiated agreement proves difficult to enforce for any reason.
- 7.15 As is noted above negotiations are underway with each of the affected parties, and the Applicant continues to seek agreement with all relevant parties. It cannot yet however be anticipated that all of the interests in the Application Land will be acquired within a reasonable commercial timeframe and as a result the compelling case in the public interest for the promotion of the Order, so as to permit the Project to proceed is, it is submitted, in existence and the private interests of the relevant landowners should not take precedence over the compelling public interest.

## Highways subsoil

- 7.16 For all highways subsoil, the interest of the presumed owners has been scheduled in the Book of Reference (**Document Reference 3.1**). The interest of North Lincolnshire Council as highway authority is also scheduled, but the interest of the highway authority excluded from compulsory acquisition. The Applicant may also seek to rely on its powers contained in Article 29 (*Acquisition of subsoil or airspace only*) of the Order to use the land under the subsoil (or airspace) only and not to acquire any greater interest in that land.

## Land in Unknown Ownership

- 7.17 There are a number of plots identified in the Book of Reference (**Document Reference 3.1**) where it has not been possible to identify ownership. Accordingly, and where access was possible, notices were posted on site seeking information from the landowner prior to the commencement of the last round of consultation pursuant to section 42 of the 2008 Act. Notices as required under section 48 of the 2008 Act were also posted on site to invite consultation responses from the potential, but unknown, owners or occupiers at the same time as notices were served on known landowners under section 42.
- 7.18 Despite ongoing diligent enquiry, it has not been possible to identify all of the beneficiaries of the many third-party interests in the Application Lands, but the Applicant will continue to attempt to identify the relevant interests where possible.

## Need for Power to Override Rights and Easements

- 7.19 Numerous rights in the Application Land have been identified and are scheduled in the Book of Reference.
- 7.20 Whilst it is not anticipated that any beneficiaries of these rights will have a relevant claim leading to the payment of compensation it remains possible that the beneficiaries may seek to enforce rights, potentially even by applying for an injunction to prevent construction or operation of the Project and so inclusion of their interests in this process will prevent that albeit they will be entitled to bring a claim for reduction in value of their interest.
- 7.21 The Applicant believes it is both necessary and appropriate for the Order to include provisions allowing for the overriding and/or extinguishment of rights and covenants over the Application Land. It is submitted that the overriding of such rights is in the public interest. Without the ability to extinguish or override such rights the Project may be delayed or prevented. Compensation for any loss that can be demonstrated will be available in accordance with the Statutory Compensation Code. In any event the Applicant will seek to agree (with each of the benefitting parties it can identify) details of how access can be maintained, or substitute access provided, during the short time that construction impacts upon the relevant access where such rights are affected.
- 7.22 Whilst the powers in Article 26 (*Private rights*) allow for the over-riding or extinguishment of such rights, the Applicant anticipates that it will be able to serve a notice on the majority of the relevant beneficiaries of rights to confirm

that, subject to the Applicant having the necessary protections to enable it to construct the works, the rights will not be extinguished. If agreement cannot be reached and extinguishment of rights is necessary, the Applicant will offer to re-grant rights on similar terms wherever possible to minimise compensation claims.

### **Alternatives to compulsory acquisition**

- 7.23 The Applicant has sought, and continues to seek, a negotiated solution to each of the identified required interests. In each case the Applicant has chosen to secure land or rights in a way that minimises disruption to the relevant owners. To date the Applicant has agreed HoTs for over **60%** of the Application Land.
- 7.24 The selection of the location of the energy generating station and associated development is set out in detail in Chapter 3 of the Environmental Statement (**Document Reference 6.2.3**). Specifically, whilst there is an urgent national need for energy recovery facilities, there is also an identified national need within the East Midlands and Yorkshire & the Humber regions, which have the highest proportion of waste going to landfill in the UK. A large proportion of the Application Land including the areas proposed for the ERF, carbon capture utilisation and storage plant and part of the concrete manufacturing facility, also falls within an existing industrial estate (Flixborough Industrial Estate). This is therefore an appropriate site for the Project.
- 7.25 In considering alternatives to the Application Land the Applicant compiled a list of 12 sites across the UK that were considered for the Project. The sites considered are set out in Chapter 3 of the Environmental Statement (**Document Reference 6.2.3**) This list was then considered based on a number of factors including size of the site, the availability of refuse derived fuel sources, availability of a suitable grid connection, potential users of heat and power in the vicinity, proximity to existing energy recovery facilities, amount of waste within the region going to landfill and for export, transport links, potential expansion area to include future best available techniques such as carbon capture and the willingness of landowners to enter into commercial negotiations. Commercial viability also had to be considered.
- 7.26 The review identified two potentially deliverable sites for an ERF being, Flixborough Wharf, RMS Ports, Flixborough and British Steel Site, Brigg Road, Scunthorpe, North Lincolnshire. Both of the short-listed sites were located within the East Midlands & Yorkshire and the Humber region, which was identified as having few ERFs and the highest proportion of waste going to export or to landfill in the UK, and so could potentially meet this need.
- 7.27 The two identified potentially deliverable sites were considered against the following criteria:
- 7.27.1 Accessibility/potential accessibility by road, rail and other sustainable transport modes
  - 7.27.2 Character of setting and whether it was suitable for an industrial type of development

- 7.27.3 Availability of grid connection of the capacity required to deliver a viable project;
- 7.27.4 The availability of the site and the willingness of landowners to enter into commercial discussions.
- 7.28 Both identified sites performed well in relation to the first two criteria. In relation to the third criteria Scunthorpe Main substation was at full capacity with the supply to Scunthorpe Steel Works whilst the Scunthorpe North substation supplying Flixborough Wharf had export capacity available which required less strengthening of the Northern PowerGrid and National Grid infrastructure to achieve the necessary export and import capacity. Flixborough Wharf therefore performed better against this criteria. Any additional export capacity would require a connection to the Primary Substation at Keadby just 4km west of the Flixborough Wharf site.
- 7.29 As both sites performed well in planning terms, the Applicant approached landowners in both areas to identify willingness to proceed. The landowners of the British Steel Site confirmed that the site was not available and would not enter into discussions and therefore the Applicant proceeded with negotiations on the Flixborough site. Notwithstanding the availability of compulsory acquisition powers within the DCO regime, the existence of a willing landowner is a valid consideration and an alternative to compulsory acquisition, particularly when two sites both have good planning merits. Whilst all of the land required is included within the Book of Reference (**Document Reference 3.1**) and would be authorised for compulsory acquisition, having reached agreement with a number of landowners for the delivery of the Project without the need for the use of the powers, the Applicant has demonstrated that all reasonable alternatives to compulsory acquisition have been explored
- 7.30 The Application Land is also an appropriate site for the Project, having considered all alternatives.
- 7.31 In addition, the Applicant has sought to minimise the amount of land required for the Project by seeking to acquire, for example, only rights in land or acquisition of land on a temporary basis as an alternative to seeking powers of compulsory acquisition of freehold land. The land scheduled in the Book of Reference (**Document Reference 3.1**) is necessary and appropriate; there are no other suitable reasonable alternatives.
- 7.32 Where land is in unknown ownership and so scheduled in the Book of Reference (**Document Reference 3.1**), the Applicant has not been able to identify the relevant holder of that interest. All identified owners of interests have been approached and where possible agreement has been reached. Negotiations will continue, but the Applicant believes compulsory acquisition powers can now be justified to ensure that the Project can be developed within a reasonably commercial timescale.

### **Availability of funds for compensation**

- 7.33 Details of the proposed funding for the implementation of the Project and the acquisition of land are contained in the Funding Statement (**Document Reference 3.3**) which accompanies the Application.
- 7.34 The Applicant has included Article 22 in the Order which provides that compulsory acquisition powers contained in the Order must not be exercised unless a guarantee in respect of the liabilities of the undertaker to pay compensation in respect of the exercise of the relevant powers or an alternative form of security for that purpose is in place. The form and the amount of the guarantee or other form of security must be approved by the Secretary of State. It will be for the Secretary of State to satisfy himself in relation to the adequacy and amount of the guarantee or other form of security provided at the relevant time
- 7.35 Article 22 ensures that adequate funding is in place before any compulsory acquisition compensation liability arises, and Article 22(3) of the Order specifically ensures that the guaranteed funding will be held by a means that is directly accessible to persons entitled to compensation.
- 7.36 In brief, the Applicant has the ability to procure the financial resources necessary to fund the works to be authorised by the Order, subject to final Board authority. These funds will meet the capital expenditure for:
- 7.36.1 The cost of acquiring the land identified in the Order; and
  - 7.36.2 The cost of compensation otherwise payable in accordance with the Order.

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

- 7.37 The Applicant considers that, for all of the reasons set out in this Statement, a compelling case in the public interest for powers of compulsory acquisition exists.
- 7.38 The Project will contribute to the national demand for generation of power using renewable energy and energy from waste. The case for this is made out in Government Policy as outlined in the Statement.
- 7.39 The Applicant has sought, and will continue to seek, to negotiate acquisition of interests where possible by voluntary agreement and is seeking appropriate powers to ensure that the Project can be brought forward in a reasonable and commercial time frame.
- 7.40 The Applicant has a well worked up scheme and funding sufficient to take the Project forward.
- 7.41 In summary the Applicant considers the Project to be:
- 7.41.1 In accordance with established and emerging national policy in relation to NSIPs contained in NPS EN-1, NPS EN-3 and NPS EN-5
  - 7.41.2 Required to meet a pressing national need for electricity generating capacity; and

7.41.3 Entirely necessary and proportionate to the extent that interference with private rights is required.

## 8. SPECIAL CONSIDERATIONS AFFECTING THE APPLICATION LAND

### Special category land - open space

8.1 Special category land is land forming part of a common, open space, or fuel or field garden allotment, including any exchange land arrangements.

8.2 The Application Land contains three areas of open space land at:

8.2.1 Plots 4-97, 6-7, 6-8, 6-9, 9-38 and 9-39, being part of the Atkinson's Warren (**Atkinson's Warren Open Space**)

8.2.2 Plots 6-50, 6-51, 6-55, 6-71, 6-72, 6-74, 6-76, 6-78, 6-79, 6-80 and 6-82 on land south of the proposed Railway Reinstatement works (**Flixborough Open Space**); and

8.2.3 Plots 9-8, 9-9, 9-10, 9-11, 9-12 and 9-40 being land at Phoenix Parkway Local Nature Reserve (**Phoenix Parkway Open Space**),

together the **Open Space Land**.

8.3 The combined Open Space Land measures approximately 121,817 square metres (117,491 m<sup>2</sup> with no acquisition, 3872m<sup>2</sup> with temporary acquisition, 315m<sup>2</sup> for acquisition of rights, and 138.63m<sup>2</sup> for permanent acquisition). The Open Space Land is shown on the Special Category Land Plans (**Document Reference 4.20**).

8.4 Section 131 provides that where an applicant for development consent under the 2008 Act seeks the inclusion in an Order of provisions for the compulsory acquisition of land that includes open space land, the Order will be subject to Special Parliamentary Procedure unless the Secretary of State is satisfied that:

(a) *... one of subsections (4) to (5) applies, and*

(b) *that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.*

8.5 Subsections (4) to (5) provide as follows:

(4) *This subsection applies if:*

(a) *replacement land has been or will be given in exchange for the order land, and*

(b) *the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.*

(4A) *This subsection applies if:*

- (a) *the order land is, or forms part of, an open space,*
- (b) *none of the order land is of any of the other descriptions in subsection (1),*
- (c) *either:*
  - (i) *there is no suitable land available to be given in exchange for the order land, or*
  - (ii) *any suitable land available to be given in exchange is available only at prohibitive cost, and*
- (d) *it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.*

(4B) *This subsection applies if:*

- (a) *the order land is, or forms part of, an open space,*
- (b) *none of the order land is of any of the other descriptions in subsection (1), and*
- (c) *the order land is being acquired for a temporary (although possibly long-lived) purpose.*

(5) *This subsection applies if:*

- (a) *the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and*
- (b) *the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.*

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

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

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

- (3) *This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons:*
- (a) *the persons in whom it is vested,*
  - (b) *other persons, if any, entitled to rights of common or other rights, and*
  - (c) *the public,*
- (4) *This subsection applies if:*
- (a) *replacement land has been or will be given in exchange for the order right, and*
  - (b) *the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).*
- (4A) *This subsection applies if:*
- (a) *the order land is, or forms part of, an open space,*
  - (b) *none of the order land is of any of the other descriptions in subsection (1),*
  - (c) *either:*
    - (i) *there is no suitable land available to be given in exchange for the order land, or*
    - (ii) *any suitable land available to be given in exchange is available only at prohibitive cost, and*
  - (d) *it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.*
- (4B) *This subsection applies if:*
- (a) *the order land is, or forms part of, an open space,*
  - (b) *none of the order land is of any of the other descriptions in subsection (1), and*
  - (c) *the order land is being acquired for a temporary (although possibly long-lived) purpose.*
- (5) *This subsection applies if:*

- (a) *the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and*
- (b) *the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.*

### **Atkinson's Warren Open Space**

- 8.8 The Atkinson's Warren Open Space is shown on the Land Plans (**Document Reference 4.2**, Sheets 4, 6 and 9) as being excluded from the land subject to compulsory acquisition of freehold land, acquisition of permanent rights or temporary possession.
- 8.9 The plots forming the Atkinson's Warren Open Space land is owned by a number of separate landowners:
  - 8.9.1 Plot 4-97 – Norinco Limited
  - 8.9.2 Plot 6-7 – Norinco Limited
  - 8.9.3 Plot 6-8 – North Lincolnshire Council
  - 8.9.4 Plot 6-9 - Norinco Limited
  - 8.9.5 Plot 9-38 - North Lincolnshire Council
  - 8.9.6 Plot 9-39 – Norinco Limited
- 8.10 The Applicant is proposing to use the Atkinson's Warren Open Space for the creation of habitats and enhancement measures proposed as Work No. 12A. The Applicant is seeking to enter into licences for entry onto the Atkinson's Warren Open Space to carry out Work No 12A rather than seek any compulsory rights over this land pursuant to the Order. The Applicant has discussed this further in paragraphs 7.10.29 and 7.10.30.
- 8.11 As the Atkinson's Warren Open Space is not subject to compulsory acquisition powers under the Order, sections 131 and 132 of the 2008 Act are not engaged.

### **Flixborough Open Space**

- 8.12 Save for Plots 6-51, 6-55, 6-74 and 6-82, the remainder of the Flixborough Open Space that falls within the Application Land is not subject to compulsory acquisition of freehold land, acquisition of permanent rights or temporary possession.
- 8.13 The Flixborough Open Space land is owned by a combination of freehold landowners:
  - 8.13.1 Plots 6-50, 6-51, 6-71, 6-72 and 6-82 - North Lincolnshire Council

- 8.13.2 Plot 6-55 – Flixborough Wharf Limited
  - 8.13.3 Plot 6-76, 6-78 – Nisa Retail Limited
  - 8.13.4 Plot 6-79 – Norinco Limited
  - 8.13.5 Plot 6-80 – Unknown owner
- 8.14 Plots 6-50, 6-71, 6-72, 6-76, 6-78, 6-79 and 6-80 are included within the Application Land as the Applicant is seeking to provide enhancements and upgrades to new and existing footpaths, and to connect to the existing footpath routes in the area. These plots form existing open space access land and the rights for access by the public are already available so would not be required to be acquired by the Applicant for that purpose. In addition, the proposed footpath upgrades are not necessary to make the development acceptable in planning terms and would similarly not be an impediment to the delivery of the Scheme, and for those reasons the Applicant has not included this land with the land subject to compulsory acquisition powers under the Order.
- 8.15 As such, sections 131 and 132 of the 2008 Act are not engaged in relation to Plots 6-50, 6-71, 6-72, 6-76, 6-78, 6-79 and 6-80.
- 8.16 Plot 6-51 is included in the Land Plans (**Document Reference 4.2**) as being required for temporary possession. Temporary possession of Plot 6-51 is required as a construction area for the works to construct a footbridge across the proposed Railway Reinstatement land. Given that this plot is required for temporary possession only the exception in section 131(4B)(c) of the 2008 Act will apply, replacement land will not be required and Special Parliamentary Procedure will not be engaged.
- 8.17 Plot 6-82 is included within the Application Land as this is intended to be the landing for the footbridge proposed over the Railway Reinstatement land. The purpose of the footbridge is to provide a safe crossing for pedestrians over the Railway Reinstatement land and to maintain Public Rights of Way connectivity in this area. The size of Plot 6-82 is 70.76 square metres.
- 8.18 Plot 6-82 falls within open space land but because the size of the plot is less than 200 metres squared, the exception in section 131(5)(a) applies so that replacement land is not required and Special Parliamentary Procedure is not required.
- 8.19 Plots 6-55 and 6-74 are included within the Application Land as permanent acquisition of both plots is required as part of the works to the Railway Reinstatement land (Work No. 3). The plots are sized as follows: 48.38 square metres (Plot 6-55) and 19.49 square metres (Plot 6-74).
- 8.20 As both plots fall within open space land, and permanent acquisition is sought over these, section 131 of the 2008 Act is engaged. However, the Applicant may rely upon the exception in section 131(5) where the requirement to provide replacement land or go through Special Parliamentary Procedure is not required where the acquisition of land is less than 200 square metres. Furthermore, the cumulative amount of land to be permanently acquired when including Plot 6-82

is 138.63 square metres, which is again under the 200 square metre threshold within the 2008 Act.

### **Phoenix Parkway Open Space**

- 8.21 Land forming part of Atkinson's Warren forms Plots 9-8, 9-9, 9-10, 9-11, 9-12 and 9-40 of the Application Land. Plots 9-9, 9-10 and 9-40 are required on a temporary basis for working room for the works to be carried out along the A1077 (Phoenix Parkway). These works include Work Nos 10, 11 and 14. Acquisition of new rights is required in Plots 9-8, 9-11 and 9-12 in respect of Work Nos 10 and 11, and as set out in Schedule 10 of the Order.
- 8.22 The Atkinson's Warren Open Space land is all owned by North Lincolnshire Council.
- 8.23 Section 131 of the 2008 Act will apply in relation to Plots, 9-9, 9-10 and 9-40. However Special Parliamentary Procedure will not be required as the Applicant may rely on the exceptions in section 131 of the 2008 Act. Given that these plots are required for temporary possession only the exception in section 131(4B) will apply and Special Parliamentary Procedure will not be required.
- 8.24 Section 132 of the 2008 Act will apply in relation to Plots 9-8, 9-11 and 9-12. However Special Parliamentary Procedure will not be required as the Applicant may rely on the exceptions in section 132 of the 2008 Act. Given that the works required in these plots will be carried out on a temporary basis and will involve burying the relevant infrastructure beneath the surface, the land, when burdened with the rights contained in the Order will be no less advantageous than it was previously to those persons listed in section 132(3)(a) to (c) of the 2008 Act. Therefore, the exception in section 132(3) will apply and Special Parliamentary Procedure will not be required.

### **Summary - The Open Space Land**

- 8.25 The Open Space Land should not be affected by the temporary use of the Open Space Land, and in so far as is possible having regard to health and safety in construction, access should remain open throughout the construction period.
- 8.26 Save for Plots 6-55, 6-74 and 6-82, no permanent surface installation works will be required within the Open Space Land. The Applicant is seeking powers in the draft Order for the temporary possession of the Open Space Land, rather than outright freehold compulsory acquisition of the land, for installation. There is no operational need for the Applicant to take the freehold of the relevant Application Land, as the use of the temporary possession is more proportionate in the circumstances, allowing the use of the relevant land to revert back to the landowner.
- 8.27 In relation to Plot 6-82, where permanent acquisition of freehold rights is required for the permanent installation of a footbridge landing, and Plots 6-55 and 6-74, where the land is required permanently for the Railway Reinstatement Works, the Applicant has taken care to limit the extent of the Open Space Land that is required for this and is applying for permanent acquisition of the minimum

required land to be able to carry out the works. It is submitted that the construction of the footbridge will have wider public benefits that outweigh the loss of 70.76 square metres of the Open Space Land. There will be limited impact on public access and there will be no less advantageous beneficial use of the Open Space Land for any party currently interested in that land. Furthermore, it is submitted that the reinstatement of the railway works and the use of rail as a more sustainable method of transport than road, also contributes to the wider public benefits of the Scheme, that outweigh the loss of a combined 67.87 square metres (being Plots 6-55 and 6-74) of the Open Space Land.

8.28 Sections 131 and 132 of the 2008 Act make provision for Special Parliamentary Procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common or open space. The land does not include any land forming part of a common.

8.29 In relation to Plots 6-51, 9-9, 9-10 and 9-40 the Applicant submits that pursuant to section 131(4B) the land:

8.29.1 forms part of the Application Land and forms part of open space;

8.29.2 is not part of common land or fuel or field garden allotments; and

8.29.3 is being acquired for a temporary (although possibly long-lived) purpose.

Accordingly, the Secretary of State will be asked to confirm that, pursuant to section 131 of the 2008 Act he can be satisfied that the Application is not required to go through Special Parliamentary Procedure.

8.30 In relation to Plots 6-55, 6-74 and 6-82, the Applicant submits that pursuant to section 131(5):

8.30.1 the combined total of Plots 6-55, 6-74 and 6-82 does not exceed 200 square metres in extent; and

8.30.2 The giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

Accordingly, the Secretary of State will be asked to confirm that, pursuant to section 131 of the 2008 Act, he can be satisfied that no exchange land is required and the Application is not required to go through Special Parliamentary Procedure.

8.31 In relation to Plots 9-8, 9-11 and 9-12, the Applicant submits that pursuant to section 132(3):

8.31.1 the Application Land when burdened with the Order right, will be no less advantageous than it was before to the following persons:

(a) the persons in whom it is vested;

(b) other persons, if any, entitled to rights of common or other rights,  
and

(c) the public.

8.32 Accordingly, the Secretary of State will be asked to confirm that, pursuant to section 132(3) of the 2008 Act, he can be satisfied that the Application is not required to go through Special Parliamentary Procedure.

### **Statutory Undertakers**

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

### **Section 127 Planning Act 2008**

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

### **Section 138**

8.35 Section 138 of the 2008 Act is engaged by Article 33 (*Statutory undertakers*) of the Order. This Article will permit the compulsory acquisition of land or rights of undertakers or enable the Applicant to extinguish or relocate the rights or apparatus of statutory undertakers. Such power may only be included in the Order if the Secretary of State is satisfied the extinguishment or removal is necessary for the Project. If a representation has been made by the relevant undertaker and not withdrawn, then section 138(4)(b) requires the undertakers' own Secretary of State to consent to the inclusion of the provision.

8.36 Article 33 of the Order is expressed to be subject to protective provisions agreed between the Applicant and the relevant undertakers. Proposed Protective Provisions form Schedule 14 to the Order, to the extent they are required. The Applicant is seeking to agree these provisions in good time before the close of the examination.

**8.37** Details of the negotiations to date with the affected utilities to which Section 127 and/or Section 138 of the 2008 Act may apply are set out as follows:

### **8.37.1 Network Rail Infrastructure Limited**

- (a) There are two major interactions with land held by Network Rail as part of the Project:
  - (i) the Railway Reinstatement Works at Dragonby Sidings (Work No 3); and
  - (ii) the crossing of the Crowle to Scunthorpe railway line by the Southern DHPWN (Work Nos. 10 and 11). It is necessary to install the relevant apparatus under the existing railway line owned by Network Rail as part of these Works.
- (b) The Applicant has been in touch with Network Rail since 11 November 2020 and is seeking to acquire the rights over land as necessary for the Project by agreement and provide any necessary protective provisions.
- (c) In the absence of a private agreement with Network Rail, it is necessary to include Network Rail's land in the Order to ensure that all land required to deliver the Project can be assembled within the necessary timeframe. It remains the Applicant's preference and intention to acquire the rights by agreement.
- (d) The Applicant does not consider it necessary to replace the land required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Network Rail's undertaking

### **8.37.2 Local Highway Authority**

- (a) Land held by North Lincolnshire Council as highway authority is also included in the Book of Reference (**Document Reference 3.1**) for completeness, although the interest of the highway authority has been excluded from compulsory acquisition.

### **8.37.3 Cadent Gas Limited**

- (a) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Cadent Gas Limited (Cadent) by private agreement. The Applicant has been in contact with Cadent since March 2021 and will continue to progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding discussions with Cadent as soon as possible. Discussions have centred around Cadent's easement requirements for the existing pipe which passes through the Application Land, Details have been provided by Cadent and the Applicant has included Protective Provisions for the protection of gas undertakers in the Order (Schedule 14, Part 1), which will apply to Cadent.
- (b) The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the

interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Cadent's undertaking.

#### **8.37.4 Northern PowerGrid (Yorkshire) Plc**

- (a) There are two major interactions with land or apparatus held by Northern PowerGrid (Yorkshire) Plc (Northern PowerGrid) as part of the Project:
  - (i) Diversion of 4no. existing overhead powerlines:
    - (A) Near to Ferry Road West;
    - (B) East of New House Pumping Station;
    - (C) Alongside Stather Road;
    - (D) To the east of Flixborough Industrial Estate; and
  - (ii) Decommissioning of the existing electrical cables to the south of the Flixborough Industrial Estate
- (b) The Works and interactions are shown on the Indicative Utility Diversion Drawings (**Document Reference 4.17**).
- (c) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Northern PowerGrid by private agreement. The Applicant has been in contact with Northern PowerGrid and Northern Powergrid has provided an estimated cost of the works. Further details will be provided to allow Northern PowerGrid to develop the detailed design and costing. The Applicant will continue to progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding discussions with Northern PowerGrid as soon as possible. The Applicant has included Protective Provisions for the protection of electricity undertakers in the Order (Schedule 14, Part 1), which will apply to Northern PowerGrid.
- (d) The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Northern PowerGrid's undertaking.

#### **8.37.5 Openreach Limited**

- (a) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Openreach Limited (Openreach) by private agreement. The Applicant has been in contact with Openreach and further details are to be provided to Openreach in order to allow Openreach to develop the detailed design and costings for the required work. The Applicant will continue to

progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding discussions with Openreach as soon as possible. Part 2 of Schedule 14 of the Order contains Protective Provisions for Electronic Communications Code Networks, which will apply to Openreach.

- (b) The interaction with Openreach's apparatus is to the extent of localised assets being affected, with the scope of any diversionary works under development. At this early stage the Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Openreach's undertaking.

### **8.37.6 Anglian Water Services Limited**

- (a) There are three major interactions with land or apparatus held by Anglian Water Services Limited (Anglian Water) as part of the Project:
  - (i) Diversion of water main in Stather Road to the north of Neap House pump station until the junction towards the wharf;
  - (ii) Decommission of the existing water main in Bellwin Drive to the building to the west to be demolished; and
  - (iii) Removal of the existing decommissioned pipes.
- (b) The Works and interactions are shown on the Indicative Utility Diversion Drawings (**Document Reference 4.17**).
- (c) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Anglian Water Services Limited (Anglian Water) by private agreement. The Applicant has been in contact with Anglian Water and Anglian Water has provided an estimate of the costs required. The Applicant is to provide further details to Anglian Water to allow Anglian Water to develop the detailed design and costing. The Applicant will continue to progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding any discussions as soon as possible. The Applicant has included Protective Provisions for the protection of water and sewerage undertakers in the Order (Schedule 14, Part 1), which will apply to Anglian Water.
- (d) The Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Anglian Water's undertaking.

### **8.37.7 Severn Trent plc**

- (a) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Severn Trent plc (Severn Trent) by private agreement. The Applicant has been in contact with Severn Trent and will continue to progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding any discussions as soon as possible. The Applicant has included Protective Provisions for the protection of water and sewerage undertakers in the Order (Schedule 14, Part 1), which will apply to Severn Trent.
- (b) The extent of the Works required affecting Severn Trent's infrastructure are new connections into existing manholes. As such the Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of Severn Trent's undertaking.

### **8.37.8 Scunthorpe and Gainsborough Water Management Board**

- (a) The Applicant is seeking to negotiate to acquire the rights over land necessary for the Project from Scunthorpe and Gainsborough Water Management Board (SGWMB) by private agreement. The Applicant has been in contact with SGWMB and an agreement in principle has been reached with SGWMB in relation to the surface water drainage strategy. The Applicant will continue to progress private agreement negotiations in tandem with the compulsory acquisition process with a view to concluding any discussions as soon as possible.
- (b) The Works affecting SGWMB are diversions of existing drainage ditches and connections into existing ditches. As such, the Applicant does not consider it necessary to replace the land over which rights are required for the Project and submits that the interest sought in land can be purchased and not replaced without serious detriment to the carrying on of SGWMB's undertaking.

## **9. THE HUMAN RIGHTS ACT 1998**

- 9.1 The European Convention on Human Rights (**Convention**) was incorporated into domestic law by the Human Rights Act 1998. The Convention contains Articles aimed to protect the rights of the individual (referred to as **Convention Rights**).
- 9.2 The provisions of particular relevance to the determination as to whether the Order should include compulsory acquisition powers are:

### **9.2.1 Article 1 of the First Protocol to the Convention**

This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the

public interest and subject to the relevant national and international laws and principles.

### **9.2.2 Article 6**

This entitles those affected by powers sought for the Project to a fair, public hearing.

### **9.2.3 Article 8**

This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.

- 9.3 The decision maker, as a public body, is under a duty to consider whether the exercise of its powers engages Convention Rights. The approach to be taken to give effect to rights under the Convention is reflected in the advice in the Guidance.
- 9.4 The Order has the potential to infringe the human rights of persons who hold interests in the Application Land. Such infringement can be authorised by law provided the appropriate statutory procedures for making the Order are followed and there is made out a compelling case in the public interest for the compulsory acquisition and the interference with the Convention Right is proportionate. On the basis of decisions of the courts, the test of proportionality is satisfied if the Order strikes a fair balance between the public benefit sought and the interference with the rights in question.
- 9.5 The Applicant has weighed the potential infringement of Convention Rights in consequence of the inclusion of compulsory powers within the Order with the potential public benefits if the Order is made.
- 9.6 The Applicant considers that there would be significant public benefit arising from the grant of development consent. That benefit is only likely to be realised if the Order includes powers of compulsory acquisition. The significant public benefits on balance outweigh the effects upon persons who own property and rights within the Application Land.
- 9.7 Those affected by compulsory acquisition may claim compensation in accordance with the Statutory Compensation Code. Through its ultimate parent company, the Applicant has the resources to provide such compensation, details of which are set out in the Funding Statement (**Document Reference 3.3**).
- 9.8 In accordance with Part 5 of the 2008 Act, the Applicant has consulted persons set out in the categories contained in section 44 of the 2008 Act, which include owners of the Application Land and those who may be able to make claims either under section 10 of the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973. All scheduled interests are able to make representations to the Examining Authority and therefore the requirements of Article 6 are met.

- 9.9 Representations can be made in response to any notice given under section 56 of the 2008 Act (notifying persons of accepted application).
- 9.10 Should the Order be made, a person aggrieved may also challenge the Order in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the 2008 Act. Affected persons have the right to apply to the Upper Tribunal (Lands Chamber) if compensation is disputed.
- 9.11 The requirements of compensation being payable for the acquisition of any interest are met. Therefore Article 1 of Protocol 1 is not contravened.
- 9.12 For the above reasons, the Applicant considers that the inclusion of powers of compulsory acquisition in the Order would not constitute any unlawful interference with Convention Rights and further that it would be appropriate and proportionate to make the Order, including the grant of powers of compulsory acquisition.

## **10. OTHER COMPULSORY ACQUISITION POWERS IN THE ORDER**

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

### **Article 11 (street works)**

- 10.3.1 This article would allow the Applicant to carry out specified street works in accordance with the statutory rights under the New Roads and Street Works Act 1991, which would ordinarily require a licence from the street authority.
- 10.3.2 The exercise of the powers in Article 11 could potentially interfere with private rights. A person suffering loss from this would be entitled to claim compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

### **Article 13 (permanent stopping up of streets)**

- 10.3.3 This Article allows for the stopping up of streets and public rights of way permanently where a substitute is to be provided. Schedule 4 of the Order has been completed to identify the lengths of street that are to be permanently stopped up subject to this article and alternative streets to be provided.

- 10.3.4 The streets listed in Schedule 4 may not be permanently stopped up unless the street to be substituted for it has been completed and is open for use or a temporary alternative route is provided until the completion and opening of the new permanent street.
- 10.3.5 The exercise of powers in Article 13 could potentially interfere with private rights, i.e. rights vested in a person rather than the public at large. In that event the right in question would be suspended. A person suffering loss due to such suspension would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

#### **Article 14 (temporary stopping up of streets)**

- 10.3.6 This Article would enable the Applicant to temporarily stop up, alter or divert streets for the purpose of carrying out the authorised project. Any stopping up or other interference could not be for longer than a reasonable time. During that time the Applicant could divert traffic from the street and prevent pedestrian access along it.
- 10.3.7 The general power to prevent pedestrian access would be subject to the obligation to provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion if there would otherwise be no such access.
- 10.3.8 In respect of the streets, the Article largely follows the approach in the model provision, in so far as it applies generally, but it has been extended to include stopping up for the purposes of maintaining the authorised development.
- 10.3.9 The exercise of Article 14 could potentially interfere with private rights, i.e. rights vested in a person rather than the public at large. In that event the right in question would be suspended. A person suffering loss due to such suspension would be entitled to compensation. The amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

#### **Article 16 (Accesses)**

- 10.3.10 Article 16(5) provides that new private means of access may be created (as detailed in Part 2 of Schedule 6) to enable the carrying out and use of the highway works authorised as part of the Project.
- 10.3.11 Paragraph 4 of Article 16 refers to private means of access which are being closed for which no substitute is to be provided. These are listed in Part 1 of Schedule 6 of the Order.
- 10.3.12 The exercise of Article 16 could potentially interfere with private rights, i.e. rights vested in a person rather than the public at large. In that event the right in question would be suspended. A person suffering loss due to such suspension would be entitled to compensation. The

amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

#### **Article 26 (Private rights)**

10.3.13 Article 26 provides that where land is compulsorily acquired, such private rights or restrictive covenants are suspended and unenforceable or (where the beneficiaries are notified by the undertaker), extinguished as far as their continuance would be inconsistent with the acquisition of the land. Where new rights or restrictive covenants are acquired over land, private rights cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant. Where temporary possession of land is taken, private rights are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken for as long as the undertaker remains in lawful possession of the land. The exercise of those powers amounts to an interference with property rights.

10.3.14 A person suffering loss due to such interference would be entitled to compensation. The amount of compensation, if not agreed, would be determined pursuant to section 152 of the Planning Act 2008, following the same principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the Compulsory Purchase Act 1965 arises. The Applicant will take particular regard to those rights of access over which the Application Lands cross and where possible maintain access at all reasonable times. Where possible the Applicant will reach agreement with the relevant beneficiary of the right or if appropriate serve a prior notice under Article 26(6) of the Order to preserve the right of access. If a right of access ceases to have effect or is overridden, the Applicant will seek to offer a re-grant of that right on similar terms to the affected party following the works being completed, with an appropriate licence for access during the time the works are carried out.

#### **Article 31 (Temporary use of land for carrying out the authorised project)**

10.3.15 Article 31 would enable the Applicant, for the purpose of constructing the Project to take temporary possession of certain land. "Possession" means that the Applicant could occupy and control the land to the exclusion of everyone else.

10.3.16 The land to which the Article applies is the land specified in columns (1) and (2) of Part 1 and Part 2 of Schedule 12 to the Order and any other land within the limits of land to be acquired or used (as shown on the Land Plans) so long as the Applicant has not made a declaration to vest the land in itself or entered the land following a notice of entry in advance of acquisition. The Applicant would be entitled to exercise rights of temporary possession in relation to Option A or Option B of

the DHPWN, but not both. On that basis either Part 1 of Schedule 12 (Option A) or Part 2 of Schedule 12 (Option B) would apply.

10.3.17 The Applicant would have the power to remove buildings and vegetation from the land and construct temporary works (including accesses, running tracks, security fencing, bridges and structures) and buildings on the land, and use the land for the purposes of a working site.

10.3.18 Before giving up possession of any land the Applicant would be obliged to remove all temporary works and restore the land to the owner's reasonable satisfaction. The Applicant would not be required to remove certain works, such as drainage works or road surfacing. The Applicant is obliged to be in temporary possession of the land for no longer than is reasonably necessary and in any event must not, without the agreement of the landowners, remain in possession of any land after 1 year of completion of the authorised development on that part of the land, unless it serves notice of entry on the landowner or makes a vesting declaration in relation to that land.

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

#### **Article 32 (Temporary use of land for maintaining the authorised project)**

10.3.20 Article 32 would enable the Applicant to take temporary possession of certain land at any time during the maintenance period i.e. in relation to any part of the Project, five years from the date on which that part is first used.

10.3.21 The land to which Article 32 applies is any land within the limits of land to be acquired or used as regards which possession is reasonably required for the purpose of maintaining the Project.

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

#### **Article 37 (Authority to survey and investigate land)**

10.3.23 This Article would enable the Applicant, for the purposes of the Order, to enter onto any land shown within the Application Land or land which may be affected by the authorised development, to survey and investigate the land. At least 14 days' notice is required to be given by the Applicant for the exercise of these powers. A person suffering loss due to such interference would be entitled to compensation. The

amount of compensation, if not agreed, would be determined in the same way as compensation for outright acquisition.

### **Article 38 (Felling or lopping of trees)**

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

## **11. OTHER CONSENTS AND LICENCES**

- 11.1 Additional consents and licences are required under other legislation in addition to the Order. These are listed in the Consents and Licences Document **(Document Reference 5.8)** .
- 11.2 The principal consents that might impact on the timetable for the commencement of construction are as follows:
- 11.2.1 European Protected Species Licence – this will be sought, if required, from Natural England after the Order is made;
  - 11.2.2 Appropriate Assessment and Habitat Regulations Assessment - The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive and the 2017 Habitats Regulations. The Applicant has submitted a Habitat Regulations Assessment report with the Application.
  - 11.2.3 Environmental Permits – these may be required, for instance for the discharge of water and the need for these will be reviewed following submission of the Application;
  - 11.2.4 Energy Generation Licence - The Applicant may apply for a generation licence pursuant to section 6(1)(a) of the Electricity Act 1989 which authorises the Applicant to generate electricity in a specified area for the purposes of giving a supply to any premises in a specified area or enabling a supply to be so given.
  - 11.2.5 Connection Agreement – to connect to the 132kV electricity distribution network. A connection offer has been received by the Applicant;
  - 11.2.6 Connection Agreement – to connect to the local gas distribution network (if required). Negotiations are ongoing with the gas supplier.
- 11.3 For these consents and the others listed in the Consents and Licences Document **(Document Reference 5.8)** it is not envisaged that there will be any undue delay or any obvious reason why consent cannot be forthcoming.

## 12. CONCLUSIONS

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

## 13. FURTHER INFORMATION

### Funding

- 13.1 As outlined in section 8 of this Statement, the Application is also accompanied by a Funding Statement (**Document Reference 3.3**) to explain how the proposed compulsory acquisition for which it seeks authorisation in the Order is proposed to be funded.
- 13.2 For the reasons set out above and in the Funding Statement (**Document Reference 3.3**), the availability of funding is not an impediment to the implementation of the Project or any part of it.

### Negotiations with the Applicant

Owners and occupiers of property affected by the Project who wish to negotiate or discuss matters of compensation should contact Giles Johnston and Tori Clinch of DDM Agriculture Limited on the following details:

Email: [REDACTED]@ddmagriculture.co.uk and  
[REDACTED]@ddmagriculture.co.uk

Address: DDM Agriculture Limited, Eastfield, Albert Street, Brigg, DN20 8HS

Tel: [REDACTED]

### **Compensation**

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

13.3.1 Booklet No. 1 - Compulsory Purchase Procedure.

13.3.2 Booklet No. 2 - Compensation to Business Owners and Occupiers.

13.3.3 Booklet No. 3 - Compensation to Agricultural Owners and Occupiers.

13.3.4 Booklet No. 4 - Compensation to Residential Owners and Occupiers.

13.4 The booklets are available to download for free online at:

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