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**Byers Gill Solar**  
**EN010139**

# 4.1 Statement of Reasons

Planning Act 2008

APFP Regulation 5(2)(h)

Infrastructure Planning (Applications: Prescribed Forms  
and Procedure) Regulations 2009

Volume 4

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# 1. Introduction

## 1.1. Purpose of this document

- 1.1.1. This Statement of Reasons has been prepared to accompany an application by RWE (the Applicant) for the Development Consent Order (DCO) for Byers Gill Solar (the Proposed Development). This Statement has been prepared in accordance with the requirements of 5(2)(h) of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) and the 'Planning Act 2008: Guidance related to procedures for compulsory acquisition of land' (DCLG, September 2013) (the CA Guidance).
- 1.1.2. The draft DCO (Document Reference 3.1) includes for powers of compulsory acquisition to enable delivery of the Proposed Development. This Statement of Reasons has been prepared to demonstrate that compulsory acquisition is necessary, proportionate and justified. It explains the reasons for the inclusion of compulsory acquisition and related powers in the draft DCO and sets out why there is a clear and compelling case in the public interest, in accordance with section 122 of the Planning Act 2008 (the Act). In doing so, this Statement of Reasons demonstrates that the relevant legislative and policy tests are met.

## 1.2. The Applicant

- 1.2.1. RWE is a leading solar and battery energy storage developer with one of the largest development pipelines in the UK and a leading supplier of renewable energies globally. RWE recently acquired JBM Solar (the Applicant) which is now known as RWE Renewables UK Solar And Storage Limited. The highly experienced JBM Solar team are now part of RWE, and have been developing projects in the UK since 2012, achieving consent for projects delivering over 1.2 Gigawatt (GW) of generating capacity across the UK and Ireland.
- 1.2.2. RWE is currently developing a pipeline of solar and solar with storage projects with a potential generating capacity in excess of 4GW in the UK by 2025. In addition to the 800MW consented in the UK in the last 24 months, RWE has an additional 350MW already in the planning system across 11 sites and a programme to submit in excess of 500MW in the coming year.

## 1.3. Requirement for a Development Consent Order

- 1.3.1. The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) under Section 14(1)(a) and Section 15(2) of the Planning Act 2008 (the Act) as an onshore generating station in England with a capacity of more than 50MW.
- 1.3.2. As an NSIP, the Applicant is required to make an application for DCO before it can lawfully construct or operate the Proposed Development. The Act provides that the

Secretary of State (SoS) is responsible for determining the application for development consent. The Planning Inspectorate (PINS), on behalf of the SoS, has responsibility for administering the examination of DCO applications and supporting the examining authority that will be appointed to make a recommendation to the SoS as to whether to grant development consent. If granted by the SoS, the DCO will provide the necessary authorisation to allow the Proposed Development to be constructed and operated.

- 1.3.3. The relevant SoS for the Proposed Development is the SoS for the Department for Energy Security and Net Zero (formally the Department for Business, Energy and Industrial Strategy).

## **1.4. Extent of compulsory acquisition**

- 1.4.1. Land associated with the panel areas has been secured by the Applicant via negotiation and voluntary agreement. The Applicant is therefore seeking powers of compulsory acquisition through the DCO application which are limited to permanent rights and powers of temporary possession over land comprising the off-road cable routes only. This is to ensure that the preferred cable route can be delivered, as not all voluntary agreements have been secured at time of the DCO application.

## **1.5. Guide to this document**

- 1.5.1. The structure of this document is as follows:
- Chapter 1: this chapter, provides an introduction to the Statement and its purpose;
  - Chapter 2: provides an overview of the Proposed Development; the authorised works; the proposed construction programme; and, the flexibility sought through the DCO;
  - Chapter 3: sets out how diligent inquiry was undertaken in order to identify land interests relevant to the Proposed Development;
  - Chapter 4: details the type and extent of compulsory acquisition sought through the DCO application;
  - Chapter 5: sets out the case for that compulsory acquisition and its compliance with legislation and guidance;
  - Chapter 6: considers special considerations in relation to land, such as Crown land, Special Category Land and Statutory Undertaker Land.
  - Chapter 7: provides a conclusion to the Statement.
  - Appendix A: Plots over which Acquisition of New Rights and Temporary Possession Powers are Required
  - Appendix B: Schedule of Negotiations
- 1.5.2. This Statement should be read alongside other documents that relate to the compulsory acquisition powers sought as part of this application, including:
- Works Plans (Document Reference 2.2)
  - Land Plans (Document Reference 2.4)

- Draft DCO (Document Reference 3.1)
- Explanatory Memorandum (Document Reference 3.2)
- Book of Reference (Document Reference 4.2)
- Funding Statement (Document Reference 4.3)
- Planning Statement (Document Reference 7.1)

## 2. The Proposed Development

### 2.1. Overview of the Proposed Development

- 2.1.1. The Proposed Development is a renewable energy scheme, covering an area of approximately 490 hectares (ha), and comprising solar photovoltaic (PV) panels, on-site Battery Energy Storage Systems (BESS), associated infrastructure as well as underground cable connections between panel areas and to connect to the existing National Grid Substation at Norton. The Proposed Development will have the capacity to generate over 50 Megawatts (MW) of electricity. The Proposed Development is located in the north-east of England.
- 2.1.2. A full description of the Proposed Development and a detailed description of the design and environmental mitigation is provided in ES Chapter 2 The Proposed Development (Document Reference 6.2.2).

### 2.2. Site location and Order Limits

- 2.2.1. The majority of the Proposed Development, including the panel areas, substation and on-site BESS are located within the administrative area of Darlington Borough Council. The eastern part of the cable routes crosses into the administrative area of Stockton-on-Tees Borough Council. The northern extent of the planning boundary (the Order Limits) borders Durham County Council's administrative area.
- 2.2.2. The Order Limits for the Proposed Development are shown in the Location Plan (Document Reference 2.1). The land within the Order Limits totals 490 ha and includes land required to construct, operate, maintain and decommission the Proposed Development. Land within the Order Limits consists primarily of agricultural fields, used for both arable and some grazing. The existing Norton 400kV National Grid Substation is located to the east of the Order Limits with the Proposed Development requiring minor works all within the existing sub-station compound.
- 2.2.3. Site access works are included within the Order Limits in order to ensure that access onto the public highway is possible from each Panel Area.

### 2.3. The authorised development

- 2.3.1. A full description of the works and associated development is set out in Schedule 1 of the draft DCO (Document Reference 3.1) and shown on the Works Plans (Document Reference 2.2). In summary, the authorised development is defined as the following works:

### Work No. 1

- 2.3.2. Ground mounted solar photovoltaic generation station comprising of solar PV modules and associated mounting structures and on site supporting equipment (or the balance of solar plant) including inverters, transformers and switch gear.

### Work No. 2

- 2.3.3. Battery Energy Storage Systems (BESS) which comprises:
- BESS units located centrally within each Panel Area;
  - Auxillary transformers and associated bunding;
  - Power conversion system units including inverters, switch gear, transformers and ancillary equipment;
  - Containers or enclosures housing the BESS;
  - Monitoring and control systems;
  - Heating, ventilation and air conditioning systems;
  - Fire safety infrastructure; and
  - Containers for storage, control and welfare.

### Work No. 3

- 2.3.4. 33kV underground electrical cables connecting the Solar Panels (Work No. 1) to the BESS (Work No. 2) and the on-site substation (Work No. 4). 132kV underground electrical cables connecting the on-site substation (Work No. 4) to the National Grid substation at Norton (Work No. 6) within panel areas. As well as the following works:
- fencing, gates, boundary treatments and other means of enclosure;
  - improvements, maintenance and use of existing private tracks;
  - laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
  - works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communications infrastructure, and perimeter fencing;
  - landscape and biodiversity mitigation and enhancement measures including planting; and
  - works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc).



### Work No. 4

- 2.3.5. Onsite substation, including the following works:
- Substation, switch room and ancillary equipment;
  - Power conversion system units including inverters, switch gear, transformers and ancillary equipment;
  - Control building housing offices, storage containers, welfare facilities, waste storage and car parking within a fenced compound.
  - Monitoring and control systems;
  - 132kV harmonic filter compound;
  - Electrical cables;
  - Communications mast up to 15m in height;
  - Fire safety equipment; and
  - Access gates track and security fencing.

### Work No. 5

- 2.3.6. Works including:
- 132kV underground electrical cables outside of panel areas connecting the on-site substation (Work No. 4) and the National Grid Substation at Norton (Work No. 6);
  - Fencing, gates, boundary treatment and other means of enclosure;
  - Laying of internal access tracks, means of access, footpaths, roads, including construction of drainage infrastructure, signage and information boards; and
  - Works required for crossing, moving, re-routing or over/undergrounding of existing utility assets.

### Work No. 6

- 2.3.7. Construction of electrical infrastructure within the National Grid substation at Norton including:
- A compound for electrical works and infrastructure necessary for the onwards transmission of electricity;
  - Electrical cables;
  - 132kV connection bay including all associated electrical equipment and civil engineering works necessary to enable the onward transmission of electricity; and
  - Access gates and tracks associated with these works.

### Work No. 7

- 2.3.8. The temporary construction and decommissioning of access tracks and compounds comprising:
- works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;
  - works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;
  - storage of equipment and materials;
  - civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface
  - creation of temporary construction access tracks, laydown and working areas;
  - works required for crossing, moving, re-routing or over/undergrounding of existing utility assets;
  - temporary stopping up of watercourses for installation of culverts, drainage and other features to cross water courses;
  - areas of hardstanding;
  - car parking;
  - site and welfare offices, canteens and workshops;
  - area for download and turning;
  - security infrastructure;
  - site drainage and waste management infrastructure; and
  - electricity, water, waste-water and telecommunications connections.

### Work No. 8

- 2.3.9. Works to facilitate access for all works comprising:
- The creation of accesses from, or access to the public highway;
  - Visibility splays;
  - Works to widen and surface the public highway; and
  - The installation of temporary traffic lights or facilities for manned traffic management.

### Work No. 9

- 2.3.10. Works for areas of green infrastructure comprising:
- Soft landscaping and planting, including tree and hedgerow planting;

- Habitat creation and management, including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure; and
- The laying of permissive paths, signage and information boards.

2.3.11. In connection with the above works, the draft DCO also include provision for further associated development comprising such other works that may be necessary for the purpose of or in connection with the relevant part of the Proposed Development within the Order Limits. These works include:

- haul roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths;
- fencing, gates, boundary treatments and other means of enclosure;
- bunds, embankments, trenching and swales;
- provision of temporary and permanent ecological and environmental mitigation and compensation works, including landscaping works and habitat creation;
- working sites in connection with the construction of the authorised development including construction lay down areas, compounds, and spoil storage and associated control measures;
- works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- electrical, gas, water, foul water drainage and telecommunications infrastructure connections diversions and works to alter the position of such services and utilities connections;
- works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;
- site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), earthworks (including soil stripping and storage and site levelling) and excavations, the alteration of the position of services and utilities and works for the protection of buildings and land;
- works for the benefit or protection of land affected by authorised development;
- works of restoration;
- tunnelling, boring and drilling works; and
- such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

- 2.3.12. Further associated development, comprising of works that may be necessary or expedient to delivery of the authorised development are listed in Schedule 1 of the draft DCO (Document Reference 3.1).

## **2.4. Proposed Construction Programme**

- 2.4.1. It would take approximately 12-18 months to construct the Proposed Development all at once, or 18-24 months to undertake the construction of each Panel Area in phases following the granting of the DCO application. The final programme will be dependent on the detailed layout design and potential environmental constraints on the timing of construction activities.

## **2.5. Flexibility**

- 2.5.1. With the pace of change and developments within the solar industry, a number of elements of the design cannot be confirmed until the final tendering process for the construction of the Proposed Development and will be dependent on final equipment suppliers. For example, new technologies are consistently emerging within the solar panel and energy storage markets and therefore sufficient flexibility is required within the DCO to allow the Proposed Development to utilise and benefit from the latest technology at the time of construction.
- 2.5.2. To address this need for flexibility, a 'Rochdale Envelope' approach has been used and this is detailed further in ES Chapter 2 The Proposed Development (Document Reference 6.2.2). This has involved the establishment of a series of maximum, and where relevant minimum parameters for various elements of the Proposed Development. The principles and justification for this approach are set out in section ES Chapter 4 Approach to EIA (Document Reference 6.2.4) and the parameters used to form the basis of assessment are described in ES Chapter 2 The Proposed Development (Document Reference 6.2.2) and secured via the Design Approach Document (Document Reference 7.2).
- 2.5.3. The draft DCO includes a requirement that the scheme must be in accordance with the design parameters, allowing flexibility which is essential to ensure viability and delivery of the Proposed Development.

## 3. Land Interests

### 3.1. Identifying persons with an interest in the Land

- 3.1.1. In preparing the DCO Application, the Applicant has carried out diligent inquiry, through a land referencing process in order to identify all Persons with an Interest in the Land (PILs) as defined in sections 42 and 44 of the Act. These include owners, lessees, tenants and occupiers of the Land within the Order Limits. Category 2 includes parties with an interest in the land or have the power to sell and convey the land, or to release the land.
- 3.1.2. Such persons are listed in the Book of Reference (Document Reference 4.2) and have been consulted about the DCO application in accordance with section 42 of the Act and described in the Consultation Report (Document Reference 5.1).
- 3.1.3. Diligent inquiry to identify affected landowners, those with interests in land, and those with a potential claim was undertaken by the Applicant's land referencing supplier. The categories of persons identified, and the methods used to identify them are described below.
- 3.1.4. Land referencing has been undertaken throughout the pre-application period to ensure any changes in interest or new interests have been identified, consulted and subject to engagement. Land referencing will continue to be undertaken throughout the making of the DCO to ensure that any changes in ownership are identified and to ensure that any new owners will be consulted and subject to engagement. Any changes will also be recorded and updated in the Book of Reference (Document Reference 6.2).

#### **Category 1 and 2 persons**

- 3.1.5. Identification of Category 1 and 2 persons, as defined in section 44 of the Act, was undertaken at the early stages of the Proposed Development in order to inform the design of the Proposed Development and the preparation of the DCO Application.
- 3.1.6. A polygon of the search area, being the proposed land requirements (before the Order Limits shown on the Land Plans was defined), was initially submitted to the Land Registry so that a Polygon Plus search could be completed in December 2022. Ongoing Land Registry searches, including edition date checks and polygon plus have been conducted throughout the preparation of the DCO Application at key project milestones including ahead of Statutory Consultation in May 2023 and targeted landowner consultation in November 2023, as well as ahead of submission of the Application, to ensure that any changes in title were identified. The official copies of the Registered Titles and Plans were examined to identify all land interests. Further Land Registry searches have been used to ensure that any changes in title in respect of Land potentially required for or affected by the Proposed Development were

identified. A search of the Index Map was obtained in November 2023 ahead of DCO Application.

- 3.1.7. All relevant freehold, leasehold, mortgagee, beneficiary, other charges and restrictive covenants information was extracted and stored in the Land Referencing suppliers' database, routinely updated during preparation of the DCO Application. All parties identified through the Land Registry searches were contacted by the land referencing supplier through the land referencing process. This included issuing a Land Interest Questionnaire (LIQ) to all parties and issuing further forms to any new parties identified through returns. Where LIQs were not returned, further follow up letters were issued. The forms have been supported by a number of emails and telephone calls to verify and confirm information. This process is ongoing.
- 3.1.8. On completion of the above initial desk-based exercise, the extent of unregistered land interests became known. In order to establish ownership of unregistered land that falls within the Order Limits, public sources of information were used, including site visits, the Planning Portal, Companies House website, the relevant Highway Authority, records held by Statutory Undertakers, electoral registers and online resources (such as Experian and TracelQ). Discussions have also been held as part of the ongoing engagement and consultation with affected landowners which revealed a number of interested parties in unregistered land.
- 3.1.9. The information obtained from the above exercises was used to populate Part 1, Part 2 and Part 3 of the Book of Reference (Document Reference 4.2).

**Category 3 persons who may fall under section 10 of the Compulsory Purchase Act 1965 (CPA 1965), section 152(3) of the PA 2008 and/or Part 1 of the Land Compensation Act 1973 (LCA 1973)**

- 3.1.10. Category 3 persons are those with potential claims under the above legislation should the proposed scheme be carried out. They mainly relate to those whose land may be injuriously affected (i.e. its value would be diminished) as a result of interference with a right or interest as a result of the proposed scheme, although the land in question is not acquired outright.
- 3.1.11. Identification of Category 3 persons, as defined in section 44 of the Act was undertaken at the early stages of the Proposed Development, in order to inform the design of the Proposed Development and preparation of the DCO Application.
- 3.1.12. In order to identify potential Category 3 persons who may have a claim pursuant to section 10 of the CPA 1965, a desk-based assessment was carried out to identify properties with a potential claim, including review of property accessways and interrogation of registered rights found on HMLR titles. In addition, site visits were used in order to assess properties that the team may not have been aware of from their desk-based assessment.

- 3.1.13. Through diligent inquiry, the Applicant considers that there are no persons who may be entitled to make a relevant claim as a Category 3 interest pursuant to Part of the LCA 1973 in relation to the following matters: noise, vibration, smell, fumes, smoke, light emissions, discharge of solid or liquid substances. The relevant factors considered by the Applicant that could have significance to proposals of this nature were noise and vibration. The Environmental Impact Assessment (EIA) Scoping Report (ES Appendix 4.1) sets out the scope of the noise and vibration assessments made. These assessments concluded there is a low likelihood of significant adverse noise and impacts resulting from the operational phase of the Proposed Development. These matters are considered in detail in Chapter 11 of the Environmental Statement (Document Reference 6.2.11)
- 3.1.14. The Applicant wrote to those people thought to be affected and continue to send follow up correspondence as necessary. Notices under section 56 of the Act will continue to be provided to any additional parties that the Applicant becomes aware of following the acceptance of the DCO Application by the Planning Inspectorate.

### **Contact Referencing**

- 3.1.15. Following the initial non-contact (desktop) methods outlined in the previous sections, persons identified as having an interest in the Land or a potential claim were issued with a letter and questionnaire requesting return of information about their interests in the Land.
- 3.1.16. Initial LIQs were issued on 24 February 2023, with further requests sent when new parties were identified as part of the ongoing land referencing. Chaser letters, alongside follow up emails and phone calls where possible were used to improve response rate and gain further confirmation of any land interests. This identification process will continue ahead of and during the DCO Examination, if any new land interests are found.
- 3.1.17. Where there was unregistered land or land with an unknown interest within the Order Limits, site notices were affixed on or adjacent to the land in order to identify and notify any unknown interest and parties of the project and include them in correspondence. This process was repeated during the Statutory Consultation and will be repeated again under S56 of the Act and any further Examination notice requirements

## **3.2. Negotiation to acquire by agreement**

- 3.2.1. As well as consulting all PILs about the Proposed Development in accordance with section 42 of the Act, the Applicant has complied with the requirement (paragraph 25 of the CA Guidance) to seek to acquire land by negotiation wherever practicable.
- 3.2.2. The Applicant has engaged with all landowners with a registrable interest with a view to acquiring their land interest by agreement by writing to them to inform them of the

Applicant's willingness to negotiate to acquire the Land by agreement, and to invite dialogue on this point. No residential or business properties (excluding agricultural land) are required for the Proposed Development.

- 3.2.3. Through ongoing Diligent inquiry work, title searches and direct approaches made by RWE, all owners of unregistered land have been identified. These landowners were then engaged with in the same manner as explained above. Site notices were affixed to these areas of land on 10 May 2023 and maintained throughout the Statutory Consultation period.
- 3.2.4. RWE retains Options over the land comprising the Panel Areas for the development of solar panels, BESS, and associated infrastructure. The Options provide RWE with all necessary rights over those parts of the Order Limits for the purposes of the construction, operation and decommissioning of the Proposed Development.
- 3.2.5. There are 16 landowners that would be affected by the off-road cable route options. Since March 2022, RWE has been seeking easement agreements with landowners affected by the off-road cable route option. Every landowner has been approached directly by RWE initially. Continued engagement has been carried out through local Land Agents representing the affected landowners. To date, 14 of the 16 landowners are at advanced stages of negotiation to agree an Option for Easement. RWE is continuing to engage with the outstanding landowners. A schedule of the current state of negotiations is provided at Appendix B of this Statement.
- 3.2.6. There are a limited number of small parcels of land in unknown ownership for which despite diligent inquiry, the Applicant has not been able to identify an owner. As a result, these cannot be acquired by agreement.
- 3.2.7. Diligent inquiry included review of Land Registry records, physical inspection, engagement with adjacent landowners and posting of site notices seeking information from the landowner of the relevant land.
- 3.2.8. Therefore, the Applicant has concluded that the proposed scheme is unlikely to be capable of being delivered without compulsory acquisition powers. A list of land plots subject to compulsory acquisition is provided in Appendix A of this Statement.

### **3.3. Wider powers / use of land**

- 3.3.1. Where cables are required to be laid within the road (e.g. Plot 12/30 in Carlton village as shown on the Land Plans (Document Reference 2.4)) or should an on-road cable option be required elsewhere as part of the detailed design of the Proposed Development, compulsory powers are sought. Whilst this was not the case at time of DCO application, the additional acquisition of subsoil rights is sought as under the change application made on 18 October 2024.



### **3.4. Summary**

- 3.4.1. This Chapter has demonstrated how the Applicant has carried out diligent inquiry and undertaken negotiations to seek to acquire land by agreement where practicable.

## 4. Compulsory Acquisition

### 4.1. Scope of powers sought in the DCO

- 4.1.1. Section 120 of the Act provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. Schedule 5 to the Act lists those matters ancillary to the development, which includes the acquisition of land, compulsorily or by agreement, and the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement.
- 4.1.2. Section 122 of the Act provides that an order granting development consent may include provisions authorising the compulsory acquisition of land only if the Secretary of State, is satisfied that the land is required for the development to which the DCO relates, and the land is required to facilitate or is incidental to that development. The SoS must also be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO.
- 4.1.3. The draft DCO (Document Reference 3.1) contains powers to enable the acquisition of land, new rights over land and the temporary use of land which are required to construct, operate and maintain the Proposed Development. Where land and rights over land cannot be acquired by agreement with the landowners and occupiers, the draft DCO enables that land and / or rights of the land to be acquired compulsorily.
- 4.1.4. The land associated with the panel areas has already been secured by the Applicant via negotiation and voluntary agreement with the freehold owner of that land and therefore, the compulsory acquisition powers sought through the application relate only permanent rights over land comprising the off-road cable routes. Powers of temporary possession are also sought in relation to those land parcels. This is to ensure that the preferred cable route can be delivered, given that not all voluntary agreements have been secured at the time of the DCO application.
- 4.1.5. An on-road cable route option is also included in the Order Limits, should voluntary agreement or compulsory acquisition powers not be achieved for the off-road cable route option.
- 4.1.6. The Applicant continues to engage with the relevant freehold interests in relation to the above elements of the Proposed Development, however, it has not been possible to date to secure the necessary interests or rights over all land by agreement. The Applicant will continue to seek such agreement and interests wherever possible, but the proposed approach of conducting such negotiations, and seeking powers of compulsory acquisition in parallel is in accordance with paragraph 26 of the Guidance.
- 4.1.7. The total area of land subject to compulsory acquisition powers is 57.9 ha. This is depicted as the land shaded blue on the Land Plans (Document Reference 2.4), with

the corresponding works shown on the Works Plans (Document Reference 2.2) and described in Schedule 1 of the DCO (Document Reference 3.1). The Book of Reference (Document Reference 4.2) provides a schedule of all plots of land within the Order Limits.

## **4.2. Main compulsory acquisition powers**

- 4.2.1. The main powers authorising the compulsory acquisition of land, or interests in, or rights over land, are contained in Articles 21 (compulsory acquisition of land), 23 (compulsory acquisition of rights) and 25 (Acquisition of subsoil only) of the DCO (Document Reference 3.1). As stated above, the compulsory acquisition powers are limited to permanent rights for off-road cable routes and, pursuant to the Applicant's change application on 18 October 2024, permanent subsoil rights for the on-road cable route. Appendix A of this Statement provides a description of the land which is subject to the powers of compulsory acquisition under Article 23 and Article 25. The purpose for acquiring this land is to enable the Applicant to construct the works and the maintenance of the works thereafter, ensuring that the Applicant is able to fulfil its function as operator of the finished development.
- 4.2.2. In each case the owner of the land, or the interest or right in the land, may be entitled to compensation.

## **4.3. Other compulsory acquisition powers**

- 4.3.1. The other compulsory acquisition powers sought by the Applicant in the draft DCO (Document Reference 3.1) include the following:

### **Article 14: Public rights of way**

- 4.3.2. Article 14 allows for the extinguishment of public rights of way (PRoW) following the undertaker erecting a site notice at each end of the right of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

### **Article 24: Private rights over land**

- 4.3.3. Article 24 allows for the extinguishment of all existing private rights over land from the earlier of the date of acquisition of the land or the date on which the Applicant enters the land.
- 4.3.4. The Article further provides that, where new rights are being compulsorily acquired or restrictive covenants are being imposed on land then any existing private rights or restrictive covenants which that land is subject to shall be extinguished to the extent that continuing those private rights or restrictive covenants would be inconsistent with the new right acquired or restrictive covenant imposed.

- 4.3.5. With regard to land that the Applicant may take temporary possession of under the DCO, Article 24 provides that all private rights over that land will be suspended and unenforceable for as long as the Applicant is in lawful possession of the land.
- 4.3.6. The power to extinguish existing rights is required to ensure that such rights do not interfere with the construction and operation of the scheme.
- 4.3.7. The Article provides that any person who suffers loss caused by the extinguishment or suspension of rights (pursuant to the exercise of the power in Article 24) is entitled to reasonable compensation.

#### **Article 25 Acquisition of subsoil only**

- 4.3.8. Article 25 provides that where the Applicant has, in respect of any land, powers of compulsory acquisition, then it may choose instead to acquire only the subsoil underneath (or corresponding rights) with consequentially less impacts on affected landowners. This power is included for flexibility as it may allow the Applicant to minimise impact to land interests by acquiring subsoil only (or corresponding rights) where it is possible to do so and still deliver the Proposed Development, leaving land interests in possession of the valuable part of the land. This allows the acquisition of the minimum interests to deliver the Proposed Development.

#### **Article 27 Power to override easements and other rights**

- 4.3.9. Article 27 provides that the Applicant may, in undertaking the authorised development, interfere with an interest or right, or breach a restriction, affecting land within the Order Limits where it is carried out in accordance with the terms of the dDCO. Where any such interference or breach occurs, there is a corresponding obligation on the undertaker to pay compensation.

#### **Article 29: Rights under or over streets**

- 4.3.10. Article 29 is not in a strict sense a power of compulsory acquisition. However, it is included here for completeness because it would authorise the Applicant to:
- a. enter on and appropriate so much of the subsoil underneath or airspace over any street within the limits of the DCO as may be required to provide the scheme; and
  - b. use that subsoil or airspace for the purposes of carrying out the scheme or any purpose ancillary to it.
- 4.3.11. Save in the case of subways or underground buildings, or to cellars or similar structures forming part of a building fronting the street, the Applicant may exercise its powers under this Article without having to acquire any part of the street or any easement or right in the street.

## 4.4. Temporary possession powers

4.4.1. The Applicant further seeks, in the DCO, powers to take temporary possession of land to carry out and thereafter maintain the scheme. Temporary possession powers are not compulsory acquisition powers. The parcels of land subject to temporary possession are listed in Appendix A and are shaded in green on the Land Plans (Document Reference 2.4).

4.4.2. The powers of temporary possession in the DCO are as follows:

### **Article 30: Temporary use of land for carrying out the authorised development**

4.4.3. Article 30 would enable the Applicant to enter and take temporary possession of any land within the Order Limits, so long as the Applicant has not executed a general vesting declaration to vest the land in question in itself or entered the land in question following a notice of entry. The Applicant would also be expressly authorised to take temporary possession of the land identified in Schedule 12, being those listed in Appendix A and shaded in green on the Land Plans (Document Reference 2.4).

4.4.4. In addition to taking possession of the land the Article 30 would authorise the Applicant to:

- remove buildings and vegetation from the land;
- construct temporary works (including accesses) and buildings on the land; and
- use the land as a temporary working site with access to the working site, in connection with the authorised development;
- construct any works on that land as specified in Part 1 of Schedule 1;
- carry out mitigation works pursuant to the requirements in Schedule.

4.4.5. The power to take temporary possession would be subject to time limits under Article 30 (4). The Applicant cannot remain in possession unless the owner of the land agrees for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Applicant has made a vesting declaration or served notice of entry in relation to that land).

4.4.6. Article 30 (5) provides that before giving up possession of any land the Applicant would be obliged to remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken or such other condition as may be agreed with the owners of the land.

### **Article 31: Temporary possession of land for maintaining the authorised development**

4.4.7. Article 31 would enable the Applicant to take temporary possession of any land within the Order limits, if reasonably required for the purpose of maintaining the scheme, at any time during the maintenance period, the period of five years from the date on

which that part of the authorised development first exports electricity to the national electricity transmission network.

- 4.4.8. Article 31 would allow the Applicant to construct temporary works and buildings on the land, so far as reasonably necessary for the purpose of maintenance. The Applicant would not be able to take temporary possession of a house, or a garden belonging to a house, or any other occupied building under this Article.
- 4.4.9. The Applicant may only remain in possession of land under this Article for so long as may be reasonably necessary to carry out the maintenance of the part of the scheme for which possession was taken. Before giving up possession of land temporarily possessed under this Article, the Applicant would be required to remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first or such other condition as may be reasonably agreed with the owners of the land.
- 4.4.10. The powers to use land temporarily for carrying out the scheme ensures that appropriate work sites, working space and means of access are available for use during the construction and maintenance period and provides space for mitigation and other permanent works. This temporary power minimises the impact on land interests by ensuring that the Applicant does not have to acquire land it only requires temporarily.
- 4.4.11. The powers to use land temporarily for maintaining the scheme ensures that the land is available for maintenance works during a five-year period from the date on which that part of the authorised development first exports electricity to the national electricity transmission network. This is in the public interest as it ensures that it is possible to maintain the scheme and the public benefits it will deliver. Temporary powers are sought for this purpose as permanent powers would entail an excessive impact on land interests.

## 4.5. Other rights and powers

- 4.5.1. In addition to powers of compulsory acquisition, if made the DCO would also confer other rights and powers on the Applicant that may interfere with property rights and private interests. The additional powers are explained in more detail in the Explanatory Memorandum (Document Reference 3.2) are:
- Article 9: Street works;
  - Article 13: Temporary stopping up of public rights of way
  - Article 18: Discharge of water;
  - Article 19: Protective works to buildings;
  - Article 20: Authority to survey and investigate the land;
  - Article 32: Statutory undertakers;
  - Article 39: Felling or lopping of trees and removal of hedgerows.

- 4.5.2. In each case (for both the principal powers and other powers) the parties having interest in the land, or the interest or right in the land, may be entitled to compensation. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.

## 5. The Case for Compulsory Acquisition

### 5.1. Introduction

5.1.1. This chapter explains why the Applicant considers that the compulsory acquisition sought through the DCO satisfies the conditions stated in section 122 of the Act and which are reflected in the considerations set out in the CA Guidance.

### 5.2. Legislation and guidance

#### Section 122 of the Act

5.2.1. Section 122 of the Act states that:

"An order granting development consent may include provision authorising the compulsory acquisition of land only if the SoS is satisfied that the conditions in subsections (2) and (3) are met."

5.2.2. The conditions in subsection (2) are that the land:

- is required for the development to which the development consent relates;
- is required to facilitate or is incidental to that development; or
- is replacement land which is to be given in exchange for the order land under section 131 or section 132 of the Act.

5.2.3. The condition in subsection (3) is that there is a 'compelling case in the public interest for the land to be acquired compulsorily'.

5.2.4. The CA Guidance (paragraph 11) sets out the considerations which the SoS will take into account in deciding whether the condition in subsection (2) has been met. It states:

- i. In respect of whether the land is required for the development, the Applicant should be able to demonstrate to the satisfaction of the SoS that the land in question is needed for the development. The SoS will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.
- ii. In respect of whether the land is required to facilitate or is incidental to the proposed development, the SoS will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more than is reasonably necessary for that purpose and that it is proportionate.
- iii. In respect of whether the land is replacement land, the SoS will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose and that it is proportionate.

5.2.5. In respect of the condition in subsection (3), the CA Guidance states at paragraph 13 that "the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory



acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired”.

5.2.6. Paragraphs 8 to 10 of the CA Guidance are also relevant, setting out a number of general considerations to be taken into account by the Applicant in seeking compulsory acquisition powers:

- that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;
- that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate;
- that the Applicant has a clear idea of how they intend to use the land which is to be acquired;
- that there is a reasonable prospect of the necessary funds for acquisition becoming available; and
- those purposes for which the compulsory acquisition powers are included in the application are legitimate and sufficiently justify interfering with the human rights of those with an interest in the affected land.

5.2.7. Finally, paragraph 25 of the CA Guidance states that Applicants should seek to acquire land by negotiation wherever practicable.

### **5.3. Need for the land for which compulsory acquisition is sought**

5.3.1. Section 3 of the Planning Statement (Document Reference 7.1) demonstrates the clear need for the Proposed Development, as supported through national planning policy and energy strategy. The Proposed Development would contribute to the UK Government’s legally binding target to reach net-zero emissions by 2050 and respond to the projected increase in demand for electricity, as well as improving UK energy security and resilience in line with national strategy. The Overarching National Policy Statement for Energy (NPS EN-1) designated in January 2024 establishes that the delivery of low carbon energy infrastructure, such as the Proposed Development, is of Critical National Priority (CNP), for which the urgent need is expected to outweigh most residual adverse effects. The need for the Proposed Development in principle is therefore clearly established and supported through national policy.

5.3.2. The Applicant is satisfied that the conditions set section 122(2) of the Act are being met with the land which is proposed to be subject to compulsory acquisition powers either needed for the scheme, needed to facilitate the scheme, or is incidental to the scheme. Appendix A of this Statement includes a description of what land will be used for with reference to individual plots as shown on the Land Plans (Document Reference 2.3).

5.3.3. The Applicant considers that the land included in the DCO is the minimum landtake required to construct, operate, maintain and mitigate the scheme and is therefore necessary to achieve the objectives of the scheme. The Applicant has sought to achieve

a balance between minimising landtake wherever possible and securing sufficient land to ensure delivery of the scheme.

- 5.3.4. The powers of compulsory acquisition of rights for off-road cable routes are only sought to ensure the Proposed Development is deliverable as negotiations for voluntary agreement on those off-road cable route easements are not yet concluded and it cannot be determined that all land required for cable route delivery is secured at the time of the DCO application. It is therefore necessary to seek powers of compulsory acquisition as a fall-back position should voluntary agreement not be forthcoming, however it is not the intention of the Applicant to utilise the powers in the first instance.
- 5.3.5. Powers of compulsory acquisition of rights are also sought for the potential on-road cables routes to the extent that any cabling for the on-road route is laid at a depth beneath the strata of land comprising publicly adopted highway. The Applicant does not expect to lay the cable in the subsoil beneath the highway, as is the case on other projects under construction by the Applicant. However, taking account of submissions made to the Examination by Darlington Borough Council as one of the relevant local highway authorities, it is acknowledged that there is uncertainty in the depth of the highway strata for the proposed on-road cabling works. The Applicant therefore seeks compulsory purchase powers as a contingency provision in the event that any of its on-road cables are eventually required to be provided within land beneath the extent of the existing highway strata.
- 5.3.6. The Applicant is seeking compulsory acquisition powers in relation to the off-road and on-road cable routes only, having successfully sought to negotiate land by agreement for the majority of the land in the Order Limits, namely the Panel Areas and mitigation land.
- 5.3.7. Compulsory acquisition powers sought are therefore limited to 59.7 ha of the Order Limits, in respect of powers limited to acquisition of ongoing rights to maintain on-road and off-road cables in that land. There are associated powers of temporary possession sought, but there is no proposed permanent acquisition of land (as compared to rights over land) as part of the Proposed Development.
- 5.3.8. The delivery of the 33kV and 132kV cable route is essential for the operation of the Proposed Development, in allowing for the Panel Areas to connect to the on-site substation and for the on-site substation to connect to the national grid, respectively. Without these aspects of the works, the Proposed Development cannot function and meet its intended purpose.
- 5.3.9. It is considered that the interference with the rights of those with an interest in the land is legitimate, necessary and proportionate, and that the Applicant has a clear idea of how the acquitted land and rights would be used. The Applicant therefore submits that the need for the land is evidenced in compliance with subsection (2) of section 122 of the Act and paragraph 11 of the CA Guidance.

## 5.4. Compelling case in the public interest

5.4.1. As set out in the preceding section, there is a clearly established needs case for the Proposed Development in principle, which is summarised in Section 3 of the Planning Statement (Document Reference 7.1). This establishes that as a form of low carbon energy, the Proposed Development constitutes CNP infrastructure under NPS EN-1, in which there is an urgent need is expected to outweigh most residual adverse effects. There is subsequently an established national need for the Proposed Development. In addition to meeting national need for renewable energy, the Proposed Development would provide further benefits which contribute to the compelling case in the public interest, such as:

- An anticipated 88% net gain of in area habitat Biodiversity Units (BUs) and a 108% net gain of hedgerow BUs, significantly over the forthcoming mandatory 10% requirement for national infrastructure;
- the infilling of existing hedgerow gaps to improve species diversity and help create wildlife corridors that connect the Order Limits with hedgerows and treelines within the wider landscape;
- provision of a community orchard in Bishopton;
- provision of a forest school/sensory garden and car park for the Bishopton Redmarshall Primary School;
- provision of a total of approximately 3,600m of permissive paths connecting into the existing footpath networks to enhance local connectivity;
- provision of interpretation facilities at points of interest along the PRow network and permissive routes through the Panel Areas, to identify information of local landscape, biodiversity and heritage interest;

5.4.2. The delivery of the Proposed Development, and the public benefits outlined above, would result in private loss for those persons with an interest in the land which is subject to compulsory acquisition powers. Appropriate compensation would be payable to those entitled to claim it, in line with the national Compensation Code. It is considered that this compensation would adequately compensate the private loss.

5.4.3. The Applicant has also sought to minimise private loss by only seeking compulsory acquisition powers for the minimum possible area of land within the Order Limits required to ensure the Proposed Development is deliverable. The type of acquisition sought is also limited, such that permanent forms of acquisition are sought for rights only (alongside temporary possession of land). The extent of compulsory acquisition is sought to enable delivery of the preferred cable route option, which is the installation of off-road cable routes as compared to on-road routes. It is considered that this approach is in the public interest, as the preferred route would reduce the potential for adverse effects that would be experienced by the local community. The Applicant is also seeking to acquire subsoil interests for the on-road cable route as a contingency against any uncertainty in the location of on-road cables within the highway and subsoil stratas, as explained in paragraph 5.3.5 above.

5.4.4. As set out in section 3.9 of ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3), whilst there is a balance of differential environmental effects identified in comparing on-road and off-road routes, those adverse effects that would arise through an on-road route, namely traffic and visual effects, would be most impactful on the community:

- As reported in ES Chapter 7 Landscape and Visual (Document Reference 6.2.7), the use of an off-road cable route option would avoid a significant adverse effect to the character of Bishopton village, avoiding visual impacts to the historic core of the village, from Mill Lane and from the recreation ground that would otherwise arise through on-road cable installation.
- As reported in ES Chapter 12 Traffic and Transport (Document Reference 6.2.12), an on-road cable route would lead to temporary lane closures and diversions, within the context of a predominantly rural setting of narrow local roads and limited alternative access arrangements. This could be avoided almost entirely via an off-road option as sought through the compulsory acquisition powers.
- Concerns regarding traffic and visual effects have been raised by the local community through consultation.
- ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3) identifies benefits to programme through off-road cable installation, which is almost three times quicker on average than on-road cable installation. This presents a dual public benefit of a reduced construction time and associated effects, as well as reducing risk to meeting agreed grid connection dates and ensuring the Proposed Development can begin to supply the grid with renewable energy.

5.4.5. Given the above, it is considered that the considerable public benefits to be delivered by the Proposed Development in principle, combined with the comparative advantages to the local community of an off-road cable route, is evidence of a compelling case in the public interest which outweighs the extent of potential private loss, in accordance with paragraph 13 of the CA Guidance.

5.4.6. The Applicant is accordingly satisfied that the condition of subsection (3) of section 122 of the Act is met, and that the Proposed Development

## **5.5. Alternatives to compulsory acquisition**

5.5.1. The Applicant has clearly sought alternatives to compulsory acquisition, as evidenced by the large proportion of land within the Order Limits which is already secured via voluntary agreement. This includes some 33kv cable route easements where it was possible to secure these prior to DCO application. Negotiations for the remaining off-road routes are ongoing, further demonstrating the Applicant's intention to avoid use of powers of acquisition wherever possible. The Applicant has also sought to acquire the on-road subsoil interests through voluntary agreements where possible.

5.5.2. Alternatives to the Proposed Development have been considered by the Applicant and are set out in ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3).

- 5.5.3. As stated in that assessment, a 'no development' alternative would not provide the additional electricity generation that would be delivered by the Proposed Development and has therefore not been considered further.
- 5.5.4. The Applicant has undertaken a staged site selection and design iteration process in developing the proposals forming this DCO application, in which land availability by voluntary agreement has been a factor informing siting, layout and design decisions.
- 5.5.5. For example, ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3) identifies how the site selection process resulted in a collection of land parcels which could be suited to solar development, and for which the Applicant began to engage with landowners to seek option agreements. The outcome of this process resulted in the initial layout of the Proposed Development.
- 5.5.6. In subsequent design iterations, the Applicant has removed areas from the Proposed Development and reduced the overall Order Limits as voluntary agreement negotiations on land parcels have failed to be successful. This includes the reduction of several parcels of land, previously proposed to contain solar PV panels, following statutory consultation. In this case, the Applicant ceased negotiations that had stalled in order to reduce the size of the scheme in response to consultation. This demonstrates that the Applicant has committed to the strategy of avoiding powers of compulsory acquisition where possible, preferring to reduce and redesign the Proposed Development rather than retain a design that would require such powers to obtain the requisite land.
- 5.5.7. The powers of compulsory acquisition sought in the DCO are limited to cable routes only, and as set out in ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3), alternatives to the proposed cable routes have been considered. It establishes that a starting point for the Applicant in determining cable routes was to avoid impacts to local communities that may be derived from utilising routes along existing roads, such as disruption to local access during the works. Avoiding routes along existing roads also has engineering, programme and cost benefits. As such, engagement was undertaken with landowners to seek potential easements on greenfield land for cable routes, which resulted in the initial network of 33kV and 132kV off-road cable routes. The Applicant also, however, identified on-road cable routes following the local road network. Both options were presented at statutory consultation in May 2023 and feedback was sought.
- 5.5.8. At that time, it was anticipated that the cable routes would be refined to a single 33kV network and a single 132kV cable route for the DCO application. However, negotiations with landowners to secure the necessary land rights via agreement for off-road cable routes (the preferred option) are ongoing at the time of submission. Consequently, there is a need to retain flexibility in options in order to ensure the deliverability of the Proposed Development and the Order Limits includes land for both on-road and off-road routes.

- 5.5.9. As set out in this Statement, the Applicant is seeking powers of temporary possession with compulsory acquisition powers for permanent rights to accommodate the preferred option of an off-road cable route, should voluntary agreement not be reached. The on-road route is also included in the Order Limits as an alternative and powers for the acquisition of rights in sub-soil interests are sought for the on-road cable beneath publicly adopted highways as a contingency as explained in paragraph 5.3.5 above. The final routing of the underground cables would be determined following the grant of DCO and controlled through requirement 3 of the draft DCO (Document Reference 3.1).
- 5.5.10. It is considered that in accordance with the CA Guidance, the Applicant can demonstrate that all reasonable alternatives to compulsory acquisition have therefore been explored, including instances where modifications to the Proposed Development have been made in order to avoid the need for acquisition.

## **5.6. Reasonable prospect of funding**

- 5.6.1. The Applicant is content that there is reasonable prospect of the necessary funds for acquisition being available for the reasons set out in the Funding Statement (Document Reference 4.3).

## **5.7. Human Rights**

### **Overview of the convention**

- 5.7.1. The Human Rights Act 1998 incorporated into UK law the European Convention on Human Rights (the Convention). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.
- 5.7.2. The following Articles of the Convention are relevant to the SoS's decision as to whether the DCO should be made so as to include powers of compulsory acquisition:
- Article 1 of The First Protocol 'Protection of Property' – protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
  - Article 6 of the Convention Rights and Freedoms 'Right to a fair trial' – entitles those affected by compulsory powers to a fair and public hearing.
  - Article 8 of the Convention of Rights and Freedoms 'Right to respect for private and family life' – protects the right of the individual to respect for his private and family life, his home and his correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.
- 5.7.3. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the Convention. As such, the SoS as Government decision-maker, is under a duty to consider whether the exercise of powers interacts with the rights protected by the Convention.

- 5.7.4. The Order has the potential to infringe the rights of persons who hold interests in land within the Order land under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:
- There is a compelling case in the public interest for the compulsory acquisition powers included within the DCO, and that proper procedures are followed.
  - Any interference with a human right is proportionate and otherwise justified.

### **Compliance with Article 1**

- 5.7.5. The Applicant has set out in the preceding sections how there is a compelling case in the public interest for the compulsory acquisition powers included in the DCO. The Proposed Development would respond to a national need for renewable energy infrastructure and the achievement of legally binding net zero target, whilst also delivering substantial local benefits through biodiversity net gain, enhanced accessibility to the countryside, new community facilities and the provision of a £1.5m Community Benefit Fund.
- 5.7.6. Whilst much of the Proposed Development is to be delivered through voluntary agreements which are already secured, the need for compulsory acquisition for cable routes arises to ensure the Proposed Development is deliverable and can be operational, therefore delivering the benefits outlined above. The Applicant has concluded on balance that the significant public benefits outweigh the effects upon persons whose property within the Order Limits would be affected by powers of compulsory acquisition. For those affected by expropriation or dispossession, compensation is payable in accordance with the statutory compensation code. It is therefore concluded that the Proposed Development would be in accordance with Article 1 of the Convention.
- 5.7.7. This conclusion has been reached individually for each of the interests in land identified in Appendix A.

### **Compliance with Article 6**

- 5.7.8. In relation to Article 6 it is the case that proper procedures have been followed for both the consultation on the scheme and for the determination of the compulsory acquisition powers included within the scheme. Throughout the development of the scheme persons with an interest in the land have had full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and the Applicant has endeavoured to engage with landowners. The Applicant has had regard to landowner feedback as detailed in the design iteration and assessment of alternatives (see ES Chapter 3 Alternatives and Design Iteration (Document Reference 6.2.3)) and in the Consultation Report (Document Reference 5.1)
- 5.7.9. Following submission of the application, individuals affected by the scheme can submit representations about the DCO and/or challenge the DCO by judicial review if there are any grounds for doing so.



- 5.7.10. It is therefore concluded that the Proposed Development would be in accordance with Article 6 of the Convention. This conclusion has been reached individually for each of the interests in land identified in Appendix A.

### **Compliance with Article 8**

- 5.7.11. The Applicant is not seeking powers of compulsory acquisition relating to any residential dwellinghouse. It is therefore considered that the rights protected by Article 8 of the Convention – the right to a private and family life – will not be infringed by the Proposed Development. In the event that such rights were to be infringed, such interference would be justifiable on the basis that it would be lawful and in the public interest.
- 5.7.12. It is therefore concluded that the Proposed Development would be in accordance with Article 8 of the Convention. This conclusion has been reached individually for each of the interests in land identified in Appendix A.

## **6. Special Considerations**

### **6.1. Crown Land**

- 6.1.1. None of the land within the Order Limits is Crown Land for the purposes of section 135 of the Act.

### **6.2. Special Category Land**

- 6.2.1. The scheme includes two plots comprising land which is Open Space (as defined in section 19 of the Acquisition of Land Act 1981, as applied by section 131(12) of the Act)
- 6.2.2. The Applicant's approach to the inclusion of these Open Space plots in the Order is set out in the following paragraphs of this section. Otherwise, none of the land within the Order Limits is open space, common land or fuel or field garden allotments.

#### **Special Category Land – Open Space**

- 6.2.3. The scheme involves potentially undertaking works on two plots of land which form part of the Wynyard Woodland Park, to the west of Stockton, Open Access Land and registered Common Land. This is shown on the Special Category Land Plans (Document Reference 2.6).
- 6.2.4. Open Space is defined as “any land laid out as a public garden, or used for the purposes of public recreation....” by Section 19 of the Acquisition of Land Act 1981.



- 6.2.5. The land required for the scheme which is designated as a Country Park is in the ownership of Stockton Borough Council and forms part of the southern extent of the Wynyard Woodland Park. As the Country Park is land used for the purposes of public recreation, it falls within the definition of Open Space.
- 6.2.6. The land that is Country Park is within plots 13/14 and 13/16.
- 6.2.7. The plots comprise 1,644 square metres of land to be used temporarily with rights to be acquired permanently for the installation and thereafter the maintenance of off-road electrical cables in these plots.

### **Legal tests for Open Space**

- 6.2.8. The Section 132 of the Act make provision for Special Parliamentary Procedure (SPP) to apply where an Order authorises the compulsory acquisition rights over land, forming part of a common, open space or fuel or field garden allotment.
- 6.2.9. The DCO will engage section 132 and the DCO would therefore be subject to SPP unless the SoS is satisfied that one of the following circumstances applies:
- 6.2.10. The land to be burdened with the order right will be no less advantageous than it was before to the owner, any person entitled to rights of common and the public (Subsection 3).
- 6.2.11. Replacement land will be given in exchange for the land to be compulsory acquired with the same rights, trusts and incidents (Subsection 4); or
- 6.2.12. For open space land only, replacement land in exchange is not available or would only be available at a prohibitive cost, but it is strongly in the public interest for a scheme to proceed sooner than SPP would allow (Subsection 4A); or
- 6.2.13. For open space land only, the land is only being compulsory acquired for a temporary (although possibly long-lived) purpose (Subsection 4B); or
- 6.2.14. The land to be acquired does not exceed 200 square metres or is required for the widening or drainage of an existing highway and the giving of land in exchange is unnecessary (Subsection 5).

### **Open Space – Temporary Acquisition with Rights to be acquired Permanently**

- 6.2.15. The Open Space Land to be used temporarily with rights to be acquired permanently comprises plots 13/14 and 13/16. Construction works on these plots are likely to be undertaken under temporary possession with permanent rights sought for ongoing maintenance of these works and the scheme. The land is required for the laying of off-road electrical cables to connect the Proposed Development to the Norton substation. The rights are required to maintain the scheme once it has been constructed.

- 6.2.16. The nature of the Open Space Land would not be affected by the rights given the sub-surface nature of the majority of proposals. The Applicant has committed in its outline Public Rights of Way (PRoW) Management Plan (Document Reference 6.4.2.15) to keeping the route open either through management or use of Horizontal Directional Drilling (HDD) cabling technique.
- 6.2.17. The ability for the public to access the land following construction would therefore be no different to the current situation. Accordingly, the land when burdened with the right, will be no less advantageous than it was before to the persons in whom it is vested or the public, and the exception in section 132(3) applies and replacement land is not necessary.
- 6.2.18. These works are also considered to fall under section 131(4B) given the land required is required for the Proposed Development which is a temporary (albeit long-lived) use of land.

### **6.3. Accordingly, the Order should not be subject to SPP. Statutory Undertaker Land**

- 6.3.1. The interests held by each Statutory Undertaker identified by the Applicant are identified in the Book of Reference (Document Reference 4.2). There are a small number of plots required for the possible cable route which are the subject of powers of compulsory acquisition, in which Statutory Undertakers hold an interest for existing apparatus. The Applicant is confident that commercial agreement can be reached with the relevant undertakers in respect of those plots, in which case the powers would not be needed in respect of those Statutory Undertaker interests. However, at this stage such powers are included on a provisional basis to ensure delivery of that off-road cable route.
- 6.3.2. Section 127(2) of the Act states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that matters set out in Section 127(3) are satisfied. Those matters include:
- The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
  - If purchased, the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 6.3.3. Section 127(5) of the Act states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that matters set out in Section 127(6) are satisfied. Those matters are:
- The right can be purchased without serious detriment to the carrying on of the undertaking; or

- Any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.

6.3.4. Articles 32 to 34 of the draft DCO (Document Reference 3.1) gives the Applicant the authority to acquire land and rights from Statutory Undertakers, and to extinguish or suspend their rights, and to remove or reposition their apparatus, subject to the provisions of Schedule 11. The protective provisions provide adequate protection for the Statutory Undertakers and the Applicant has engaged with those effected and considers that the Statutory Undertakers effected will not suffer serious detriment to the carrying out of their undertaking as a result of the Proposed Development. In all cases, the land parcels in question would be affected by the imposition of rights authorising the Applicant to cross existing Statutory Undertaker apparatus. The tests set out in Sections 127(3) and 127(6) of the Act are therefore satisfied.

6.3.5. The Applicant has prepared a Statutory Undertakers Position Statement (Document Reference 7.7) which sets out the current status of engagement and negotiation with each Statutory Undertaker. It can be noted from that statement that in the vast majority of cases the Applicant is not proposing the compulsory acquisition of any statutory undertaker land. It is the Applicant's intention to secure crossings and the protection for Statutory Undertaker apparatus through private crossing agreements. In addition, Schedule 11 of the draft DCO (Document Reference 3.1) includes protective provisions for all statutory undertakers.

## 7. Conclusion

- 7.1.1. This Statement has set out how land interests relevant to the Proposed Development have been identified through diligent inquiry and has described the extent of powers of compulsory acquisition sought through the draft DCO (Document Reference 3.1) and the justification for their inclusion.
- 7.1.2. This Statement demonstrates that the inclusion of powers of compulsory acquisition in the DCO for the purposes of the Proposed Development is in accordance with the requirements of Section 122 of the Act as well as the considerations in the CA Guidance.
- 7.1.3. In summary, the compulsory acquisition powers sought are limited to the off-road cable routes which the Applicant has not yet been able to secure via voluntary negotiation, along with powers for the acquisition of rights in sub-soil interests of the on-road cable routes. The powers sought do not relate to permanent acquisition of land and relate only to the temporary use of land and ongoing rights to maintain. These powers are required for the purposes of, to facilitate, or are incidental to, the Proposed Development and are proportionate and no more than is reasonably necessary.
- 7.1.4. All reasonable alternatives to compulsory acquisition have been explored.
- 7.1.5. There is a compelling case in the public interest for the acquisition of rights over land to be compulsorily acquired given the need for, and benefits of the Proposed Development. The benefits to the public of the preferred off-road cable route add to the compelling case in the public interest for the acquisition of the corresponding rights for the off-road cables.
- 7.1.6. Articles 1, 6 and 8 of the First Protocol to the Convention have been considered and the Applicant has set out how the substantial public benefits of the Proposed Development outweigh the private loss that may be suffered by those whose land is to be acquired / whose rights would be interfered with.
- 7.1.7. It is therefore concluded that the Proposed Development and the land subject to compulsory acquisition powers meet the legislative tests set out within the Act and complies with the policy requirements set out in the CA Guidance such as the consideration of alternatives and human rights. The Applicant will continue to engage with persons effected.

## Appendix A Plots over which Acquisition of New Rights and Temporary Possession Powers are Required

The specific purpose for which each plot of land subject to compulsory acquisition and temporary possession powers is required is set out in this appendix. The first column of each table identifies the plot number as shown on the Land Plans (Document Reference 2.4) and used in the Book of Reference (Document Reference 4.2). The second column refers to the relevant Work Number as depicted in the Work Plans (Document Reference 2.2) and listed in the draft Development Consent Order (Document Reference 3.1).

### Part 1 – Acquisition of Rights and Imposition of Restrictions

**Table A-1 Schedule of acquisition of rights**

Plot Ref. (Sheet/ Plot)	Purpose (Work No.)	Purposes for which rights over land may be required and restrictive covenants imposed
1/1	3	install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus
1/2	3	
2/2	3	
2/4	3	
2/6	3	remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development
3/1	3	continuous vertical and lateral support for the authorised development
3/6	3	
4/2	3	install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts
4/3	3	
5/2	3	

5/3	3	install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
6/1	3	
6/2	3	
6/4	3	install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
6/6	3	
6/7	3	restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
7/3	3, 5	
7/4	3,5	
7/5	3,5	
7/6	3,5	
7/8	3, 5	
8/3	3,5	
8/4	3, 5	
8/5	3, 5	
8/6	3	
9/2	3, 5	
9/3	3, 5	
9/4	3, 5	
9/5	3, 5	
9/6	3	
9/8	3	

9/9	3	
9/15	5	
9/16	5	
10/1	3	
10/2	3	
11/1	5	
11/3	3	
11/5	5	
11/6	5	
11/7	5	
11/9	5	
11/10	5	
11/11	5	
11/12	5	
11/13	5	
11/14	5	
11/15	5	
11/16	5	
11/17	5	
11/18	5	
12/1	5	

12/2	5	
12/3	5	
12/4	5	
12/5	5	
12/6	5	
12/7	5	
12/8	5	
12/9	5	
12/10	5	
12/11	5	
12/12	5	
12/13	5	
12/14	5	
12/15	5	
12/16	5	
12/17	5	
12/18	5	
12/19	5	
12/20	5	
12/21	5	
12/22	5	



12/23	5	
12/24	5	
12/25	5	
12/26	5	
12/27	5	
12/28	5	
12/29	5	
12/30	5	
12/31	5	
12/32	5	
13/1	5	
13/2	5	
13/3	5	
13/4	5	
13/5	5	
13/6	5	
13/7	5	
13/8	5	
13/9	5	
13/10	5	
13/11	5	

13/12	5	
13/13	5	
13/14	5	
13/15	5	
13/16	5	
13/17	5	
13/18	5	

**Part 2 – Temporary Possession**

**Table A-2 Temporary Use of Land**

<b>Plot Ref. (Sheet/ Plot)</b>	<b>Purpose (Work No.)</b>	<b>Purpose for which temporary possession may be taken</b>
3/7, 3/14, 3/15	1 to 9	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9 Temporary use (including access) for the construction of Work No. 1 to 9  Works to facilitate access to all works

## Appendix B Schedule of Negotiations

**Table B-3 Schedule of Negotiations**

<b>Plot Ref. (Sheet/ Plot)</b>	<b>Name</b>	<b>Status of Negotiations</b>
9/3, 9/4, 9/5	Andrew Parsons and Josephine Parsons	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
2/4, 5/2, 5/3, 6/1, 6/2, 6/4	David Richard Hewitson and Richard William Hewitson	An Option Agreement in respect of Panel Area B which includes rights to carry out cable works was entered into in July 2022.
9/16, 11/5, 11/6, 11/7	Fiona Jayne Hopper	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/13, 12/19, 12/21, 12/22, 12/26, 13/4, 13/6, 13/7, 13/9, 13/10	Frank Battersby Andrew	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/29, 13/2, 13/12	Frank Taylor	RWE is working toward signing Heads of Terms for an Option for Easement over the land for the cable route.
12/11	Glenn Bargewell	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/28	Hellens Investments (Carlton) LLP	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
13/9	Ineos Manufacturing (Hull) Limited	RWE is engaging with INEOS in respect of a crossing agreement and relevant rights for the pipeline
6/7	June Mary Dent, Mark Peter Dent and Stuart Peter Dent	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/6	Kathryn Sally-Ann Robson	RWE has offered a commercial agreement for the cable route with communications commencing in March 2022. In August 2023, the landowner declined to take this offer further. RWE will continue to engage with the landowner to seek a commercial agreement.

7/3	Margaret Ruth Lowrie	RWE is working toward signing Heads of Terms for an Option for Easement over the land for the cable route.
4/2, 4/3, 6/6	Michael Webster	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/26, 13/4, 13/6	Norma Andrew	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
11/13	Northumbrian Water Limited	RWE is engaging with Northumbrian Water in respect of a crossing agreement and relevant rights for the pipeline
11/18, 12/2	Peter Charles Robson and The Executor/Executrix of Eric Callender Robson	RWE has attempted engagement with the landowner in March 2022 and understands they would not like to enter into any form of agreement due to a conflict of interest.
6/2	Richard Edwin Ord, Robert Benton Ord and The Executor/Executrix of Mary Ord	RWE has attempted engagement with the landowner in March 2022 and understands they would not like to enter into any form of agreement
11/9, 11/14, 12/5	Robert Leslie Bainbridge and June Bainbridge	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/8	Robert Stephen Bradley	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
11/15, 12/1	Stephen Revis Sharp and Shirley Sharp	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
7/8, 8/4, 8/5, 9/2	Stewart Eric Chapman	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
12/31, 12/32, 13/14, 13/16	Stockton-on-Tees Borough Council	RWE has been engaging with the Council regarding the proposed development since August 2022 and will seek to understand whether commercial terms are required.
9/9, 10/1	Stuart William Blythman	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.

13/4	Thomas Battersby Andrew	RWE is in an advanced stage of negotiation to agree an Option for an Easement over the land for the cable route.
11/3	Timothy Wood and Victoria Jane Wood	RWE has engaged with this landowner's agent to understand the nature of the rights as they relate to the Option Agreement with the adjacent landowner. A commercial offer has been raised with the landowner's agent and will be tabled once these rights are better understood.