



Department for  
Business, Energy  
& Industrial Strategy

Steve Self  
Project Manager  
National Grid Electricity Transmission plc  
1 – 3 Strand  
London  
WC2N 5EH

**Department for Business,  
Energy and Industrial Strategy**  
1 Victoria Street  
London SW1A 0ET  
T: +44 (0)300 068 5770  
E: [giles.scott@beis.gov.uk](mailto:giles.scott@beis.gov.uk)  
[www.gov.uk/beis](http://www.gov.uk/beis)

3rd August 2017

Dear Mr Self

## **PLANNING ACT 2008**

### **APPLICATION FOR DEVELOPMENT CONSENT FOR THE RICHBOROUGH CONNECTION PROJECT [Planning Inspectorate Reference: EN020017]**

#### **1. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to:

- the Report dated 8 March 2017 of the Examining Authority, a panel of four Examining Inspectors led by Frances Fernandes (Lead Member of the Panel), Annie Coombs, Richard Rees and Stephen Roscoe (“the ExA”), who conducted an examination into the application dated 11 January 2016 (“the Application”) from National Grid Electricity Transmission plc (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the Act”) for the Richborough Connection Project (“the Development”);
- representations received by the Secretary of State in respect of the Application; and
- further consultation undertaken by the Secretary of State in respect of the Application.

1.2 The examination of the Application began on 8 June 2016 and was completed on 8 December 2016. A number of hearings to consider aspects of the Application were held during the examination. The ExA also undertook a number of accompanied and unaccompanied site inspections.

- 1.3 The Order as applied would grant development consent for the construction and operation of a 20km long, 400kV high voltage overhead electric line between Richborough and Canterbury North substations together with related modifications to the local electricity transmission and distribution networks. The proposed Development would connect the Nemo Link electricity interconnector between the United Kingdom and Belgium to the national grid transmission system.
- 1.4 The Development, as applied for, would comprise the following principal elements:
- A new 400kV overhead line between Richborough and Canterbury North substations (“the PC 400kV line”) which would be approximately 20km long and would be built using 45 standard lattice pylons and 15 low height lattice pylons;
  - A permanent diversion of an existing lower voltage (132kV) overhead line (“the PY 132kV line”) to enable the PC 400kV line to be constructed above, thereby, crossing over the PY 132kV line. This would be done by constructing six new pylons, four of which would be of lower height so that the 400kV line could then be constructed overhead. Also, the removal of two pylons of the PY 132kV line to enable the permanent diversion;
  - Three temporary diversions of another existing lower voltage (132kV) overhead line (“the PX 132kV line”). The PX 132kV line needs to remain in operation (energised) whilst the PC 400kV line is being built. In order to maintain local electricity supplies, three temporary diversions of the existing PX 132kV line would be needed where the PC 400kV line crosses over it. This would be done by transferring the PX 132kV line onto wooden poles so that the PC 400kV line can be built;
  - The removal of 20.6km (79 pylons) of the PX 132kV line (including its temporary diversions) which run between Richborough 132kV substation and Canterbury South 132kV substation; and
  - Associated Development, including temporary access roads to reach pylon construction and demolition areas, bridge structures, highway works, construction compounds, protective scaffold structures, pylon works sites and ancillary works.
- 1.5 Published alongside this letter on the Planning Inspectorate’s web-site is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in chapters 4, 5, 6, 7, 8 and 9 of the ExA’s Report and the Summary of Conclusions and Recommendations is in chapter 11.
- 1.6 All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report (specified in the form, ER X.XX.XX.)

## 2. **Summary of the ExA's Report and Recommendation**

2.1 The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

- a) the need for and evolution of the proposed Development;
- b) landscape and visual effects;
- c) good design;
- d) socio-economics;
- e) biodiversity and geological conservation;
- f) noise, vibration and electric and magnetic fields;
- g) traffic and transportation;
- h) water quality and resources and flood risk;
- i) the historic environment;
- j) air quality and lighting;
- k) the effect of the proposed development on the Broad Oak Reservoir proposal; and
- l) compulsory acquisition.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the ExA's Report, the ExA recommends [ER 11.1.4] that the Secretary of State should make the Order set out in Appendix A to the Report.

## 3. **Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 and 120 of the Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## 4. **The Secretary of State's Consideration of the Application**

4.1 The Secretary of State has considered the ExA's Report, the representations and all other material considerations. The Secretary of

State's consideration of the ExA's Report is set out in the following paragraphs.

- 4.2 The Secretary of State has had regard to the relevant National Policy Statements ("NPSs"), the Local Impact Report submitted on behalf of Kent County Council, Canterbury City Council, Thanet District Council and Dover District Council and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendation.

#### Need for the Proposed Development

- 4.4 The Secretary of State has had regard to the Energy NPSs, EN-1 (the Overarching NPS for Energy) and EN-5 (the NPS for Electricity Networks Infrastructure), which set out a national need for the development of new nationally significant electricity transmission infrastructure of the type that is the subject of the Application. The Panel considered the Application against the relevant provisions and requirements in the NPSs throughout the Report and, after considering the Panel's conclusions in paragraphs 4.2.5, 4.4.162, 8.2.2 and 11.1.1(a), the Secretary of State is satisfied that the decision to make the Order would be consistent with the Government's policy objectives, as set out in EN-1 and EN-5, and that there is a national need for the Development – as it would enable delivery of the Nemo Link interconnector and the development of new electricity transmission infrastructure of the type proposed in the NPSs.

#### Conformity with National Policy Statements

- 4.5 Under the provisions of the Planning Act 2008, the Secretary of State must consider if applications for development consent are consistent with all of the relevant policies in the Overarching National Policy Statement for Energy (EN-1) and the relevant technology specific National Policy Statement, in this case, the National Policy Statement for Electricity Networks Infrastructure (EN-5).
- 4.6 The Secretary of State notes concerns from a number of interested parties that the Application was not consistent with the relevant policy tests set out in the NPSs and that, in response, the Applicant contended that the Application was in accordance with the NPSs. The ExA concluded that it was satisfied with the approach the Applicant had taken in its

consideration of the NPS assessment principles and the Secretary of State adopts and agrees with that view.

### Habitats Regulations

- 4.7 The Secretary of State has considered whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site (as required by regulation 61 of the Conservation of Habitats and Species 2010 (“the Habitats Regulations”).
- 4.8 The ExA’s overall findings and conclusions in relation to the Habitats Regulations are found in Chapter 7 of the Report.
- 4.9 The Applicant submitted a No Significant Effect Report (“NSER”) with the Application, which assessed the potential impacts of the Development on European Sites. This assessment was updated throughout the Examination to address matters raised by the ExA and the Interested Parties. The Secretary of State is satisfied that the material provided during the Examination contains sufficient information to inform consideration under regulation 61(1) of the Habitats Regulations as to the likely impact on the European sites, or other sites to which the same protection is applied as a matter of policy.
- 4.10 Using a 10km buffer zone around the proposed development, the Applicant identified eleven European sites for inclusion within the NSER, as follows:
- Stodmarsh SPA;
  - Stodmarsh Ramsar;
  - Stodmarsh SAC;
  - Thanet Coast and Sandwich Bay SPA;
  - Thanet Coast and Sandwich Bay Ramsar;
  - Sandwich Bay SAC;
  - Thanet Coast SAC;
  - Blean Complex SAC;
  - Tankerton Slopes and Swalecliffe SAC;
  - The Swale SPA; and
  - The Swale Ramsar.
- 4.11 The Applicant concluded within its NSER that the Development, both alone and in-combination with other plans or projects, is not likely to have a significant effect on any of the European sites screened into the assessment. This is on the basis of mitigation secured in the Embedded Environmental Measures Schedule. Natural England, the Government’s statutory advisers on nature conservation matters, agreed with this conclusion and confirmed that an appropriate assessment is not required. The ExA’s recommendation took the view that sufficient information had been made available to allow the Secretary of State to conclude that likely significant effects on European sites during the construction, operation, maintenance and decommissioning of the

proposed development can be excluded, provided the mitigation measures secured in the Order are delivered. The Secretary of State agrees with the view of the ExA and consequently considers that the Development either alone or in combination with other plans or projects is not likely to have a significant effect on European sites.

## 5. **Consideration of the ExA's Conclusions and Recommendations**

5.1 The Secretary of State notes that the issues on which the greatest focus fell during the examination were: (a) the need for and evolution of the proposed development; (b) landscape and visual effects; (c) socio-economics; (d) biodiversity and geological conservation; (e) the historic environment; (f) the proposed Broad Oak Reservoir; and (g) proposals for compulsory acquisition. These matters are considered in detail below.

### (i) Need for and Evolution of the Proposed Development

5.2 The ExA covered a wide variety of topics under this heading:

#### Pre-Application Engagement and Consultation

5.3 The Secretary of State notes that there were concerns from South East Water ("SEW"), a water supply company with operations around the south east of England which is proposing to construct a reservoir at Broad Oak near Canterbury, and from other interested parties that the pre-application engagement and consultation carried out by the Applicant before it submitted its application for development consent was inadequate. The Secretary of State notes that the ExA considered the arguments put forward by the all parties including the Applicant and further notes that the relevant local Councils (Kent County Council, Canterbury District Council, Dover District Council and Thanet District Council) indicated that the Applicant's consultation "*provided sufficient opportunity during the various stages of the pre-application process to provide feedback and comment as the development has evolved*".

5.4 The ExA's conclusion was that relevant legal and policy duties were met by the Applicant in relation to the pre-application consultation. The ExA also considered that the appropriate process had been followed in relation to pre-application duties in respect of the Broad Oak Reservoir proposal. The Secretary of State agrees with the ExA's conclusions in respect of this matter.

#### Pre-Application Alternatives

5.5 The ExA's Report sets out that there were many representations from Interested Parties contesting the way in which the Applicant had assessed alternatives to the Development. The key issues raised were the way in which the Applicant had determined the proposed route during the preparation of the Application, why the landfall element of the Nemo Link (at Richborough on the Kent coast) had been separated from the application for the transmission system, why there was no provision for

partial or total undergrounding of the route and why Richborough had been chosen as the landfall for the Nemo Link in the first place.

- 5.6 The Secretary of State notes that (as recorded in the ExA's Report) the Applicant produced a Strategic Options Report ("SOR") which considered a number of possible scenarios to connect the Nemo Link to the National Grid transmission system. The Report included possible subsea connections between Richborough and landfall locations on the North Kent coast, different land-based route options from Richborough to suitable sub-stations either at Canterbury or elsewhere and the possible retention of an existing 132kV line that runs from Richborough to Canterbury.
- 5.7 The conclusion in the SOR was that the offshore options raised cost and environmental issues which, when taken together, posed considerable difficulties for the selection of an alternative offshore route. The SOR also concluded that an onshore connection between Richborough and Canterbury best met the twin targets of meeting the Applicant's statutory duties and Government guidance. The Applicant concluded that the chosen route was not the most economical option but it had less environmental harm in terms of impacts on landscape and biodiversity.
- 5.8 The ExA records that the Applicant undertook various studies to finesse the connection option between Richborough and Canterbury:
- (i) a Route Connection Study which identified two route corridors (a Northern and a Southern one) and two sub-options at the Canterbury end of one of the routes, the preferred one of which came into contact with an area identified as a location for the proposed Broad Oak Reservoir;
  - (ii) a Preferred Connection Option and a Route Corridor Report considered whether the findings in the Strategic Options Report and the RCS should be modified in the light of consultation:
  - (iii) a Connection Options Report considered alternative alignments for an overhead line within the preferred route corridor, pylon design and whether undergrounding would be appropriate. Five alignment options were considered – four overhead and one underground (if that was appropriate);
  - (iv) a Pylon Design Options Report covering an appraisal of the three pylon types that might be considered for the Development: standard lattice, low height lattice and T-pylon); and
  - (v) a route option appraisal relating to the Broad Oak Reservoir proposal, prepared and incorporated into the Applicant's Environmental Statement submitted with its application for development consent. It concluded that adopting option 3 (the route that is the subject of the Application) meant it could co-exist with the reservoir proposal.

- 5.9 The ExA reported that the various studies undertaken by the Applicant resulted in changes being made to the route of the Development. The Secretary of State concludes that the Applicant has set out clearly the rationale for its decision to choose the connection route that is the subject of the Application and agrees with the ExA's analysis that its consideration of alternatives is reasonable.
- 5.10 A number of Interested Parties considered that the way the lifetime costs of the Development had been calculated by the Applicant worked against the adoption of a Zeebrugge – Kingsnorth sub-sea cable route. Kent County Council felt there was a need for further detail on costs to be provided for undergrounding the Richborough to Canterbury route.
- 5.11 In response, the Applicant set out how it had arrived at the figures quoted for the lifetime costs of the various options and how these fitted in with the overall assessment of the suitability of each of the route options that were considered before submission of the Application. The ExA noted that none of the Interested Parties was able to provide any cost figures to counter those provided by the Applicant and was satisfied, therefore, that suitable information had been provided by the Applicant.
- 5.12 The Secretary of State agrees with the ExA's conclusions in this matter.

#### Separation of Landfall and Consented Richborough Substation from the Application

- 5.13 A small number of interested parties argued that the landfall for the Nemo Link and the Richborough Connection Project should have been considered as a single development, rather than separating them into individual projects. The Applicant argued that the Nemo Link was not of itself a Nationally Significant Infrastructure Project and did not, therefore, fall to be considered under the Planning Act 2008. In addition, the Nemo Link and the Development were being brought forward by different legal entities, were subject to separate statutory authorisations and different development timescales. The Secretary of State agrees with these arguments.
- 5.14 The Secretary of State also notes that there are no legal impediments to the approach adopted by the Applicant in this case and that any commercial risks associated with a refusal to grant consent would have been entirely a matter for the Applicant.

#### Distribution-based Network Solution

- 5.15 The Secretary of State notes that the Broad Oak Preservation Society suggested during the Examination that the option to upgrade the existing 132kV overhead line (between Richborough and Canterbury) had not been considered fully and that a full technical evaluation should be undertaken by the Applicant. In response, the Applicant explained that the pylons used for the 132kV line were not suitable for use with the

higher voltages needed to connect to the Nemo Link, as they do not provide the necessary ground clearance.

- 5.16 The Secretary of State is aware that the ExA was content that the Applicant's explanations about why reinforcement of the existing 132kV line would not work were reasonable and agrees with the overall conclusions reached.

#### Undergrounding and Localised Undergrounding Options

- 5.17 The ExA's Report noted there were calls from a number of interested parties for the Richborough Connection Project to be either partially or wholly undergrounded. There were also concerns that the Applicant had not given sufficient consideration to alternatives for undergrounding.
- 5.18 The Secretary of State notes that the Applicant pointed to a number of the Reports it had produced to look at route options (as referenced in paragraph 5.8 above). Undergrounding was rejected by the Applicant because of the potential landscape and visual impacts; the potential impact on heritage assets; the potential impacts on ecology; the potential pollution impacts during construction; and, cost. The Applicant also appraised an underground connection in the Connection Options Report and concluded that in relation to the criteria in EN-5, there was insufficient justification for undergrounding any section of the proposed route of the Development.
- 5.19 The Broad Oak Preservation Society questioned whether all of the impacts identified by the Applicant would apply in the event that High Voltage Direct Current ("HVDC") technology was used because a narrower trench could be adopted. The Society also set out its view that land for the converter station that would be necessary to convert the HVDC cables to the High Voltage Alternating Current ("HVAC") system could be built on land at Canterbury near the sub-station for the project.
- 5.20 There were a number of suggestions from interested parties for which sections of the Development might be laid underground: westwards of Pylon 13 to the Canterbury North sub-station; the 'diamond cross over' south of Monkton; and in the vicinity of the proposed Broad Oak Reservoir.
- 5.21 In considering all these matters, the ExA was content that the Applicant had demonstrated how its assessment arrived at a conclusion of not significant landscape and visual effects. The ExA concluded that the Applicant's pre-application process in respect of undergrounding was sound.
- 5.22 The Secretary of State agrees with the ExA on the conclusions it reaches. Different route and technology options were considered at the pre-application stage before the Applicant settled on the proposal which is the subject of the Application. The Secretary of State agrees with the ExA that the process leading up to the Application being made was

sound and that the Application before him should be considered on its merits.

Consideration of the Broad Oak Reservoir Proposal During Pre-Application

- 5.23 As indicated above, SEW wants to develop a freshwater reservoir (the Broad Oak Reservoir) in close proximity to a section of the route of the proposed Development. SEW argued that its proposals for the Reservoir development had not been considered properly at the pre-Application stage by the Applicant, to the detriment of those proposals. SEW also complained that it had not been involved in discussions about some of the consultation options and had not, therefore, been able to put its case forward.
- 5.24 The Applicant argued that it had treated the Reservoir proposal appropriately in its assessments before finalising its route option.
- 5.25 The Secretary of State notes from the ExA's Report that the SOR does not refer to the Broad Oak Reservoir proposal but that the Applicant explains that this is consistent with the approach taken to the inclusion in the document of other socio-economic features. The ExA concludes that it is content that the lack of a reference to the Broad Oak Reservoir proposal does not constitute inadequacy in terms of the Applicant's appraisal of alternatives. The ExA further indicates that it considered the Applicant had based its decision on the final route option on information on other proposals which was available at the time, noting that Canterbury City Council's emerging Local Plan did not safeguard or allocate land that might be needed for the proposed Reservoir.
- 5.26 The ExA also gave weight to the Applicant's separate study that identified design options for the proposed overhead line in the vicinity of the proposed Broad Oak Reservoir. The Applicant indicated that this study was undertaken to ensure that both the overhead line and the Reservoir could co-exist without constraints on them in the form of restrictions on the siting of the river diversion and fish pass and on the possibility of planting suitable vegetation to provide cover for fish using the fish pass. The ExA considered that, overall, the Applicant's assessment of the Reservoir proposal in framing its decision on which routing option to take forward had been conducted properly and that the outcome in relation to the way that alternatives for the overhead line were assessed was appropriate.
- 5.27 The Secretary of State has considered the arguments set out in the ExA's Report and the conclusions that are drawn on them. He considers that the Applicant's approach was acceptable and that the conclusions drawn by the ExA are appropriate.

*Adequacy of the Environmental Impact Assessment Process and the Environmental Statement*

- 5.28 All proposals for projects that are subject to the Environmental Impact Assessment (“EIA”) Directive must be accompanied by an environmental statement describing aspects of the environment likely to be significantly affected by the project in question. The proposed Development is covered by this requirement.
- 5.29 The Secretary of State notes that the Applicant submitted a Scoping Report to the Secretary of State seeking an opinion on what information was to be provided in any environmental statement. A Scoping Opinion was issued by the Secretary of State after taking account of responses from a range of prescribed consultees and other interested parties.
- 5.30 SEW questioned the adequacy of the Applicant’s environmental statement process in respect of the Broad Oak Reservoir proposal. The key issues it chose were: the Scoping Opinion regarding undergrounding; engagement with SEW for the purposes of environmental assessment; the suggested need for further environmental information; visual effects; the assessment of effects on the water environment; the assessment of socio-economic and recreation effects; and cumulative effects.
- 5.31 SEW argued that the Applicant had not addressed undergrounding in the way that it was covered in the Scoping Opinion, particularly in respect of paragraph 2.42 of the Scoping Opinion which states that it would be helpful to understand why an underground option was not considered for all the potential alignments set out in the Connection Options Report. SEW also felt that the Environmental Statement should have adopted the Scoping Opinion’s stated expectations and demonstrated consideration of options and an explanation of where options were not adopted.
- 5.32 The Applicant responded that it was not appropriate to assess an underground cable option for each (overhead) alignment as an underground route would not necessarily be aligned with an overground option because it would be subject to a different set of constraints on routeing. In addition, the Applicant stated that two of the options merely reflected the use of different pylons which would not, therefore, lead to separate underground options.
- 5.33 The ExA stated it was satisfied with the Applicant’s explanation for its approach to addressing the issues on undergrounding set out in the Scoping Opinion. The ExA also stated that it was satisfied the Applicant’s consideration of undergrounding in the Environmental Statement had answered the request for an explanation of the alternatives considered that were set out in the Scoping Opinion and that it meets the minimum requirements set out in Schedule 4, Part 2 of the Environmental Impact Assessment (England and Wales) Regulations 2009.
- 5.34 SEW argued that the Environmental Statement and EIA processes are inadequate and that because the Applicant failed to engage with it, the

fact that the Development and the Broad Oak Reservoir proposal were incompatible was not appreciated. The ExA considered that the consultation with SEW was appropriate and proportionate.

- 5.35 SEW argued that the adoption of one of its three suggested alternatives could secure the co-existence of the proposed Development and the Reservoir. The company argued that there would be a need for further environmental information in the event its alternatives were to be considered. The Applicant's position was that there is no need for alternatives to be considered as the two developments can co-exist under the scenario that is the subject of the Application.
- 5.36. There were also differences of opinion between the Applicant and SEW over whether the visual impacts of the Development, the water environment and socio-economic and recreation effects had been properly considered by the Applicant.
- 5.37 Both SEW and the Environment Agency argued that the Applicant had failed to consider the Broad Oak Reservoir proposal when assessing the potential cumulative effects of the proposed Development as it had been scoped out of the Cumulative Effects Assessment that had been undertaken by the Applicant. The Applicant argued that it had scoped out the Reservoir proposal for good reasons which had been a matter of agreement with the relevant local councils. Kent County Council and Canterbury City Council were keen that there would be no unacceptable conflict between the proposed Development and the Broad Oak Reservoir proposal and urged the ExA to take account of SEW's objection in framing its consideration of the Application. Finally, Natural England stated that it had not assessed the interactions between the proposed Development and the Broad Oak Reservoir as it considered the matter was for the Applicant and SEW to resolve.
- 5.38 The ExA's conclusions on the cumulative effects issues was that there was so much uncertainty over the detail of the Broad Oak Reservoir proposals at the time that the Applicant was writing its Environmental Statement that it was a reasonable conclusion to avoid including the Reservoir in the cumulative assessments it prepared as part of the application process. However, the ExA stated that it doesn't underestimate the importance the Environment Agency attributes to establishing thorough consideration of further details of the design of the reservoir and its mitigation, whether the Development and the Reservoir could co-exist.
- 5.39 The ExA noted that there were two specific points on which SEW considered the Applicant's Environmental Statement to be inadequate – the impacts on the Blean Woods Special Landscape Area and Bird Collision Risk. In respect of the former, the Applicant explained that the Special Landscape Area already had overhead lines within it (400kV and 132kV) and would not be directly affected by the Development in contrast with the Broad Oak Landscape Character Area which would be subject to a direct effect because the proposed Development would cross it introducing a new feature into the landscape which would lead to a

marked change. In respect of the latter, the Applicant argued that while it would be possible to undertake an assessment of impacts on birds, it would be very difficult to ascribe any confidence to the results because of the lack of detailed data on the proposed Reservoir as a suitable habitat for bird species. With no information available on its broader geographical setting, it is not possible to understand bird movements to and from the proposed Reservoir. Natural England supported this view. In light of the arguments put forward by the respective parties, the ExA considered that the Applicant's assessment of cumulative impacts was acceptable.

5.40 The ExA concluded that the Applicant's assessment of impacts was adequate for the purposes of EIA and its Environmental Statement. The Secretary of State considers that the ExA has correctly assessed the matters raised and agree with its conclusions.

5.41 In respect of the points raised by the Environment Agency, the Secretary of State notes that it responded to the Secretary of State's consultation of 31 March 2017 by way of a letter dated 11 April 2017. In that letter, the Environment Agency set out that its role was to ensure that both the proposed Reservoir and the proposed Development complied with any necessary legislation for which it is responsible as competent authority. The Environment Agency's concerns about the way that cumulative impacts had been assessed by the Applicant, were considered by the ExA which found that there was no basis for the Applicant to make any cumulative assessments that included the proposed Reservoir. The Secretary of State agrees with that assessment.

(ii) *Landscape and Visual Effects/Landscape Methodology*

5.42 The Secretary of State is aware that this was one of the key topics for consideration during the Examination of the Application. He notes that EN-1 requires the decision-maker to judge if any adverse effect on landscape would be of such magnitude as to outweigh any benefits of the project in question. EN-5 sets out that mitigation for visual impact effects can often be put in place but that it may be necessary to reject planning applications where impacts are unacceptable in planning terms.

5.43 General guidance is also provided by the Holford Rules (a series of planning guidelines relating to the visual amenity of high voltage transmission lines) which set out a framework within which proposals for overhead lines should be framed.

5.44 The Applicant provided a number of strategies for mitigating the visual impacts of the proposed Development both as part of the documentation at application and during the Examination of the Application – in the Environmental Statement, the Embedded Environmental Measures Schedule, the Biodiversity Mitigation Strategy, the Concept Mitigation Planting Plan and the Landscape and Habitat Enhancement Scheme (which sets out planting enhancements the Applicant would deliver outside the limits of the Development Consent Order that is the subject of the Application).

- 5.45 The Joint Councils' Local Impact Report ("LIR") sets out that adverse visual and landscape effects would be experienced over an extensive area, much of which would be characterised by open and expansive landscape settings which have little topographic backgrounding or screening. The LIR also states that there would be adverse visual impacts on the Saxon Shore Way long distance footpath.
- 5.46 The Applicant used standard industry methodology to produce its assessment of landscape and visual impacts. The ExA reports that there were no interested parties who fundamentally disagreed with the Applicant's approach but there were disagreements about the way it had been applied.
- 5.47 Kent County Council objected to the proposed Development throughout the Examination of the Application because of its landscape effects. The Council also argued that the way the impacts of the Development were assessed by the Applicant meant that they were understated, particularly in relation to: the sensitivity judgements in the Application documentation; assessment of the sensitivity of the Ash Level (a low-lying area of land along parts of the River Stour); the geographic extent of landscape effects; construction effects; and the application of professional judgement. The Applicant disagreed with the Council's arguments.
- 5.48 The Broad Oak Preservation Society argued that the landscape methodology had been designed by the Applicant to conclude that there were no significant landscape impacts arising from the proposed Development. The Applicant's response indicated it felt the assessment of landscape effects was appropriate and in accordance with the relevant landscape methodology.
- 5.49 The ExA raised concerns about the way the Applicant had characterised landscape value particularly with reference to Areas of High Landscape Value and Special Landscape Areas. The Applicant responded, explaining that its landscape characterisations were based on descriptions in local planning policies and in the Guidelines to Landscape and Visual Impact Assessment ("GLVIA") (3<sup>rd</sup> Edition).
- 5.50 In considering the arguments on landscape methodology, the ExA gave weight to some of the arguments put forward by Kent County Council about the way that the issue had been assessed. However, the ExA's overall conclusion on this issue was that the Applicant had conducted its appraisals in accordance with the GLVIA. The ExA was also satisfied that the procedures adopted by the Applicant followed objective methods (ER 5.2.59).
- 5.51 In light of the arguments set out by interested parties, the Secretary of State considers that infrastructure of the sort being proposed by the Applicant has the potential to give rise to adverse impacts and that the significance of those impacts needs to be considered properly. The Secretary of State notes the differing arguments about landscape and

visual impacts. The Secretary of State has considered the ExA's analysis of those arguments and agrees with the conclusions it draws from it.

### Visual Methodology

- 5.52 The ExA records that there were discussions among the parties about the visual assessment methodology used by the Applicant to assess impacts, with Kent County Council, SEW and the Broad Oak Preservation Society all disagreeing with the approach adopted by the Applicant.
- 5.53 The ExA considered the arguments being put forward by the Applicant and interested parties. It strongly disagreed with the Applicant's approach to excluding adverse construction stage visual effects in its assessment of all public rights of way that would be closed even briefly. The ExA concluded that the Applicant had under-assessed construction effects on views from public rights of way but that these would not have resulted in significant effects beyond those assessed because of the short-term and temporary nature of the effects of construction works.
- 5.54 The ExA's overall conclusions on landscape and visual methodologies used by the Applicant (ER 5.2.78 – 5.2.80) were that they were fit for purpose, though lacking in clear analysis and transparency in certain respects (although some of this was remedied by information provided by the Applicant during the Examination of the Application). The ExA did not consider that the challenges made to the methodologies undermine the overall conclusions of the Applicant's landscape and visual assessments when mitigation is taken into account.
- 5.55 The Secretary of State acknowledges the deficiencies identified by the ExA in the Applicant's methodologies. However, the Secretary of State considers that the ExA's assessment of the overall outcomes in this matter was correct.

### Consideration of Alternatives in Relation to Landscape and Visual Effects

- 5.56 Applicants for development consent orders for projects which constitute development for environmental impact assessment purposes have to consider alternatives with respect to landscape and visual impact (as set out in NPSs EN-1 and EN-5). The Applicant set out that it considered alternatives and followed the Holford Rules in aligning its preferred route.
- 5.57 Interested parties including Kent County Council, the Broad Oak Preservation Society, Chislet and Hoath Parish Councils and SEW all questioned whether the Applicant's assessment of alternatives had been open-minded and whether it had properly considered options for undergrounding and alternative connection points.
- 5.58 In considering the application of the Holford Rules along the route of the Development as a whole, the ExA considered the views put forward by interested parties as well as the Applicant and concluded that the Rules

had been applied properly in guiding the design of the proposed overhead line (ER 5.2.123).

5.59 In terms of more general routeing considerations, the Applicant stated that it had set out its consideration of alternative routes in a number of documents submitted as part of the Application. The ExA concluded that the Applicant had acted appropriately in choosing a route for the proposed Development. In terms of the possibility of alternative landfall points being utilised for the Nemo Link, the ExA agreed with the Applicant that the Development has to connect to the consented landfall point at Richborough. Its overall conclusion (ER 5.2.127) is that it is content with the approach adopted by the Applicant in respect of decisions on routeing of the Development.

5.60 The Secretary of State agrees with the ExA that the Applicant conducted an appropriate assessment of options for the Connection Project and that the conclusions reached were correct including in relation to the application of the Holford Rules to the Development.

### Undergrounding

5.61 The Secretary of State notes that the ExA considered whether the Applicant had properly assessed the need for partial undergrounding of the Development, particularly in the vicinity of Broad Oak village and what is known as the 'diamond cross-over' (the location on Monkton Marshes where the proposed 400kV overhead line would need to pass over the retained PY 132kV electric line, also involving temporary diversion of the PX 132kV electric line prior to its dismantling and removal) where concerns were raised on landscape, visual and farming grounds.

5.62 The ExA (ER 5.2.138 – 5.2.142) did not consider that there were arguments to support the undergrounding of the Development along any parts of the proposed route. The Secretary of State agrees that the arguments put forward by the Applicant and endorsed by the ExA show that the undergrounding of the proposed Development either in whole or in part was not required.

### Mitigation

5.63 The ExA assessed whether the selected design option for the Development's support structure – lattice pylons of two heights – was the most appropriate in the circumstances. The ExA considered whether T-pylons, a new pylon design which are relatively shorter in height compared to full height lattice structures and occupied a smaller land footprint could be used. These had been discounted by the Applicant in favour of the lattice design but might have been utilised in the Development. The Applicant had set out its rationale for the use of full and lower height lattice pylons in its Pylons Design Options Report submitted with its application. In its conclusion (ER 5.2.149), the ExA expressed its satisfaction with the consideration given by the Applicant to

the choice of the lattice structures and accepted the Applicant's rationale for not choosing the T-pylon.

5.64 The Secretary of State agrees with the conclusion reached by the ExA.

#### Conclusions on Alternatives in Relation to Landscape and Visual Effects

5.65 The ExA accepts that alternatives to the proposed Development would be technically feasible (ER 5.2.150) and considers that the Applicant has demonstrated that its approach to alternatives was appropriate. The ExA also considered that undergrounding would not be an appropriate response to calls for mitigation. Finally, the ExA concluded that the Holford Rules had been applied appropriately by the Applicant in both route alignment and the way that visual assessments had been undertaken.

5.66 The Secretary of State notes the conclusions drawn by the ExA in this matter, particularly in relation to the way the Holford Rules had been applied by the Applicant in its consideration of route options and agrees that they are appropriate.

#### Key Matters Raised by the Examining Authority and Interested Parties

5.67 (ER 5.2.153 – 5.2.194) The ExA considered specific locations where it and interested parties had concerns about the effects of the proposed Development on landscape and views: Broad Oak village, Foxhill House and Stables; Kemberland Wood; Tile Lodge Farm; Nethergong Campsite; Historic Wantsum Channel and Wantsum Channel Area of High Landscape Value; the Ash Level; the Diamond cross-over and Sherrif's Court Farm. The ExA's Report reflects the Applicant's assessment that in some of these locations, the visual impacts of the proposed Development were classified as moderate adverse, but the conclusion reached by the ExA is that in none of the locations is the impact considered to be of such significance as to make the proposed Development unacceptable in planning terms.

5.68 The Secretary of State agrees with the conclusions drawn by the ExA.

#### Long Distance Footpaths and Trails

5.69 (ER 5.2.195 – 5.2.199) While noting that there were criticisms by the ExA of the way the Applicant had assessed visual effects on some long distance paths and trails, the Secretary of State accepts the ExA's conclusion that the overall reporting of significant effects is sound.

#### Mitigation and Enhancement

5.70 (ER 5.2.200 – 5.2.218) The Applicant proposes to mitigate the potential impacts of the Development by a combination of design features for the Development itself (the use of shorter rather than standard height, lattice towers, for example) and mitigation measures such as the retention and protection of woodland, tree belts and hedgerows, the reinstatement of

farmland etc. Kent County Council argued that more should be done to mitigate the impacts of the Development including planting of shrubs in certain locations but the Applicant argued that this would not be appropriate.

- 5.71 There were discussions about whether further mitigation measures were needed, including early planting of mitigation foliage and the Applicant included in its draft development consent order a provision to clarify that opportunities for planting would be sought during the implementation of the proposed Development (which was welcomed by the ExA).
- 5.72 There was discussion about how long any mitigation planting should be maintained by the Applicant, with arguments being made that the five years proposed was too short a timescale. However, the ExA, concurred with the Applicant and considered that any maintenance requirements after that period were the responsibility of the landowner concerned. The Secretary of States notes the various arguments put forward in relation to this matter. The Secretary of State's overall conclusion is set out below.

#### Overall Conclusions on Landscape and Visual Effects

- 5.73 (ER 5.2.224 – 5.2.231) The ExA found that there had been some understating of possible landscape and visual effects during construction of the proposed Development but concluded that these impacts would be temporary and reversible within a reasonable timescale. The ExA considered that the Applicant had given appropriate consideration to alternative routes and technologies and to the Holford Rules in determining the final route alignment for the Development.
- 5.74 However, the ExA pointed out that despite the mitigation measures being proposed “there would remain significant adverse landscape and visual effects, at construction and operation stages, for the project alone and cumulatively with other projects, as well as non-significant adverse effects”. Notwithstanding these comments, the ExA found that the Development would be acceptable in planning terms but the adverse effects would offset its overall benefits but not to the extent that it would prevent the Secretary of State from making the development consent order.
- 5.75 The Secretary of State has considered the arguments put forward by the ExA on the basis of its analysis of information provided by the Applicant and other interested parties during the examination of the Application. The Secretary of State concludes that despite the adverse impacts identified by the ExA, the landscape and visual impacts of the Development are acceptable given the need for infrastructure of the sort represented by the proposed Development. The Secretary of State has also concluded that the Applicant has demonstrated through its SOR that it has considered a variety of options to connect the Nemo Link to the Canterbury North substation and that its decision to choose the route for the proposed Development is a reasonable one.

(iii) Broad Oak Reservoir

- 5.76 (6.1.1 – 6.4.7) The Secretary of State considers that this issue, along with the visual impacts of the proposed Development, is one of the key considerations in determining whether consent for the Development should be granted or refused.
- 5.77 The Secretary of State notes that the proposed Development is opposed by SEW because of potential impacts on its ability to secure the necessary planning permissions for its proposed Reservoir, particularly in respect of its ability to provide mitigation necessary to comply with the requirements of the EU Water Framework Directive. In particular, the proposed locations of pylons PC8, PC9 and PC10 would mean that SEW would not, in their view, be able to undertake what it considers are necessary works to install and maintain a fish pass which is essential mitigation for the impact of the Reservoir. There is also a question about whether the proposed locations of those pylons would prevent suitable fish protection measures – planting of vegetation which would shield the water in the fish pass thus keeping its temperature at an appropriate level for fish use, for example – from being put in place along the route of the fish pass.
- 5.78 SEW has acquired the land for its proposed Reservoir proposal and a section of the proposed Development would have to cross the land (SEW proposes that the part of the route of the Development that it considers would have an adverse impact on its Reservoir interests should be undergrounded to ensure there is no conflict between the two projects.).
- 5.79 Kent County Council and Canterbury City Council both wish to ensure that there is no unacceptable conflict between the two proposed projects, notwithstanding the former's objection to the Development. There were further objections to the Development from other interested parties.
- 5.80 SEW argues that there is a need for the proposed water resource at Broad Oak as the Canterbury area is reliant on groundwater sources and this supply has been shown to be under stress during recent drought conditions. The company's Water Resources Management Plan 2014 which sets out plans to secure water supplies for its current and future customers from 2015 to 2040, proposes a Reservoir at Broad Oak (near Canterbury), which SEW considers is the only suitable site in North Kent for such a facility. SEW's main concerns are in relation to possible interactions in respect of: engineering and construction of the reservoir; ecology and biodiversity; and landscape and visual amenity.
- 5.81 The Applicant made a number of points in response to each of the potential interactions but its basic position was that it saw no reason why the reservoir and the proposed Development could not co-exist side by side.
- 5.82 The ExA addressed the issues raised by both parties. On engineering and construction issues, it found that the installation of pylons PC8 and PC9 would have a limited effect on the Reservoir proposals. However, it

found that the proposed location of pylon PC10 would represent a significant risk to the provision of the fish pass and reservoir mitigation measures and thus to the provision of the Reservoir as a whole. The same argument was held by the ExA in relation to the consideration of ecology and biodiversity issues. On landscape and visual amenity, the ExA found that the impacts of the Development on the proposed reservoir were acceptable.

- 5.83 Given its views on the potential impacts of pylon PC10 on the long term viability of the Broad Oak Reservoir proposal, the ExA considered that the re-location of the pylon to another site some 80 metres along the proposed line of the Development would lessen the interaction with the proposed Reservoir and lead to it being acceptable mitigation.
- 5.84 On the receipt of the ExA's Report, BEIS officials consulted with interested parties on the ExA's proposals to re-locate pylon PC10 as provided for in the recommended Development Consent Order. In response, the Applicant stated it would be happy with the proposed mitigation while SEW re-stated that it did not believe the proposal, though providing relief for some of its concerns, offered acceptable mitigation and sustained its objection to the Development in the form proposed by the Applicant.
- 5.85 The Secretary of State has considered the arguments put forward by the Applicant, SEW and the ExA and takes the view that the proposed movement and re-location of pylon PC10 would provide some mitigation for the impacts of the Development on aspects of the proposed Broad Oak Reservoir scheme as set out in the conclusion reached by the ExA. Accordingly, he considers that pylon PC 10 should be moved to the location as suggested by the ExA in order to mitigate its impacts on SEW's reservoir proposals and has taken appropriate measures in the Development Consent Order to ensure this outcome.

(iv) Socio-Economic

Farming and Agricultural Practices

- 5.86 (ER 5.4.14 – 5.4.53) There were concerns about the potential adverse effects of the Development on farming activities and land management such as:
- Field drainage (from the haul roads);
  - Access routes to order limits and to land along haul roads;
  - Height of cables and clearance for farm machinery, irrigation and polytunnels;
  - Future effects on farming operations from pylons;
  - The 'diamond cross-over'.
- 5.87 The ExA concluded that the Applicant had put in place suitable mitigation measures to moderate any adverse impacts and that while, there would be likely to be disruption to farming practices during construction and in the longer term (in some places), it was satisfied that appropriate

compensation mechanisms would be available in relation to disturbance to farming practice.

- 5.88 The National Farmers Union wrote to the Secretary of State 2 June 2017 to set out that the restrictive covenants sought by the Applicant over land underneath the proposed Development would limit the sort of activities that could be carried out – including agricultural practices. The Secretary of State, therefore, sought the views of the Applicant and others as appropriate on the inclusion of a provision in the Order to set out that the power to limit agricultural or other activities under the route of the Development Consent Order can only be exercised with the consent of the landowner and that such consent should not be unreasonably withheld.
- 5.89 The Secretary of State, having considered the consultation responses, agrees with the Applicant and ExA that the powers to impose restrictions sought were necessary for the construction and operation of the proposed Development. This is considered further in relation to compulsory acquisition, below.

#### Tourism and Local Recreational Use

- 5.90 (ER 5.4.54 – 5.4.67) There were particular concerns from interested parties about potential impacts on two tourist businesses – Nethergong Camping and Robin Hood Events at Goose Farm, Broad Oak.
- 5.91 The Secretary of State notes the ExA's consideration of the impacts from the Development on the two local businesses and its view that there would be some adverse impacts. It is noted that measures have been secured in the Construction Environmental Management Plan ("CEMP") to prevent noisy construction activities taking place during the likely busy tourism months of May to September. The ExA has also highlighted the changes made to pylon locations during the Applicant's pre-application consultation to minimise adverse visual and noise effects for campers. It is of the opinion that whilst landscape adjacent to and views from the campsite would be altered, this change would not be so great as to deter visitors from staying at the campsite. Similarly, in respect of Robin Hood Events, the ExA acknowledged that there would likely to be business disruption, but are satisfied that this would be only that necessary and kept to a minimum. The ExA were also satisfied that appropriate compensation measures would be available in relation to business disturbance and have therefore given adverse impact limited weight. . . In the circumstances, whilst the Secretary of State is mindful that there will be some adverse impacts from the Development on the two local businesses, he is satisfied that they are not sufficient reason to withhold the grant of consent.

#### Public Rights of Way and Cycle Routes

- 5.92 (ER 5.4.68 – 5.4.76) The ExA found that there would be differing impacts on the trails and routes in the vicinity of the Development but mitigation proposed would limit the impacts on those using them. The ExA found that there was little or no evidence presented to support any arguments

about potential harm arising from the proposed Development and considered that any harmful effects on tourism would not be unacceptable. The Secretary of State notes the impacts but agrees with this conclusion.

### River Stour

5.93 (ER 5.4.77 – 5.4.79) The proposed Development would require the use of two temporary bridges over the River Stour during construction which would have an effect on navigation along the river at particular times. However, this was not an issue that was raised during the Examination of the Application and the ExA concluded the measures that would be put in place to minimise any disruption would afford appropriate and adequate mitigation. The Secretary of State agrees with this conclusion.

### Conclusion on Tourism and Local Recreational Use

5.94 (ER 5.4.80) The ExA concluded that the overall impacts of the proposed Development on tourism and recreational use were acceptable. The Secretary of State acknowledges the importance of tourism and the need for the enjoyment of local recreational facilities to be available to those who wish to use them. However, the Secretary of State considers that the impacts of the Development are acceptable and concludes that this matter is not one that prevents the grant of consent for the Development.

### Economic and Employment

5.95 (ER 5.4.81 – 5.4.86) The Secretary of State notes that the ExA records that the Applicant estimates the cost of implementing the proposed Development would be around £73.2 million, with a further £10.9 million need to remove the PX 132kV route (while also noting that the Environmental Statement provides lower figures for these activities). The ExA, however, considered that, while the Applicant had made assertions about how these sums would be spent and the benefits to the British economy that would result from this expenditure, no evidence was provided to support the figures and little weight was, therefore, placed on them.

5.96 However, the ExA did note the wider national economic benefits that would result from the Development and did attach considerable weight to these positive impacts.

5.97 The ExA also noted that the local employment benefits arising from Development were not significant – the Applicant estimated that an average of 17% of the workforce involved in the Development could be from the local labour market and that this workforce could generate additional spending in the region of £2.4 million over the 28 month period of construction of the Development. The ExA compared this with the £860 million per annum resulting from tourism in the Kent and Medway areas.

- 5.98 The ExA concluded that the Development would not result in significant economic benefits from supply contracts or local employment. However, it would have a wider economic benefit for the national economy and that fact should carry some weight.
- 5.99 The Secretary of State accepts the ExA's analysis of the weight to be given to the Applicant's economic benefit figures as reasonable. The Secretary of State also accepts the conclusion reached by the ExA of the national benefit that would derive from the delivery of the Development.

### Development Sites

- 5.100 (ER 5.4.87 – 5.4.90) The Secretary of State notes the concerns raised by Canterbury City Council that the location of pylon PC2 would effectively render the Council's development site at the junction of Broad Oak Road and Vauxhall Road as sterilised to all but general storage use. The Applicant argued that it could move the pylon within the site (which would provide some mitigation) but could not remove it from the site completely because of constraints in its vicinity. The ExA was, on balance, inclined to agree with that argument. In addition, Canterbury City Council was concerned that the proposed Development would be too close to an area being proposed for housing development ("SP3" in the Draft Local Plan) although it noted that no concerns had been raised by landowners. The Applicant also noted that the proposed Development would not directly affect the SP3 development area or the proposed transport access route (the latter position agreed by the local highway authority).
- 5.101 The ExA considered the arguments put forward and concluded that the proposed Development would not have an unacceptable effect on the SP3 or the Broad Oak Junction development sites.
- 5.102 The Secretary of State agrees with this conclusion.

### Community Infrastructure

- 5.103 (ER 5.4.92 – 5.4.96) The ExA sets out that the only significant impact from the Development is a potentially direct effect on the Canterbury Sea Scouts because the access route to their hut would provide a construction access point. The Applicant argued that mitigation measures would be put in place to minimise any impacts on the use of the hut so the effects would be negligible and not significant both during construction and operation.
- 5.104 The ExA concludes that any impacts on community infrastructure would be acceptable. The Secretary of State agrees with the ExA's conclusion.

### **Overall Conclusions on Socio-Economic Impacts**

- 5.105 (ER 5.4.97 – 5.4.102) The ExA concludes that it is satisfied that the socio-economic impacts of the Development do not prevent the

Secretary of State from making the Order. The Secretary of State notes that there is a range of impacts arising from the Development but considers that their impacts are not so significant as to preclude the grant of the Order.

(v) Biodiversity and Geological Conservation

5.106 (ER 5.5.1 – 5.5.126) The ExA did not report any objections in relation to geological conservation. The Applicant assessed that there would be no direct or indirect effects from the Development on any geological receptors. Accordingly, potential effects on geological conservation receptors were scoped out of further assessment. It is recorded that Natural England agreed with this scoping decision which in turn satisfied the ExA that this was the correct course of action. On this basis, the Secretary of State concluded there would be no adverse impacts on any sites of geological conservation importance.

5.107 Biodiversity received a greater level of attention during the Examination. Paragraphs 5.5.12 – 5.5.16 of the ExA's Report provide a detailed account of the various route options for the Development set out in the Application and how each of the different options might impact on a range of receptors. Concerns about the Applicant's route selection were raised by the Kent Wildlife Trust, the Woodland Trust, SEW, the Broad Oak Preservation Society and landowners at and near Kemberland Wood. Specific concerns in relation to ancient woodland, designated sites, ornithology and other habitats and species are described below.

Ancient Woodland

5.111 (ER 5.5.34 – 5.5.48) There were concerns from Canterbury City Council, Kemberland Wood Landowners and the Woodland Trust about the potential impacts of the construction and operation of the Development on areas ancient woodland (such as the West Blean and Thornden Woods SSSI and the Little Hall and Kemberland Wood and Pastures Local Wildlife Site).

5.112 The Applicant's position was that mitigation of any potential impacts would result in effects that were not significant – there would be no permanent pylons in the ancient woodland and any replacement poles would be wooden and temporary.

5.113 The Woodland Trust continued to have outstanding concerns about the mitigation proposed by the Applicant. However, the ExA concluded that the Applicant's assessment of effects was acceptable. The ExA was also satisfied that the addition of a requirement to the proposed Development Consent Order, which covers management and maintenance in ancient woodland addressed any outstanding concerns. The Secretary of State takes the same view as the ExA and concludes that any impacts to ancient woodland are acceptable.

## Ornithology

- 5.114 (ER 5.5.53 – 5.5.62) The Secretary of State is aware that overhead lines pose potential dangers to birds in flight because of the potential for disturbance and collision risk. The Applicant assessed the risks to birds from the proposed Development as not significant. The ExA reports that there was a difference of opinion over whether monitoring was necessary in areas where bird diverters were fitted to the overhead lines that formed the Development.
- 5.115 The ExA's recommendation placed appropriate weight on Natural England's view specifically that bird diverters were not necessary as mitigation because it did not consider there would be a likely significant effect arising from the construction and operation of the Development. The ExA concluded that monitoring was not necessary but did recommend the inclusion of a Requirement in any development consent order that the Secretary of State might issue to ensure that bird flight diverters were fitted to the overhead lines in two specified locations where the potential for bird strike was greatest.
- 5.116 The Secretary of State notes the weight placed by the ExA on Natural England's view in this matter. He also notes the ExA's recommendation that bird diverters should be utilised along two stretches of the line even though this was against the views of Natural England. The Secretary of State concludes that this measure is appropriate and that monitoring of bird impacts is not necessary in this case, as no significant effect on birds was predicted. The Secretary of State's overall conclusion is that the impacts of the Development are not significant and do not, therefore weigh sufficiently against the grant of consent for the Development to require further mitigation or refusal.

## Designated Sites

- 5.117 (ER 5.5.63 – 5.5.70) The ExA considered both statutory and non-statutory designated sites in the vicinity of the proposed Development. The only statutory site is the West Blean and Thornden Woods (Lynn Wood) Site of Special Scientific Interest. The ExA records four non-statutory sites – all are Local Wildlife Sites – and the disagreements between the Applicant and some interested parties over the scale of any impacts on these sites. The ExA's overall conclusion was that any effects on those sites will not be significant. The Secretary of State agrees with this conclusion.

## Habitats

- 5.118 (ER 5.5.71 – 5.5.90) The ExA considered the potential impacts of the Development on: woodland and trees; hedgerows; rivers and ponds; and the impact of invasive species. Under each of these headings, the ExA considered that the mitigation proposed by the Applicant would protect the habitats in question and that mechanisms are in place to control invasive species. The Secretary of State agrees with this conclusion.

## Species

- 5.119 (ER 5.5.91 – 5.5.116) The ExA's assessment of impacts covered bats, dormice, great crested newts and otter along with reptiles, badgers, water voles and terrestrial invertebrates. The ExA's conclusion was that species and habitats would be protected from the adverse effects of the Development through the adoption of appropriate measures.
- 5.120 The ExA's overall conclusion on biodiversity and geological conservation was that suitable mitigation was in place in the development consent it was recommending to the Secretary of State to ensure that there was no reason to prevent the grant of consent for the Order. The Secretary of State agrees with this conclusion.

### (vi) Noise, Vibration and Electric and Magnetic Fields

- 5.121 (ER 5.6.1 – 5.6.53) The ExA records that there were concerns from interested parties about noise impacts from the construction and operation of the Development. However, it considered that mitigation being put forward by the Applicant would mean that any impacts were moderated to an acceptable level. There were also concerns about the potential health effects of the electric and magnetic fields associated with the operation of electric lines. In respect of this issue, the ExA accepted the Applicant's view that, while the Development would produce electric and magnetic fields, the exposure for the public was at a level which was within the relevant guidelines.
- 5.122 The ExA's conclusions were that the effects of noise, vibration, electric and magnetic fields were of such a level that did not preclude the Secretary of State from granting consent for the Development. The Secretary of State notes that there is a general interest in the potential impacts of infrastructure such as the Development on health and well-being. However, the Secretary of State considers that the need to comply with relevant guidelines would provide the necessary safeguards for interested parties and that the impacts of the Development would, therefore, be acceptable.

### (vii) Traffic and Transportation

- 5.123 (ER 5.7.1 – 5.7.77) The ExA recorded that there were concerns about the methodology the Applicant had used to assess transport impacts, but concluded that, on balance, it was acceptable. The ExA points out that transport impacts during the construction and operation of the Development would be governed by a Construction Traffic Management Plan which would be included in the Applicant's Construction Environmental Management Plan. The conclusion in the ExA's Report into this matter is that, subject to suitable mitigation being put in place, the impacts of the Development would be acceptable in traffic and transport terms.
- 5.124 Regarding Public Rights of Way, the ExA noted that a number of such routes would be affected by the construction and operation (through

visual effects) of the Development, including some that would be closed in the long term – including the Saxon Shore Way long distance footpath. However, the Applicant and Kent County Council discussed the points at issue and reached agreement on them. The ExA noted, in particular, that the closure of the Saxon Shore Way would mean disruption for those using it but considered that the temporary diversion would be a satisfactory alternative. It also noted that Kent County Council and other local councils were content with the proposals to divert the route.

5.125 The ExA also records that the River Stour (which is navigable at certain points along the route of the Development) would be closed for a time during the construction of the Development but notes that the matter had been dealt with by the Applicant to the satisfaction of relevant interested parties.

5.126 In its overall conclusions on Traffic and Transportation, the ExA concluded that this issue was not one that would preclude the Secretary of State from granting consent for the Development. The Secretary of State takes the view that there is a strong likelihood that developments of the scale of the proposed overhead line connection will give rise to impacts on traffic and transportation. However, the Secretary of State is also of the view that such impacts can be managed and that the measures set out in the Construction Traffic Management Plan will provide suitable management as to ensure that impacts arising from the Development are kept to an acceptable level.

(viii) Water Quality and Resources

5.127 (ER 5.8.1 – 5.8.39) The ExA considered that the potential impacts of the construction and operation of the Development on flood risk, water quality and resources, the drainage of arable land within the Chislet and Minster Marshes and the Ash Level and ground contamination to controlled waters were acceptable. The Secretary of State agrees with the ExA's conclusion.

(ix) Historic Environment

5.128 (ER 5.9.1 - 5.9.50) The ExA identified the historic environment as a principal issue during its initial assessment of the Application. The key issues related to impacts on the Canterbury World Heritage Site (“WHS”) and on one listed building – Tile Lodge Farmhouse (although other listed buildings were assessed in the Applicant's pre-application studies which informed the contents of Environmental Statement submitted with the Application).

5.129 In respect of the WHS, there was agreement from Kent County Council, Canterbury City Council and Historic England that the Applicant's assessment of impact as minimal was acceptable. In respect of the Tile Barn Farmhouse, the Applicant assessed potential impacts as significant even after mitigation (planting of shrubs and hedgerow).

5.130 The ExA considered the adverse impacts on the historic environment had to be weighed in the overall balance against the benefits of the Development but concluded that there were no reasons under this heading that would prevent the Secretary of State from granting consent.

5.131 The Secretary of State notes the assessment of impact on the Canterbury World Heritage Site as acceptable. In contrast, he notes that impacts on other archaeological features – the Tile Barn Farmhouse – would be significant and that this should weigh against the grant of consent. However, the Secretary of State further notes the ExA's conclusion that impacts were acceptable when considered as a whole, and the Secretary of State considers, therefore, that this is not a matter that would prevent the grant of consent.

(x) Compulsory Acquisition

5.132 (ER 9.1.1 – 9.11.1) The Secretary of State notes that the Applicant is not seeking to acquire the freehold of any Order land but is seeking powers to extinguish private rights over land and impose restrictions on it as well as to create new rights over it. The Applicant seeks permanent rights over land owned by private individuals and organisations (including statutory undertakers – which are given particular protection under the Planning Act 2008) as well as by statutory undertakers and Crown bodies along the route of the proposed Development. There is also a request for permanent rights to be granted over 'open space' land – designated as 'special category land' - which is subject to special processes under the Planning Act 2008.

5.133 Compulsory acquisition powers can be granted by the Secretary of State only if certain conditions set out in sections 122 and 123 of the Planning Act 2008 are met. The basic conditions are that there is a need for the development, there is a need for the powers to be granted and that the extent of the powers requested is reasonable and proportionate. The requested powers were considered at length by the ExA during the examination of the Application.

5.134 There were a large number of objections to the powers sought by the Applicant. The grounds for objection were based on a range of concerns including that the powers sought exceed those that would be in the public interest, restrictions sought by the Applicant were more extensive than necessary, including restrictions on the growing of any plant and the erection of polytunnels within the land subject to compulsory acquisition, possible breach of the European Convention on Human Rights, there has been no negotiation by the Applicant of voluntary terms to acquire the land needed for the Development and that the justification for the route chosen by the Applicant is unsubstantiated.

5.135 In response to the objections, the ExA noted that the Applicant stated that in respect of the potential impact on statutory undertakers' land, the measures sought were needed and would have no serious detriment to the carrying on of the activities conducted by the statutory undertakers.

- 5.136 The ExA noted it was satisfied that the Applicant's application for compulsory acquisition powers had met all the necessary tests sets out in the Planning Act in relation to compulsory acquisition matters. Accordingly, it recommended to the Secretary of State that the compulsory acquisition powers requested by the Applicant should be granted subject to the necessary consent from the relevant Crown authority being granted and a suitable indemnity being in place between the Applicant and UK Power Networks.
- 5.137 Having considered the ExA's Report, the Secretary of State sought the views of the Crown Estate on the provisions requested by the Applicant in relation to Crown Land. In addition, in response to a letter from the National Farmers Union which was critical of the restrictive covenants being sought, the Secretary of State sought views from the Applicant and others on the proposals to limit the scope of restrictive covenants sought to be imposed on landowners. In response, the Crown Estate provided wording that gave its consent in acceptable terms. The National Farmers Union and others re-stated their opposition to the powers being sought and also set out in strong terms that the Applicant's request for permanent powers of compulsory acquisition were unnecessarily onerous and should not, therefore be granted in the event that the Secretary of State was minded to approve the making of the Order being requested. The Applicant's position was that the powers sought were not unreasonable because they offered protection for its assets and safety for members of the public.
- 5.138 In light of the consultation exercise, the Secretary of State considers that the Applicant has made the case sufficiently for powers to restrict in appropriate circumstances activities in the vicinity of the proposed Development. However, the Secretary of State considers that such restrictions should only be imposed when that is reasonable – and has included a specific Requirement in the Development Consent Order accordingly. On that basis, and taking into account the availability of compensation, the Secretary of State has granted the powers to restrict activity in the vicinity of the proposed Development, as sought by the Applicant..

#### Sections 127, 132, 135 and 138 of the Planning Act

- 5.139 In considering whether to grant development consent for a project, the Secretary of State has to have regard to the potential impact it may have on certain categories of land and rights over land which are the subject of specific given statutory protection under the Planning Act – under sections 127 (statutory undertakers' land), section 132 (open space land), section 135 (Crown land) and section 138 (the extinguishment of rights, and removal of apparatus, of statutory undertakers etc.).
- 5.140 The ExA considered the relevant requirements under each of the provisions outlined and, with the exception of section 135 (where it asked the Secretary of State to seek views from the Crown Estate), concluded in all other respects that the necessary tests in the Planning Act 2008 had been met by the Application. In respect of the section 135 test, the

Secretary of State consulted with the Crown Estate which wrote in response to say that it had reached a separate agreement with the Applicant which provides it with sufficient assurance as to the way in which compulsory acquisition powers may be exercised in respect of third party interests in Crown Land forming part of the Crown Estate. It, therefore, confirmed its consent under section 135 of the Planning Act 2008 subject to the inclusion of a suitable protection provision in any Development Consent Order that might be granted by the Secretary of State.

- 5.141 The Secretary of State is satisfied that all the necessary considerations have been met in relation to the elements of the Planning Act 2008 and that there is nothing to prevent consent being granted.
- 5.142 Finally, in this sub-section, section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

#### Human Rights Act 1998

- 5.143 The Secretary of State notes that the ExA considered the potential infringement of the European Convention on Human Rights (“ECHR”) by the Development. In particular, the Panel had regard to Article 1 of the First Protocol to, and Article 8 of, the ECHR. Article 1 provides a right to the protection of property while Article 8 provides a right to respect of private and family life. (The rights can be qualified and may be interfered with depending on the circumstances.)
- 5.144 The ExA accepted the Applicant’s contention that Article 6 of the ECHR was also engaged in relation to the Development. Article 6 sets out the need for a fair trial or hearing.
- 5.145 The Secretary of State notes that the National Farmers Union suggested (ER 9.9.144) that the Development Consent Order proposed by the Applicant would engage Articles 4 and 14. Article 4 prohibits slavery, servitude and forced labour while Article 14 prohibits discrimination. The Secretary of State also notes that the Applicant disagreed with the National Farmers Union’s analysis and that the ExA agreed with the Applicant in this matter.

5.146 The Secretary of State has considered the ExA's conclusions in the above matters and agrees with the ExA's conclusion that there is a strong need for new electricity transmission infrastructure and that the Development would assist in meeting this need. The Secretary of State also agrees with the ExA's conclusion that the Applicant has adopted a proportionate approach to the acquisition of rights and that the powers are limited to what is absolutely necessary to deliver the project. The Secretary of State also notes that the ExA concluded in relation to Article 6 arguments that the views of interested parties had been able to be submitted and considered and agrees with that view.

5.147 The Secretary of State has reached the conclusion that any interference is necessary given the importance in the national interest of the Development proposed and that the interference authorised by the Order is proportionate, as not going further than the Secretary of State considers necessary to achieve delivery of the Development.

## **6. LATE REPRESENTATIONS (OUTSIDE FORMAL CONSULTATIONS)**

6.1 Letters from Sir Roger Gale MP (dated 3 March 2017) and former MP Sir Julian Brazier (28 February 2017) were sent to the Secretary of State for Environment, Food and Rural Affairs raising: issues about the Applicant (National Grid) having started construction before any consent for the Development had been granted; general opposition to the proposed Development, National Grid's failings in properly considering construction and alternative landfall options (Kingsnorth was mentioned as an option). BEIS officials responded stating that the Secretary of State would consider the matters raised in taking the decision on the Application (but also set out that if National Grid wanted to construct before consent then it was at their own risk). However, none of the matters raised were new (in that the topics covered had already been assessed by the ExA). There was, therefore, no need for consultation with interested parties on the contents of the letters.

6.2 As indicated above, the National Farmers Union submitted a letter to the Secretary of State dated 2 June 2017 in relation to a number of points about the restrictive covenants and compulsory acquisition powers sought by the Applicant. The contents of the letter were subject to consultation with interested parties and have been considered alongside the responses received. The details are set out in the Compulsory Acquisition section of the submission at paragraphs 5.133 – 5.143 above.

6.3 Bircham Dyson Bell submitted a letter to the Secretary of State on behalf of the Applicant on 26 June 2017 asking whether the timescale between making any Order and its coming into force could be kept to a minimum noting that the Secretary of State had extended the decision timetable owing to the General Election. (The Department has generally imposed a 21 day period between the making and coming into force of an Order although there is no statutory requirement to do so.) Although the Applicant has stated an urgent need to commence works, the Secretary of State has not been provided with contractual or other specific

milestones that would evidence why the 'coming into force' period should be less than three weeks. Consequently, the Secretary of State considers that the case has not been made for a shorter coming into force period.

- 6.4 SGN wrote to the Secretary of State on 20 July 2017 stating that it entered into an agreement with National Grid and that its representations submitted to PINS on 1 April 2016 were, therefore, withdrawn and that it supported the Application. The Secretary of State notes the withdrawal of the representations.

## 7. **Other Matters**

### Transboundary Impacts

- 7.1 The Secretary of State for Communities and Local Government ("SoSCLG") undertook a screening exercise for transboundary impacts for the purposes of regulation 24 of the 2009 Regulations twice; first on 11 May 2015 following the Applicant's request for a Scoping Opinion, and then again on 8 January 2016 following the Planning Inspectorate's acceptance of the Application documents. The Secretary of State for Communities and Local Government applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation" and took the view that the Development was not likely to have a significant effect on the environment of another EEA state. The Secretary of State agrees with that conclusion.

### Equality Act 2010

- 7.2 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that the decision to grant consent would have significant differential impacts on any of the protected characteristics.

### Natural Environment and Rural Communities Act 2006

- 7.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when granting development consent. The Secretary of State is of the view that the Examining Authority's report, together with

---

<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the development, the Secretary of State has had due regard to conserving biodiversity.

## **8. The Secretary of State's Conclusion and Decision**

8.1 For the reasons set out in this letter, the Secretary of State accepts that the ExA's consideration of the issues raised during the Examination of the Application is robust and well-reasoned. Further, the Secretary of State is of the view that the need case for the Development has been demonstrated and, while he accepts that there will be some adverse impacts from the Development, he considers that the overall benefits outweigh those impacts.

8.2 The Secretary of State has decided, therefore, to make the Order granting development consent and to impose the conditions recommended by the ExA but subject to the modifications described below.

## **9. Modifications to the Development Consent Order**

9.1 In considering the draft Order submitted with the Panel's Report, the Secretary of State has decided to make modifications to the recommended Development Consent Order. The principal modifications, and the reasons for them, are set out below:

- Amendments of article 3 to delineate in between the respective roles of the Applicant and UK Power Networks in respect of the installation and keeping installed of the UK Power Networks works.
- Amendments to the definition of "undertaker" in article 2 and to the drafting of articles 3 and 6, to give effect to the presumed drafting intent that the Applicant could install the UK Power Networks works further to a notice under article 6(3) of the proposed order but that maintenance and keeping installed of those works would be the responsibility of UK Power Networks, subject to an agreement or transfer of benefit to the contrary.
- Adding a requirement that the Applicant should act reasonably in exercising restrictive covenants (see paragraph 5.138 above);
- Adding provisions to limit the placement of Pylon PC10 to ensure that it does not conflict with the proposed Broad Oak Reservoir (see paragraph 5.85 above);
- Removing provisions in relation to human remains and burial grounds as these provisions conflict with the Archaeological Mitigation Written Scheme of Works; and
- Amending references to the Compulsory Purchase (Vesting Declarations) Act 1981 as a result of the repeal of parts of the Act.

9.2 Other minor amendments have been made for clarification and to meet requirements relating to the drafting of Statutory Instruments. These have not affected the intention of the development consent order recommended to the Secretary of State.

10. **Challenge to decision**

10.1 The circumstances under which the Secretary of State's decision may be challenged are set out in the note in the Annex to this letter.

11. **Publicity for Decision**

11.1 The Secretary of State's decision, on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours sincerely

GILES SCOTT

Head of Energy Infrastructure Planning and Coal Liabilities

## ANNEX

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, the grant or refusal of an application for an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published on the Planning Inspectorate's website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/South%20East/Richborough-Connection-Project/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**