Date: 25 January 2021

AQUIND Interconnector application for a Development Consent Order for the 'AQUIND Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030) in relation to Little Denmead Farm

Statement on Funding

Submitted in relation to Deadline 7 of the Examination Timetable

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STATEMENT ON FUNDING

Executive Summary

1. Mr. Geoffrey Carpenter and Mr. Peter Carpenter, the freeholders of Little Denmead Farm, ("the **Affected Party**") respectfully consider that the Examining Authority (the "**ExA**") could not *rationally* recommend to the Secretary of State that compulsory acquisition powers should be granted in relation to the Affected Party's' land, and by extension the 'sea of red' (all the land within the Order Limits), nor could he consent to authorisation under Section 122 of the PA 2008 of any draft CPO provisions in the current draft DCO **[REP6-015]** of the Applicant.

2. "*There is [no] reasonable prospect of requisite funds becoming available to cover land acquisition costs*" within the 5 year period when compulsory acquisition powers can be exercised. as is required by paragraph 9 of guidance issued by the Ministry of Housing, Communities, and Local Government entitled 'Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land' (September 2013) ("**Planning Act CPO Guidance**"). .

3. *Unlike* the examples previously cited where conditional CPO provisions have been included *where there was actual evidence of requisite funds* of the Applicant but they fell to be verified by the Secretary of State, **in this Application**, there is actual evidence of the *absence* of requisite funds (see the 2019 Accounts attached to the Deadline 6 Funding Statement (document reference **[REP6-021]**)) and a shortfall is intended (irrationally) to be supplied (the phrase "is to be" is used by the Deadline 6 Funding Statement) by the *hope* that the market might supply project financing. But, there is ***as* yet *no* project financing document** before the ExA or Secretary of State, **nor any objective evidence of the *immediate* availability of draw down funds that can be enforced against by the Affected Party**. Consequently, the ExA and Secretary of State are not presently in a lawful position to be able to rationally *weigh* the public interest against the private loss for want of present ensured requisite funds. The same logic would apply to any other affected party within the Order Limits. If it were otherwise, the Secretary of State would be authorising a speculative CPO. The Affected Party submits that all compulsory acquisition powers should be stripped out of the proposed draft DCO because a speculative CPO would be outside of the scope of section 122 of the PA 2008, having regard

to paragraphs 9-10 of the Planning Act CPO Guidance, and because the very principle of compulsory land take rests on the availability of funds. Put in another way, compulsory acquisition powers should not be granted based on a simple promise by the Applicant that funds might become available at some unknown point in the future.

4. The Applicant's Deadline 6 Funding Statement (document reference **[REP6-021])** confirms the Affected Party's previous arguments in its 'Note on Funding' submitted at Deadline 6 (document reference **[REP6-138]**) that this is a financially wholly speculative project. The Applicant's Deadline 6 Funding Statement also shows the Applicant has just over a £1m in the bank, which is nowhere near enough to cover the Applicant's estimate that it needs nearly £5m to cover compulsory acquisition costs.

Introduction

5. The amplified Funding Statement submitted by the Applicant at Deadline 6 (document ref: **[REP6-021]**) ("**Deadline 6 Funding Statement**") reflects all the available information as at the date the document was submitted to the ExA - i.e. the position as at 22 December 2020. The current funding position of the Applicant as revealed by the Deadline 6 Funding Statement confirms all the conclusions we reached in our Note on Funding, submitted at Deadline 6 (document ref: **[REP6-138]**).

6. Paragraph 17 of the guidance issued by the Ministry of Housing, Communities, and Local Government entitled 'Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land' (September 2013) ("**Planning Act CPO Guidance**"), requires a funding statement to provide "as *much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required*". In this way, the guidance ensures that the ExA and the Secretary of State can properly (lawfully) consider whether there are resources available by which to in part counter-balance the compulsory taking of the affected party's land. If there are no resources, it is difficult to see how such acquisition could be lawfully justified as a State authorised taking of private land *without* compensation at the date of the authorisation.

7. The Applicant submitted a Funding Statement dated November 2019 **[APP-019]** that was underpinned by "as much information as was then) possible" to provide about the resource implications as it had at that time available to it. The Applicant submitted for Deadline 6 (23rd December 2020) the Deadline 6 Funding Statement **[REP6-021]** with additional statements in it that also represents ""as much information as [was then] possible" to provide about the resource implications as it had at that time available to it. Therefore, the most recent Statement is the Applicant's best possible evidence on the *current* financing of the Application and the *current* availability of resources. Consideration of the Statement is hampered by the absence of a tracked changed version. But it appears that the original text remains the same but has been supplemented in certain paragraphs and with further sections. It would help evaluation of this important and relevant matter for the Applicant to provide a tracked changed version (as it has done with a number of its other documents) and to explain the basis for each the amendments made to the first version of the Funding Statement (document ref: **[APP-019]**). At present, the second iteration of Funding Statement (the Deadline 6 Funding

Statement) does not do this, and thus does not meet the requirements of Government guidance.

8. There are two separate guidance questions falling to be satisfied in relation to funding:

    a) In relation to acquisition: "Is" there presently a "*reasonable* prospect of *the requisite* funds becoming available *from the Applicant*? (guidance terms paragraph 9); and

    b) In relation to the wider question of the resource implications of both acquiring the land and implementing the project for which the land is required, how the Applicant will cover the required costs of the project as a whole, including the costs of obtaining the relevant consents and costs of pre-construction and construction (guidance paragraph 17), and the timing of that prior availability (paragraph 18), and "the applicant should provide an indication of how any potential shortfalls are *intended* to be met" (paragraph 17).

9. The Deadline 6 Funding Statement **[REP6-021]** reflects the Applicant's most up to date funding position as at 22 December 2020 (Deadline 6). Based on the Deadline 6 Funding Statement, the Applicant cannot demonstrate that it presently holds required funds for compulsory acquisition. Instead, it is clear that the Applicant *intends* such shortfall in its present assets to be covered by future as yet unidentified project finance. The Deadline 6 Funding Statement confirms the Application to be a wholly speculative project, and does not evidence that the Applicant can meet the test of there "is a reasonable prospect of required funds for land acquisition becoming available".

10. The Deadline 6 Funding Statement **[REP6-021]** also shows that the entire wider project cost is also to be met by future unidentified project finance.

11. The funding of the entire project cost, and including land acquisition costs, is therefore entirely speculative. However, the **Planning Act CPO Guidance** paragraphs 9-10, and 16 recognises that, unexceptionally, such speculative applications may result in the consent to a development consent order but without inclusion of compulsory acquisition powers. In particular, the Secretary of State has not cast his guidance on that situation as "exceptional" and this aligns with the presumption (under section 104(3) and (5) of the PA 2008) in favour

of an NSIP being granted for the development requiring development consent on the one hand as against the protections and statutory provisions of section 122 of the PA 2008 that operate in the reverse direction and presume against a compulsory acquisition unless lawfully justified. The lawful justification includes the availability of compensation at the time of consideration of authorisation. See paragraph 10 of the CPO Guidance.

12. This in turn does not satisfy the test under section 122(3) Planning Act 2008 which requires a compelling case "in the public interest". And see the Planning Act CPO Guidance paragraphs 6-7, 10 (HRA considerations), and 12-13 (*outweighing* the private loss i.e. including by monetary compensation to the landowner in and as part of the balance against the private loss).

13. In the absence of present required funds held by the Applicant to cover required acquisition costs, it is difficult to see how the ExA and Secretary of State, in light of the above and the Deadline 6 Funding Statement **[REP6-021]** evidence can lawfully recommend or authorise the inclusion of any compulsory acquisition powers (*including* theoretically justified by means of a proxy provision) as part of this DCO application where the prospect of funding land acquisition costs, and indeed of the entire project, is *entirely* speculative. By contrast with the examples provided by the Affected Party in Deadline 6 Note on Funding **[REP6-138]**, those other DCO examples included a proxy provision (such as conditional CPO provisions or subsequent objective verification of funds) in circumstances where a prior Funding Statement *demonstrated availability of* funds but a timing issue resulted in the deferment of the trigger of availability of CPO powers in the DCO itself.

14. The Affected Party has not yet located a wholly speculative DCO but recognises that the principle of authorisation of such a DCO (without CPO provisions in it) is accepted by paragraphs 6-7, 9-10, 12-13, and 16 of the **Planning Act CPO Guidance**.

15. The Affected Party notes that it remains the orthodox position to not include (by stripping out all CPO powers from the draft DCO) CPO provisions that may have been included for completeness in the "draft development consent order". See **Planning Act CPO Guidance** paragraph 5. This does not result in the project not being deliverable. Section 154 of the PA 2008 requires a development to begin within 5 years. Section 157 provides a trigger for beginning by reference to a "material operation" (undefined under the PA 2008). The **Planning**

Act CPO Guidance recognises the absence of CPO provisions in a DCO (see Guidance paragraphs 9, 10, 13 and 16). Thus, the statutory scheme provides a full five years in which the Applicant may agreement privately to execute the authorised development, or, in the absence of agreement, seek to secure compulsory acquisition powers locally, by following the Town and Country Planning process with local planning authorities when it is in a position to demonstrate it has the necessary funds available. See, for example, the bifurcation of development consent between the two regimes in the Tidal Bay Lagoon DCO.

Land acquisition costs – has it been demonstrated by the Applicant that "there is a reasonable prospect of requisite funds for acquisition becoming available*"*

16. Reduced to simple terms, funding is here envisaged by the Deadline 6 Funding Statement **[REP6-021]** to cover discernible phases that cover the situation up to conclusion of obtaining authorisations (including of CPO provisions) and then subsequent execution of works.

17. The requirement in paragraph 9 of the Planning Act CPO Guidance that: "*The applicant must have a clear idea of how they intend to use the land which it is propose to acquire. They should also be able to demonstrate that* ***there is a reasonable prospect of the requisite funds for acquisition becoming available****. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122 …*";

18. Paragraph 6.1 of the Deadline 6 Funding Statement **[REP6-021]** states that in relation to the securing of authorisations: "*The Applicant has secured from its current investors financing sufficient to support the Project until the completion of the development stage, which includes obtaining all necessary permissions and authorisations, including the DCO. The Applicant has invested approximately £35m in the development of the Project as of 30 June 2020. The residual cost of completing the pre-construction stage of the Project is forecasted at £15m*".

19. The Affected Party understands "the development stage" (by reason of the reference to its inclusion of obtaining consents including the DCO) to encompass *only authorisations* to execute works and not to encompass the carrying out of development works themselves. i.e. the (paper) "development" (or *formulation*) of the project and not the actual execution of the physical project development itself. Hence the use of "the development stage" and its references to obtaining all necessary authorisations – *on paper*.

20. With regard to the subsequent stage once paper authorisations are in place, paragraph 6. 2 of the Deadline 6 Funding Statement **[REP6-021]** states: "*Post the development stage the Proposed Development, and more broadly the Project, is to be funded through project finance secured against the operational profits (revenues) of the Project*."

21. The use of the phrase "is to be" funded demonstrates that the Applicant does not *presently* have the required funds in place but *intends to* have them. Those funds cannot be anticipated presently because they are intended to be secured by project finance but there is no evidence before the ExA of *existing objectively confirmed project finance as at Deadline 6.*

22. The Deadline 6 Funding Statement remains silent (as was the earlier Funding Statement (document ref: **[APP-023]**)) on the actual *availability* of required funding for the Applicant's estimated land acquisition costs.

23. Paragraph 5.5 of the Deadline 6 Funding Statement **[REP6-021]** asserts that the estimated total land acquisition cost is £4.97m and without any underlying objective evidence for that asserted sum. It follows that the Applicant cannot have such information currently available because **Planning Act CPO Guidance** paragraph 17 requires "as much information as possible" be provided and the Applicant has provided none. It is clear from its oral evidence to CAH2 that the Applicant has not actually quantified the totality of the land within the Order Limits that it envisaged *could* be subject to CPO on the basis of its own draft DCO terms.

24. No further additional information is provided beyond what was already available before Deadline 6 to demonstrate that the Applicant itself has £4,970,000 in its bank or that there is a reasonable prospect of required funding becoming available to cover such an amount.

25. The Deadline 6 Funding Statement **[REP6-021]** has *confirmed* by its content the representations that we made in our Note on Funding submitted at Deadline 6 (document ref: **[REP6-138]**) on whether the Applicant currently has the required funds to cover acquisition costs. In particular, and following our CAH2 representations (document ref: **[REP5-108]**) , we note that the Applicant has inserted new wording in the Deadline 6 Funding Statement at paragraph 4.7 *describing* approximately £25m in total assets. But, **this does not equate to the Applicant currently having £25m available to cover land acquisition costs**. The Affected Party explains this below.

26. The 2019 accounts that are scheduled to the Deadline 6 Funding Statement **[REP6-021]** describe on page 7 that the *Applicant's* 'total assets' of approximately £25m comprise a combination of Fixed Assets (£23,362,164) plus Current Assets (£1,701,394). These are defined phrases. 'Current Assets' include funds (real money) at hand or in the bank, and debtors (money due to the Applicant). Page 7 of the 2019 accounts reveal that the Applicant only had (and has given no updated information was provided in the Deadline 6 Funding Statement) £1,049,684 as real cash at hand or in the bank. In itself, that cash cannot be enough to cover the current estimate of land acquisition costs of £4.97m or £1.277m.

27. Further, 'Fixed Assets' by their nature have no liquidity – they are not readily available funds as in they are not 'funds' per se as in cash. The Applicant's Fixed Assets of £23,362,164 are broken down further on page 7 of the 2019 accounts into several components: tangible assets (£5,591); investments (£894); and *intangible* assets (£23, 355,679). The Applicant's asserted 'total assets' of "£25m" appears to derive from the £23.35m added to the £1.7m above.

28. Importantly, 'Intangible assets' are typically items that are *not* able to be touched or seen, though money may have been paid to purchase them. They are, by definition "intangible". Examples of intangible assets include goodwill, patents, copyrights, trademarks, loan fees and organisation costs. 'Loans' are not 'intangible assets'. Short term loans are usually recorded separately as 'borrowings'.

29. The Applicant's 'Intangible assets' are described by it further by its own Note 8 on page 10 of the Applicant's 2019 accounts contained in its Deadline 6 Funding Statement **[REP6-021]**. The Applicant's Intangible assets are divided into the following components: (i) 'Development Costs'; (ii) intellectual property rights; and (iii) 'other intangibles'. We note the phrase "development costs" is categorised by the Applicant as an "intangible" asset and not as "borrowings" and that the phrase "development costs" is also described in the Deadline 6 Funding Statement **[REP6-021]** at Note 3 on page 9 of the 2019 accounts attached to the Deadline 6 Funding Statement.

30. 'Development costs' are defined in Note 3 on page 9 of the 2019 accounts as being:
"*Expenditure to establish the Project is recognised in the Profit & Loss Account on an accruals basis. Expenditure on the development of the Project is capitalised when its future*

recoverability can be reasonably assured and both its technical feasibility and commercial viability can be demonstrated. Costs capitalised include costs incurred in bringing the Project to the consented stage, including costs associated with obtaining all material permits, authorisations and financing. At the point where the future economic benefit from its use or disposal does not exceed the carrying value of the Project it is impaired. At the point that the Project reaches the consent stage and is approved for construction by the Board the carrying value will be transferred to property, plant and equipment as assets under construction. "

31. Therefore, by their nature, the Applicant's development costs cannot include the 1-year loans that the Applicant states it has,. The loans cannot also be included in the intangible assets figure of £23,362,164 for two reasons: a loan cannot be an intangible asset; a loan would be recorded as 'borrowings'; and, therefore, a loan would be available cash.

32. By reason of "development costs" being within the category of "intangible assets", the category of development costs cannot be a "tangible asset". This results in a shortfall of readily available funds to cover the required acquisition funding. This appears to explain why the Deadline 6 Funding Statement **[REP6-021]** states that funding "is to be" secured by project finance. The absence of any further objective explanation, in the face of CAH2 representations, results to evidence that the rational answer is that the 'development cost' described in the Deadline 6 Funding Statement amount of just over £23m is not in fact available to cover land acquisition costs (i.e. as a tangible asset) but remains an 'intangible asset' of some objectively unparticularised nature.

33. Further, the Deadline 6 Funding Statement **[REP6-021]** has introduced the novel phrase "capitalised development costs" and asserted these to be "£23.3m" (paragraph 4.7) and previously (in 2018) "£12.2m" (paragraph 4.4). Paragraph 4.7 of the Deadline 6 Funding Statement states: "*As at 30 June 2019 the total company assets of the Applicant were £25m according to the annual audited account, mainly consisting of the capitalised development costs £23.3m*."

34. Capitalisation is the process by which a **cost is written in as an asset,** with the example here being the capitalisation of costs incurred in development. Capitalised Development costs were analysed in the case of *Ecolegacy Limited & Companies Act [2018] IEHC 380,* where they were described as being *'costs that have no recoverable or measurable value and essentially reflect the effort that had gone into developing the technology over a four year period*.' The rationale

seems to be to recognise those costs have been incurred as an investment, with the view of securing future income for the company as an asset of the company.

35. Paragraphs 4.4 and 4.7 assert (and in the present tense) "total company assets" and that they are "mainly consisting of the capitalised development costs of £23.3 million. Therefore, the figure of £23.3 million is a cost that has been incurred as an investment with a view to securing future income. The Applicant does not currently have £23.3 million. Therefore a large part of the £25 million worth of total assets the Applicant states it has in paragraph 4.7 of the Deadline 6 Funding Statement should not be interpreted to mean the Applicant has £25 million it can use in any way towards land acquisition costs. Cross-referencing the asserted "total company assets" of £25 million therefore to each of the accounts under the heading "Total assets less current liabilities" shows the total company assets to be somewhat less than the figures asserted in paragraphs 4.4 and 4.7 and neither of the sums in those paragraphs aligns to the "total assets less current liabilities" in either accounts. The Deadline 6 Funding Statement does the opposite of demonstrating requisite funds in that it appears to show absence of requisite funds and to prevent objective sight of such funds as the Statement asserts to assets of the Applicant.

36. Therefore, on the information produced the Deadline 6 Funding Statement **[REP6-021]**, the Applicant has in effect confirmed that it does <u>not</u> currently hold the funds necessary to pay for all land acquisition costs. This is in contrast with the examples of other DCOs. The Affected Party notes, by contrasting example, that the Manston DCO Funding Statement, a copy of which can be found at **Appendix 2 of this note**, included at paragraph: 12 the "commitment through a revised joint venture agreement (submitted as an appendix to *REP5-011)* to fund compulsory acquisition and noise mitigation required by the DCO as detailed in the summary below paragraph 29 of this statement (totalling £11,850,000, but in fact £15m has been committed"; 16 "During the examination, [the applicant] *has provided* the following information: … a) the Joint Venture Agreement … to commit … to spending £15m on land acquisition…"; 24: "Should the project receive development consent, [the applicant] can *immediately* draw down the land acquisition and noise mitigation costs from its current funders under the terms of its joint venture agreement".

37. For completeness, the Affected Party summarises its representation made in relation to the loans the Applicant's 2019 accounts (document reference **[REP6-021]**). A "loan" would fall in

accounts to be described “borrowings” if it were an actual loan. The Affected Party notes there are references to what are *described* as ‘loans’ in the Accounts. However: though described as ‘loans’, Note 12 also records their timing and does not evidence them as available during the time land acquisition costs will be incurred, and are therefore irrelevant to this discussion; the (so-described) ‘loan’ appears in a “Note 12” to the 2019 Accounts but the Note is not attributable to any of the figures in the financial statements; the “total assets” or cash do not include a reference to Note 12 of the 2019 accounts and the sum of Note 12 does not appear identified as a “tangible asset”. It is difficult to see how a factor that is not described by the accountants as a tangible asset could be enforced against by the Affected Party.

38. In this respect, Note 8 of the Applicant's 2019 accounts (document reference **[REP6-021]**) refers to “intangible assets” and Note 9 to “tangible assets”, Note 12 does neither. See page 7 of the 2019 Accounts. Note 12 on page 11 of the 2019 accounts (Related party transactions) (previously Note 10 to the 2018 Accounts) states that:

"*During the year, the Company received loans from OGN Enterprises Limited of £11,910,079 (2018: £8,678,425). The outstanding amount at the reporting date was £24,105,908 (2018: £12, 195, 829)….OGN Enterprises Limited has agreed to roll-over each loan and to extend them until 1 June 2021*".

39. The Note 12 descriptions are at odds with the Deadline 6 Funding Statement **[REP6-021]** assertion of the Applicant’s assets.

40. The addition of the identified sums to the cash in bank of the Applicant does not equate to the £25m described in the Deadline 6 Funding Statement **[REP6-021]** which gives the reader the impression that the Applicant has £25m available. That is not the case.

41. The Note 12 ‘loan’ value information does not appear to be reflected in the primary financial statements in the 2019 accounts **[REP6-021]** (i.e. the Affected Party, ExA nor the Secretary of State can see objectively where they are represented in the numbers of those accounts). This ‘loan’ value information also only appears as ‘supplementary information’, in Note 12 not related to any item in the accounts and, under normal accountancy principles of England, such ‘supplementary information’ is not normally audited. Therefore, it the Affected Party maintains that it remains unclear what the actual nature of these (so-called) loans is, how

these ‘loans’ are being treated for accounting purposes (not being identified as “borrowings” nor as “tangible assets” and the Applicant has not to date of Deadline 6 (at least) remain (providing “as much information as possible”) about what the ‘loan’ may be used for, and whether those ‘loans’ may objectively cover compulsory acquisition costs. If ‘loans’, such ‘loans’ objectively expire on 1 June 2021. **There is no evidence that they will be in place therefore by the time compulsory acquisition compensation would be payable, and are therefore unlikely to be intended to cover compulsory acquisition costs**.

42. The Deadline 6 Funding Statement **[REP6-021]** indicates that total estimated land acquisition costs will also be funded through *future* unidentified project finance. This is the same conclusion reached in the Note on Funding by the Affected Party, submitted at Deadline 6 (document reference: **[REP6-138]**). The Applicant's ability to fund land acquisition costs is based exclusively on ‘hope’, and in consequence the required funds, and the availability of required future finance is wholly speculative. It would not be rational for compulsory acquisition powers to be granted in relation to all the land within the Order Limits. Understandably for such a speculative venture, it could not be lawful to include CPO provisions (including by proxy terms) because the ExA and Secretary of State cannot presently weigh in the balance the objectively availability of present funds required for land acquisition. Inclusion of any CPO provisions would be premature. This does not meet the requirements in the **Planning Act CPO Guidance,** paragraphs 9, and 12- 16.

43. No evidence has been provided in the Deadline 6 Funding Statement **[REP6-021]** to demonstrate that there “is a reasonable prospect of requisite funds becoming available to cover land acquisition costs.

Correctness of Requisite Funds and of Project Cost estimate

44. Section 106(1)(c) of the PA 2008 empowers the Secretary of State to disregard representations that relate to compensation for acquisition. However, this does not prevent the consideration of evidence about the level of “requisite funds” for evaluation of **Planning Act CPO Guidance**, paragraphs 9-10, and 14-16. Paragraph 5.6 of the Deadline 6 Funding Statement **[REP6-021]** introduces a table of “estimated land acquisition costs” totalling £4,970,755.64 and of which (permanent) “Land Acquisition” is asserted as “£1,277,000”. The Applicant's own estimated cost of 'land acquisition' of £1,277,000 exceeds the amount of *money* shown by the Applicant in its *own* latest June 2019 accounts. Further, the estimated of the Affected Party exceeds that

sum. Mr Jarvis in CAH2 also gave evidence on behalf of the Applicant that that it had assessed *all* of the pink land within the Order Limits and it can be inferred that the £1,277,000 equates to all of the pink land within the totality of those Limits. But the Affected Party's own estimate makes up the majority of that sum (leaving very little further sums for any other affected party within the Order Limits). On its face, this does not accord with **Planning Act CPO Guidance** paragraphs 9-10 and demonstrates the lawful severance or deletion from the draft DCO of all CPO powers.

45. The Affected Party submitted during CAH2 that the Applicant has not also provided an accurate estimate of project costs (document reference **[REP6-138]**). .

46. Despite this, the Applicant has not provided any further meaningful information or evidence in the Deadline 6 Funding Statement **[REP6-021]** that it has estimated the project cost accurately.

47. Paragraph 5.2 of the Deadline 6 Funding Statement **[REP6-021]** states that: "*The current cost estimate for the Project is approximately €1.4bn (£1.24bn), with this estimate being undertaken at beginning of 2019 following two rounds of market engagement with potential contractors in respect of the design, engineering, supply and installation of converters and cables*." No explanation is provided of what "*market engagement*" means or involved. It is unclear whether formal approaches to tender were made or responded to as part of a procurement process, or whether this was more of a speculative informal process. The reference to "market engagement" is clearly the most the Applicant can say in terms of describing its efforts to estimate project costs, which is a very vague phrase to use.

48. The Applicant also assumes, at paragraph 5.5 of the Deadline 6 Funding Statement **[REP6-021]** that there will be an equal split of project cost between the UK and France. However, no explanation has been provided to justify such assumption and at best, therefore appears to be a subjective assumption by the Applicant. This subjective assumption further throws into doubt the accuracy of the Applicant's estimate of the project cost in the UK.

49. It is for these reasons there is real doubt over whether the Applicant has correctly estimated requisite project costs.

The Applicant estimates its "land acquisition costs" to be £4.97million (as per paragraph 5.6 of the Deadline 6 Funding Statement **[REP6-021]**).

50. The Applicant's estimated cost of 'land acquisition' of £4.97 million is still more than the amount of money shown by the Applicant in its *own* June 2019 accounts (attached to the Deadline 6 Funding Statement document ref: **[REP6-021]**) for the Applicant shows it has in terms of cash at hand or in the bank (which was £1,049,684). Note 12 of the June 2019 accounts also states that the 'related party transaction' loans are only rolled over until 1 June 2021, so those loans will not be available to be used to cover the cost of land acquisition of £4.97 million.

51. In addition, we submitted in our post-hearing Note on Funding (document ref: **[REP6-0138]**) at para 7 of Section B that the effect of article 30(4) is such that the Applicant would also have the power to compulsorily acquire all the land it temporarily possesses, which is also what Mr. Jarvis who acts for the Applicant confirmed during Compulsory Acquisition Hearing 2. This means that all the land within the Order Limits is at theoretical risk of being permanently compulsorily acquired (as Mr Jarvis also confirmed during Compulsory Acquisition 2 that all the land within the Order Limits was subject to the power of temporary possession).

52. The Land Plans **[REP6-006]** show the great extent of Order Limit land and the range of the area of pink, and the CPO rights sought over the rest of the Order Limit land area that could entitle permanent acquisition of all of the land within the Order Limits. There is real doubt over whether the Applicant's estimate in paragraph 5.6 of the Deadline 6 Funding Statement **[REP6-021]** of £4.97 million can be correct.

53. In light of this, and the fact that the Applicant has not provided evidence that it *currently* holds funds to cover land acquisition costs of£4.97million . On this analysis, it can only therefore be concluded that the Applicant intends to rely on *future project financing* to cover land acquisition costs as it adverts to in paragraphs 6.1 and 6.2 of its Deadline 6 Funding Statement **[REP6-021]** ("post the development stage the Proposed Development, and more broadly the Project, is to be funded through project finance").

54. The Affected Party submits to the ExA and to the Secretary of State that the Deadline 6 Funding Statement **[REP6-021]** demonstrates an *absence* of present requisite funds held by the Applicant. This results to mean that the ExA and Secretary of State cannot be presently in

a position to weight the public interest in the balance against the private loss because the factors required in that balance (requisite funds) remain absent.

55. If there is no present reasonable prospect of funding becoming available in relation to land acquisition costs, and if the Applicant is to rely of future project finance to pay for its total estimate land acquisition costs of £4.97million, the Applicant cannot satisfy the **Planning Act CPO Guidance** paragraphs 9-10 test of there "is a reasonable prospect" because the term "reasonable" excludes the irrational: the hope for market finance is not rational.

56. The Deadline 6 Funding Statement **[REP6-021]** does not contain any objective evidence that there is a reasonable prospect that funding will be available for land acquisition costs. In light of this, it would irrational for compulsory acquisition powers to be granted in relation to all the land within the Order Limits because the "there is a reasonable prospect" test cannot presently be satisfied. The proposed authorisation of CPO provisions remains premature.

57. The scope of the KPMG report (a copy of which has not been made available during the Examination) only covers what the market is for this "type" of project as it was in 2019. This is based on the Applicant's response to the ExA's First Written Question CA1.3.103 **[REP1-091]**. The data in the KPMG Report is two years' old already and will be even more historic by the time the Applicant goes out to market to obtain finance. The KPMG report therefore cannot be a reliable source of information as to what the market will be like in the future. The KPMG evidence is not evidence that this project is bankable (as is asserted by the Applicant in paragraph 6.9 of the Deadline 6 Funding Statement **[REP6-021])**.

58. It also appears that the Applicant, through its Deadline 6 Funding Statement **[REP6-021]**, continues to confuse what tests it needs to satisfy in order to justify being granted compulsory acquisition powers. The Applicant continues the looser and different test under the Town and Country Planning Act regime of 'likelihood of availability ' of funds, with the much stricter test under the Planning Act Regime of "reasonable prospect of funds becoming available". The Planning Act CPO Guidance paragraph 16 reflects that it is a perfectly orthodox approach to remove compulsory acquisition powers in this scenario and for the Applicant to secure the relevant CPO powers later with the relevant local planning authority in the traditional way under the Town and Country Planning regime when it is able to justify being granted such powers when it comes to funding.

59. Whatever the Applicant's explanation may be, the Deadline 6 Funding Statement **[REP6-021]** reflects the Applicant's position as at 22 December 2020 and thus the true underlying position, which is that the Applicant expects land acquisition costs to be funded through prospective future financing, which is not the same as proving there is a "reasonable prospect" of funding availability.

60. It is equally clear from the Deadline 6 Funding Statement **[REP6-021]** that the funding of the entire project (including land acquisition costs) is also entirely speculative. This is evident from the language used throughout the Deadline 6 Funding Statement. For example, paragraph 6.2 states "*Post the development stage the Proposed Development, and more broadly the Project, **is to be funded** through project finance*". Paragraph 6.10 states: "*Financing for the Project is therefore **expected to be subject to** grant of the development consent order and the settlement of regulatory status of the Project*". Paragraph 5.1 also reveals that the Applicant is also still calculating estimated costs (in which case how can it be sure of what the real estimate will be?) - it states: "*The Applicant **continues to work with its delivery partners to understand the costs** of implementing the Order…*".

61. Therefore, as stated above, the prospect of future financing is entirely subjective and contingent on factors outside the Applicant's control. It is thus based on an irrational belief which in itself cannot equate to the rational reasonable prospect of funding being available.

62. Not only does the Affected Party consider think the Applicant's estimate of land acquisition costs is significantly underestimated, the money the Applicant has in the bank or as 'cash in hand' is *itself* less than its *own* current estimates of land acquisition costs of £4.97 million in paragraph 5.6 of its (most recent 22nd December 2020) Deadline 6 Funding Statement **[REP6-021]**, but we also conclude that land acquisition costs are to be funded by unidentified financing at some unknown point in the future.

63. The Affected Party continues to struggle to ascertain how in practice a landowner within the Order Limits could enforce a compulsory acquisition claim against anything other than cash in hand or in the bank.

Practical Way forward

64. For the reasons we set out above, in light of the Deadline 6 Funding Statement **[REP6-021]**, the Affected Party respectfully considers that the ExA could not *rationally* recommend to the Secretary of State that compulsory acquisition powers should be granted in relation to our Clients' land, and by extension the 'sea of red' (all the land within the Order Limits), nor could he consent to authorisation under Section 122 of the PA 2008 of any draft CPO provisions in the current draft DCO **[REP6-015]** of the Applicant.

65. "There is [no] reasonable prospect of requisite funds becoming available to cover land acquisition costs" within the 5 year period when compulsory acquisition powers can be exercised. See **Planning Act CPO Guidance**, paragraph 9.

66. *Unlike* the examples previously cited where conditional CPO provisions have been included *where there was actual evidence of requisite funds* of the Applicant but they fell to be verified by the Secretary of State, in this Application there is actual evidence of the *absence* of requisite funds (see the 2019 Accounts within the Deadline 6 Funding Statement **[REP6-021]**) and a shortfall is intended (irrationally) to be supplied ("is to be") by the *hope* that the market might supply project financing. But there is as yet *no* project financing document before the ExA or Secretary of State nor objective evidence of the *immediate* availability of draw down funds that can be enforced against by the Affected Party. Consequently, the ExA and Secretary of State are not presently in a lawful position to be able to rationally *weigh* the public interest against the private loss for want of present ensured requisite funds. The same logic would apply to any other affected party within the Order Limits. If it were otherwise, the Secretary of State would be authorising a speculative CPO. The Affected Party submits that a speculative CPO would be outside of the scope of section 122 of the PA 2008, having regard to **Planning Act CPO Guidance**, paragraphs 9-10, because the very principle of land taking compulsorily rest on the availability of funds.

Conclusions

67. The conclusions reached by the Affected Party in its Note on Funding submitted at Deadline 6 (document reference **[REP6-138]**) are consistent with the information revealed by the Deadline 6 Funding Statement **[REP6-021]**.

68. This remains a wholly speculative project in terms of funding, both in respect of the DCO and of the CPO powers sought in respect of it

69. The Applicant does not currently have requisite funding available in the bank or through borrowings or existing finance to cover its (massively underestimated) land acquisition costs.

70. Furthermore, paragraph 6.2 of the Deadline 6 Funding Statement **[REP6-021]** states that "*Post the development stage the Proposed Development, and more broadly the Project, is to be funded through project finance*…", which we interpret to mean that post securing the relevant consents for the project, everything else, including land acquisition costs, will be funded through project finance.

71. This cannot satisfy the requirements of the Planning Act CPO Guidance, as it is not evidence that "there is a reasonable prospect of funds becoming available for land acquisition costs".

72. We have suggested previously a practical way forward that aligns with guidance and involves not authorising any of the compulsory acquisition powers but instead leaving to the Applicant to secure these locally under the Town and Country Planning Act regime. This will not prohibit the delivery of the project or cause delay as those 'local' CPO application processes involve different legal and guidance tests which involve lower financial thresholds.

73. Given however that this is a wholly speculative project with no reasonable prospect of funding becoming available, the appropriate way forward would be to remove all compulsory acquisition powers from the DCO provisions and enable the project to progress in stages through use of local agreements or, as a last resort, local CPO powers through the relevant local authority/ies. Please see **Appendix 1 to this note** which sets out examples of other DCOs where the respective applicants provided far more evidence than in this case of reasonable prospect of availability of land acquisition funds. Even those example cases, the DCOs contained wording to prohibit the use of CPO powers and development until further evidence was provided. Taking the example of the funding statement for the Norfolk Vanguard DCO (a copy of the full funding statement for Norfolk Vanguard is attached at **Appendix 3 to this Note**), in that case even though the undertaker had secured future funds, the Secretary of State still required Norfolk Vanguard to verify its funds before it was allowed to exercise compulsory acquisition powers in the confirmed DCO. The Applicant in this case does not

have near as much funding evidence as was available in the Norfolk Vanguard DCO and the other DCO examples we set out at Appe**ndix 1 and Appendix 2 to this Note** , which is why it is submitted that all CPO powers need to be removed from the Applicant's proposed DCO **[REP6-015]**. We have provided a full copy of the Norfolk Vanguard DCO funding statement at **Appendix 3 to this Note** as it serves as a very good comparison against the Applicant's current funding position, and a good example of how so much funding evidence was available in the Norfolk Vanguard case, but it was still not enough to secure immediate availability of CPO powers once that DCO was confirmed.

74. There can be no blank unsigned cheque for taking someone's land and rights against their will.

Appendix 1

The Rookery South (Resource Recovery Facility) Order 2011 (SI 2013/680)

ExA's Decision and Statement of Reasons

Availability of funds for compensation

1. The ExA explained[1] that in this DCO application the applicant (Covanta Rookery South Limited) stated, through its financial statement that it had the ability to procure the financial resources required for the development through its holding. This included the cost of acquiring any land and the payment of compensation. The applicant in this case also stated that the capital resources of the applicant or its holding companies would be used to meet any claims for blight.

2. The applicant, Covanta Energy Limited, and Covanta Holdings Corporation also confirmed that they had obtained specialist compensation advice as to the amount of compensation they were likely to be liable to pay if the DCO was made and implemented and that the funds for compensation could be provided from Covanta Holdings Corporation's resources. Copies of Covanta Holdings Corporation's financial statements for the year ending 31st December 2010 were enclosed.

3. The ExA set out that they considered the position of the applicant here was inadequate in terms of ensuring that the resources of Covanta Holdings would in fact be available to the Applicant.[2]

4. According to the ExA's report, following exchanges between the ExA and the applicant, a positions was reached where; by Unilateral Undertaking the applicant undertook not to implement any part of the proposed development or use compulsory acquisition powers until a parent company guarantee from Covanta Holdings was in place in the form agreed. [3]

[1] The Rookery South (Resource Recovery Facility) Order 2011, ExA recommendation to Secretary of State, para 7.24
[2] ibid, para 7.99
[3] ibid, para 7.101

5. The ExA reported that on the basis that such funding guarantees were in place the funding statement and subsequent documentation were adequate to support the case for a compelling case for the grant of compulsory acquisition powers.[4]

6. As such the ExA stated that the funding was adequate with regard to s122(3) of the Planning Act 2008.[5]

The Able Marine Energy Park Order

ExA's Decision and Statement of Reasons

Availability of funds for compensation

7. The applicant for this order was Able Humber Ports Ltd, the applicant was the fully owned subsidiary of Elba Securities Limited who was in turn the fully own subsidiary of Elba Group Limited, a Jersey registered company.

8. The position of the applicant, as explained at paragraph 18.93 of the ExA's decision was that the applicant had sufficient funding for the financing of the project of a whole through Elba Group's financial position, where the project was around 10% of Elba Group's stated funds.

9. The applicant proposed to provide equivalent comfort that the compensation was guaranteed to be paid as was in the case for the Rookery South DCO, and so provided a unilateral s.106 undertaking with a parent company guarantee.

10. Under this universal undertaking the applicant also covenanted:

    - not to implement the proposed NSIP, nor to exercise any powers of compulsory acquisition authorised by the DCO, unless and until:

        (a) a parent company guarantee has been provided substantially in a form agreed by NLC acting reasonably) by a Group Company approved for this purpose by NLC; or

[4] ibid
[5] ibid, para 7.118

(b) alternative security in a form approved for that purpose by NLC including but not limited to a bond, bank guarantee or policy of insurance, and

- not to take any steps to place Able Humber Port Limited into administration or liquidation (subject to any overriding statutory duty).

11. The ExA found whilst the funding statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required6, it cannot mean that it should be a surrogate for testing the economics of the project as a whole.[7] Instead the ExA stated that 'what the applicant has provided needs to be assessed in an appropriately proportionate way in the context of the application.'[8] It was noted that the price of £1.7million for the acquisition was not a particularly large sum, and even if it were underestimated by some 50% then there is not enough level of risk that the applicant could not cover this through its own resources or through commercial borrowing enough to warrant refusing the dDCO.

12. As such the ExA stated that the funding was adequate with regard to s122(3) of the Planning Act 2008. [9]

<u>The Swansea Bay Tidal Generating Station Order 2015 (SI 2015/1386)</u>

ExA's Decision and Statement of Reasons

Availability of funds for compensation

13. The applicant for this order was Tidal Lagoon (Swansea Bay). The project included estimated costs of company acquisition of £10.5million[10] and this would be funded through 20% equity, 15% mezzanine debt, and 65% senior (project) debt.[11]

14. The ExA was satisfied that whilst the development did not have the benefit of full funding at application stage, which according the applicant was not unusual, during the course of the

6 Planning Act 2008, Guidance related to procedures for compulsory acquisition, para 33
7 Able Marine Energy Park Order, ExA recommendation to Secretary of State, para 18.162
8 ibid, para 18.166
9 ibid, para 18.208
10 The Swansea Bay Tidal Bay Generating Station Order 2015 (SI 2015/1386), ExA recommendation to Secretary of State, para 4.25.3
11 ibid, 4.25.4

examination the ExA had sought updates regarding the likelihood of funding being assured. At deadline five, the applicant submitted a news release from Prudential confirming a commitment to become the cornerstone investor in the project.[12]

15. The ExA then was satisfied that the was adequate funding likely to be available to enable the compulsory acquisition of land, and that article 7 of the dDCO provided appropriate security for the funding of the compulsory acquisition liabilities. Article 7 did not provide a definitive framework for security but suggested a range of optioning including deposit, bond or insurance policy amongst others.

16. As such the ExA stated that the funding was adequate with regard to s122(3) of the Planning Act 2008. [13]

Thorpe Marsh Gas Pipeline Order 2016 (SI2016 No.297)

ExA's Decision and Statement of Reasons

Availability of funds for compensation

17. The applicant for this order was Thorpe Marsh Power Limited. The funding statement in this application reported professional advice that put a maximum precautionary value on the total contingent liability for the compulsory acquisition of land and interests at £5million.[14] It also identified that the applicant was the wholly owned subsidiary of Carlton Power, with funding to be provided by Wainstones Investments, another company of the same group. The accounts of Wainstones Investments and Carlton Power were provided.

18. The applicant in this application provided a letter from its parent company Carlton Power confirming its willingness to enter into a guarantee agreement, escrow arrangement, bond or other suitable alternative security. The applicant also provided representations that it is not depended on third party financing to provide the security. The ExA found that it could not be demonstrated that the applicant company could meet the arising liabilities of

[12] ibid, 6.9.4
[13] ibid, para 6.1.1
[14] The Thorpe Marsh Gas Order 2016 (SI 2016 No.297), ExA recommendation to Secretary of State, para 8.4.13

compulsory acquisition from its current assets, but that other companies within the group could do so, and also provide guarantee's or other security to cover the amount. [15]

19. The ExA accepted the applicant's argument to provide a guarantee to the Secretary of State to approve. As such wording was provided at article 35 of the dDCO which requires the guarantee or other security to be in place for 15 years which in the ExA's view provided the reassurance necessary that the funding was likely to be available to enable the compulsory acquisition through the statutory period. [16]

20. As such the ExA stated that the funding was adequate with regard to s122(3) of the Planning Act 2008. [17]

Manston Airport Development Consent Order (SI 2020/ No. 716)

ExA's Decision and Statement of Reasons

Availability of funds for compensation

21. The applicant for this order was RiverOak Strategic Partners Limited. Following the issues of the decision to accept the application for examination, a s51 advice letter was issued which identified the funding statement as being a potential substantial risk. The advice listed a number of areas in which the statement was lacking, from lack of evidence of adequate funds, further information needed around the applicant's accounts, shareholders, investors, assets, and details of funders who had already expressed an interest. The ExA noted that the examination of the funding issue in this case was given additional challenges due to the applicant's apparent difficulty in providing the information requested by the ExA.

22. Whilst the ExA find the source of the funding, the applicant argued that the source of the funding is not a matter that falls within the consideration of the ExA, and the ExA may be 'trespassing beyond its own land-use planning remit'.[18] This crux of the debate was that the applicant was unwilling to reveal the names of its investors in the scheme without reassurance

[15] ibid, para 8.5.38
[16] ibid, para 8.5.39
[17] ibid, para 8.77
[18] Manston Airport Development Consent Order (SI 2020/ No. 716), ExA recommendation to Secretary of State, para 9.8.14

from the ExA that the names of the investors would be redacted, the ExA refused to provide this reassurance.

23. Regardless, the ExA examined the funding on the following points.

24. The ExA sought to examine the availability of funds from the applicant and its allied companies. However, in the absence of any definitive information in the funding statement the ExA considered it necessary to examine the structure of the applicant. In the funding statement the applicant submitted that the applicant had 90% of its shares held by MIO Investments Limited, a Belize registered company who ultimate beneficial owners are resident in Switzerland and the United Kingdom. MIO Investments Limited was managed and administered by Helix Fiduciary AG ("Helix") Helix managed and controlled all the investors' funds that were to provide funding for the Manston DCO. The funding statement submitted the following:

> *"Helix can confirm that we are the trustees and administrators of a number of structures for which each of the clients we have unencumbered liquid assets that exceed what is the estimated expenditure to complete the Manston DCO airport project."*

25. In addition a letter from PwC stated that Helix held enough in liquid funds to fund the project.

26. The ExA however, considered that the information was not sufficient evidence to reassure that there was sufficient funds for the compulsory acquisition. The applicant then proceeded to restructure their company group so that the applicant's parent was a UK registered company. They also provided to the ExA that the shareholders of MIO Investments were to be the project's investors and then went on to name these investors.

27. The ExA then examined the subsidiaries of the applicant, as the balance sheet of the applicant showed that there was no cash in hand or at the bank. The ExA asked the applicant to disclose all their subsidiaries, the applicant disclosed three subsidiaries and the ExA through its own due diligence later found a fourth. The ExA on review of these subsidiaries found that the applicant and its network of companies did not have sufficient funds to fulfil article 9 of the DCO.

28. The applicant went on to provide further information in the form of a JVA and a capital costs report. The ExA then reviewed these and through whilst not wholly adequate, went someway to provide the necessary reassurance of security.19 The ExA went on to examine the proposed Article 9 of the dDCO, and proposed changes to it, which were adopted.

29. Article 9 of the dDCO provided a security much like that of the Swansea Tidal DCO, providing security for £13.1 million, increasing the security from x as the applicant had failed to appropriately assess noise pollution and blight.[20] The ExA concluded that Article 9 should then be enough to ensure adequate cover for the compulsory acquisition.[21]

The Wylfa Newydd (Nuclear Generating Station) Order

ExA's Decision and Statement of Reasons

Availability of funds for compensation

30. NO DECISION RECOMMENDATION ON PINS WEBSITE.

[19] ibid, 9.8.76
[20] ibid, 9.8.139
[21] ibid, 9.8.143

Appendix 2

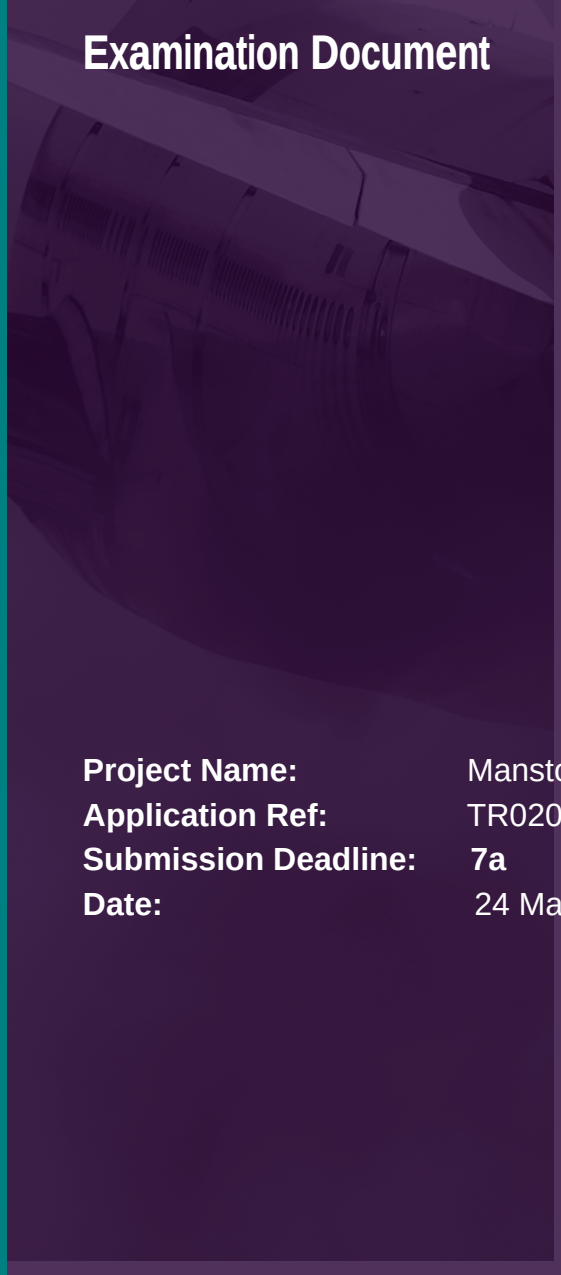
MANSTON AIRPORT FUNDING STATEMENT

RiverOak Strategic Partners

Funding Statement

TR020002/D7a/3.2

Examination Document



Project Name:	Manston Airport Development Consent Order
Application Ref:	TR020002
Submission Deadline:	**7a**
Date:	24 May 2019

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER

APPLICATION REF TR020002

FUNDING STATEMENT

DOCUMENT REF TR020002/D7a/3.2

Introduction

1. This Funding Statement relates to an application by RiverOak Strategic Partners Ltd ('RiverOak') to the Secretary of State for Transport under the Planning Act 2008 for development consent to construct, operate and maintain a predominately cargo airport at the site of the airport at Manston in east Kent, which closed as an airport in May 2014.

2. RiverOak is proposing a development that consists of the following principal components:

    a. an area for cargo freight operations including 19 additional stands, able to handle at least 10,000 movements per year;

    b. facilities for other aviation-related development, including:

        i. a passenger terminal and associated facilities;

        ii. an aircraft recycling facility;

        iii. a flight training school;

        iv. a base for at least one passenger carrier;

        v. a fixed base operation for executive travel; and

        vi. business facilities for airport-related activities.

3. The project is classified as a nationally significant infrastructure project pursuant to sections 14(1)(i) and 23 of the Planning Act 2008, further explained in the revised **NSIP Justification (document TR020002/D1/2.3)**.

4. This statement has been prepared pursuant to the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and in accordance with the Department for Communities and Local Government (DCLG) guidance entitled 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land.'

5. The applicant is RiverOak Strategic Partners Ltd ('RiverOak'), an investment company formed with the intention of promoting and securing a Development Consent Order (DCO) for the project. The project was formerly promoted by RiverOak Investment Corporation, a US company registered in Delaware, but in December 2016 an agreement between the two entities transferred all responsibility, right and liabilities in relation to the project from the US to the UK company.

6. Almost all of the land required for the project is not owned by RiverOak; the vast majority

being owned by Stone Hill Park Ltd (formerly known as Lothian Shelf (718) Ltd, which acquired the airport from its previous owners).

7. The proposed Manston Airport Development Consent Order (**document TR020002/D6/2.1)** updated from the version submitted with the application includes powers for RiverOak to acquire compulsorily all of the land and rights comprising the airport site, its landing lights to the east and west, and a pipeline from the airport to the sea at Pegwell Bay. This Statement is required because the proposed Development Consent Order (DCO) would authorise such compulsory acquisition. Regulation 5(2)(h) requires in respect of such an order, a statement indicating how the order including powers for compulsory acquisition of land will be funded.

8. The DCLG guidance in relation to compulsory acquisition explains that a funding statement should demonstrate that adequate funding is available to enable the compulsory acquisition within the relevant time period. The funding statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the works for which the land is required.

9. This Statement explains:
   a. how the acquisition of the land necessary to build the Project will be funded; and
   b. how the Project generally is to be funded.

10. This Statement should be read alongside RiverOak's other application documents and, in particular, the **Statement of Reasons (document TR020002/APP/3.1)** which justifies the powers of compulsory acquisition that are sought in the DCO.

Capital funding

11. RiverOak is the applicant for the DCO for the project. The applicant is a company registered in England (Company No. 10269461). 10% of its shares are held by RiverOak Manston Ltd and 90% by RiverOak Investments (UK) Ltd.

12. RiverOak Investments (UK) Limited ("RIU") is a UK-registered company (Company No. 11959684) whose ultimate beneficial owners are resident in Switzerland and the United Kingdom. RIU is managed and administered by Helix Fiduciary AG ("Helix"), a Swiss registered and regulated fiduciary company on behalf of the beneficial owners. Helix also manages and controls all the investors' funds that provide the funding for the Manston DCO. RIU has the same directors as M.I.O Investments Ltd, a Belize registered company, who are the funders of the project., They are committed through a revised joint venture agreement (submitted as an appendix to REP5-011) to fund compulsory acquisition and noise mitigation required by the DCO as detailed in the summary below paragraph 29 of this statement (totalling £11,850,000, but in fact £15 million has been committed).

13. Paragraph 17 of the DCLG guidance on compulsory acquisition refers to an indication of how shortfalls in land acquisition and the costs of the project would be met. £15 million covers land acquisition and noise mitigation costs plus a more than 25% contingency, and the full cost of the project will be met by private sector investors once the DCO is granted – such details cannot yet be finalised.

14. Paragraph 18 of the guidance requests information on when funds to cover compulsory acquisition costs will be available. The Joint Venture Agreement allows the funds to be called upon now, although they would not in fact be called upon until they were payable;

there would therefore be no delay between them becoming payable and being paid.

15. Helix has provided an explanatory letter about its role in the funding of the project, together with a confirmatory letter from PwC that the investors have unencumbered funds substantially in excess of the funds required for the completion of the DCO (namely blight claims, land acquisition and the cost of noise mitigation measures). These are attached to this statement. So far, £15.2 million has been expended on the DCO process. Funds are drawn down by RiverOak on demand under the provisions of the joint venture agreement between the parties.

16. During the examination of the application RiverOak has provided the following information:

    a. The Joint Venture Agreement entered into between parties including RiverOak Strategic Partners Ltd (the Applicant) and M.I.O. Investments Ltd, varied to commit the latter to spending £15 million on land acquisition and noise mitigation (appended to REP5-011);

    b. The structure of the Applicant, its subsidiaries and parent company and the accounts of these where available (Appendices F.2.6, F.2.5,

    c. Information about the project's investors, their assets, expenditure on the project to date and their use of Business Investment Relief to invest in UK infrastructure (appended to REP5-011);

    d. Evidence that the Applicant has spent £12.8 million on pursuing the DCO application so far plus a further £2.4 million acquiring the 'Jentex' fuel farm (Appendices F.2.21 and F.2.7 in TR020002/D6/SWQ/Appendices respectively);

    e. A summary business model consisting of a 20-year operating income statement for the airport (Appendix F.1.5 at REP3-187);

    f. A capital expenditure budget for the project over 15 years (Appendix F.1.6 at REP3-187);

    g. The rationale for estimating land acquisition costs together with costings for the expenditure in the Noise Mitigation Plan (answering questions F.1.8 and F.1.9 in REP3-195 respectively);

    h. Evidence that the Applicant has set aside £500,000 for any blight claims despite receiving advice that none would be payable (appended to REP5-011); and

    i. Information about RiverOak Investment Corporation, the predecessor of RiverOak Strategic Partners (Appendix F.2.25 in TR020002/D6/SWQ/Appendices).

Project cost

17. RiverOak has taken expert advice from RPS on the cost estimate for the project that is the subject of the application. The initial phase of the project, which will bring the airport back into use, is estimated to cost about £186 million. The cost of developing the remaining phases of the project over a 15-year period is estimated to be an additional £120 million, i.e. a total of £306 million. This cost estimate includes the cost of implementing the project, the cost of construction and the funding of the acquisition of the

necessary rights over land, including any interference with rights.

18. On land acquisition specifically, RiverOak has obtained advice from surveyors CBRE that the total cost of acquiring the necessary land for the project at its value in the 'no-scheme world', the basis upon which compensation for compulsory acquisition is calculated, as no more than £7.5 million.

19. The **Statement of Reasons (document TR020002/APP/3.1)** sets out the extent of the compulsory acquisition powers being sought in the application.

20. The **Noise Mitigation Plan** (**document TR020002/D6/2.3**) that accompanies the application contains further financial commitments in the form of the applicant's noise mitigation measures, some of which involve expenditure, and provision also needs to be made for any successful 'Part I' claims, i.e. for loss in market value due to operation of the project. We have again taken valuation advice from CBRE as to the cost of these measures, based on environmental information about noise exposure from environmental consultants Wood, and these estimates are:
    a. Implementation of insulation policy and Part I claims: £2.75m (up to 275 properties at £10,000 each); and
    b. Implementation of relocation policy: £1.6m (up to eight properties).

21. Through its joint venture agreement, RiverOak is able to draw down these two categories of funding (£7.5m land acquisition and £4.35m noise mitigation measures) when required.

22. RiverOak has assessed the commercial viability of the project in the light of this information and is confident that the project will be commercially viable and will therefore be fully funded if development consent is granted.

Project funding

23. It is important to note that the funding of the project is not dependent on any public funding, government subsidy or guarantee, or any access to borrowing or grants from UK or European funds. The prospect of the DCO application has attracted significant interest from a wide range of further institutional investors based in the UK, the Far East and North America. The profile of the various interested institutional investors includes entities with extensive broad-based aviation investments, in terms of aircraft leasing portfolios, but also with extensive airport infrastructure interests combining investment ownership, airport management, airport construction, expansion and airport masterplanning. RiverOak's directors have, between them, experience of multiple historical airport capital markets infrastructure financings, in the US and elsewhere with these institutional investors.

24. Should the project receive development consent, RiverOak can immediately draw down the land acquisition and noise mitigation costs from its current funders under the terms of its joint venture agreement.

25. To meet the capital costs of construction, RiverOak will select one or more funders from amongst those who have already expressed interest and others that are likely to come forward, to secure the best deal for constructing and operating the project.

Guaranteeing investment before exercise of powers

26. The **Development Consent Order** that has been submitted with this application

(**reference TR020002/D6/2.1**) contains a provision (article 9 – Guarantees in respect of payment of compensation etc.) that construction cannot commence and powers of compulsory acquisition cannot be implemented until a guarantee to pay compensation and noise mitigation costs under the Order or an alternative form of security is provided to the satisfaction of the Secretary of State.

27. This goes further than other DCOs that have been granted (albeit in those cases an equivalent article was not included at the time the applications were made), e.g. Article 8 of the Rookery South (Resource Recovery Facility) Order 2011, Article 14 of the Able Marine Energy Park Development Consent Order 2014 and Article 7 of the Swansea Bay Tidal Generating Station Order 2015, which are each reproduced in Annex 1 below. Articles 82 and 83 of the proposed Wylfa Newydd (Nuclear Generating Station) Order are also shown.

Blight Claims

28. In some circumstances, landowners can make blight claims once the application has been made but before it is decided. Statutory blight is triggered once an application for a DCO has been made, pursuant to paragraph 24(c) of Schedule 13 to the Town and Country Planning Act 1990. The three categories of land to which this applies are small businesses, owner-occupiers and agricultural units. CBRE advise that there is no land subject to compulsory acquisition under this application in any of these categories. Nevertheless, RiverOak is has set aside funding for potential blight claims out of an abundance of caution and have drawn down £500,000 from their investors at the time of making the application in case any claims are successfully made (as evidenced in an appendix to REP5-011).

Summary

29. The following table summarises the various categories of funding, when and how they will be secured. The first three items constitute 'the completion of the DCO' referred to elsewhere in this document.

Type of funding	**Estimated amount**	**When secured**	**How secured**
Blight claims	£500,000	Now	In RiverOak's accountants' account now
Land acquisition	£7.5m	Now	Joint venture agreement allows draw-down of this amount
Noise mitigation measures	£4.35m	Now	Joint venture agreement allows draw-down of this amount
Project capital costs	£306m	Upon grant of DCO	Funders to be selected from parties who have already expressed interest and who may subsequently do so

ANNEX 1 – EXAMPLE PROVISIONS FROM OTHER DCOs

The Rookery South (Resource Recovery Facility) Order 2011 (SI 2013/680)

Guarantees in respect of payment of compensation
8.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 17 to 27 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authorities.
(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

The Able Marine Energy Park Development Consent Order 2014 (SI 2014/2935)

Guarantees in respect of payment
14.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers conferred by Part 5 (powers of acquisition) unless either guarantees or alternative forms of security for that purpose in respect of—
(a) the liabilities of the undertaker to pay compensation under this Order; and
(b) the liabilities of the undertaker to construct and maintain the compensatory environmental habitat referred to at paragraph 4(a) of Schedule 1 (authorised development) and any additional compensatory habitat identified in the compensation environmental management and monitoring plan,
are in place which have been approved by the relevant planning authority.
(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

The Swansea Bay Tidal Generating Station Order 2015 (SI 2015/1386)

Guarantees in respect of payment of compensation, etc.
7.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 24 to 37, until—
(a) subject to paragraph (3), security of £10.5 million has been provided in respect of the liabilities of the undertaker to pay compensation under this Order; and
(b) the City and County of Swansea Council has approved the security in writing.
(2) The security referred to in paragraph (1) may include, without limitation, any 1 or more of the following—
(a) the deposit of a cash sum;
(b) a payment into court;
(c) an escrow account;
(d) a bond provided by a financial institution;
(e) an insurance policy;
(f) a guarantee by a person of sufficient financial standing (other than the undertaker).
(3) The City and County of Swansea Council may agree to the substitution of a different sum to that of £10.5 million referred to in paragraph (1), having regard to the liabilities of the undertaker to pay compensation under this Order existing at the time of the approval referred to in that paragraph.
(4) The authorised development must not be commenced until—
(a) the undertaker has provided to the City and County of Swansea Council written evidence (which may comprise a written certificate given by a professional firm) of—
(i) the construction contracts in respect of Works No. 1a, 1b and 2a and a contract for the procurement of hydroturbines for installation in Work No. 2a; and
(ii) financial provision to secure the delivery of the works and procurement referred to in paragraph ((i); and
(b) the City and County of Swansea Council has given written confirmation that it is satisfied that such financial provision is sufficient.
(5) The undertaker must pay to the City and County of Swansea Council the reasonable and proper costs, charges and expenses that the City and County of Swansea Council may reasonably incur in obtaining legal or financial advice in respect of giving the confirmation of satisfaction referred to in paragraph (3)(b).
(6) The City and County of Swansea Council is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.

Guarantees in respect of payment of compensation

82.−(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (3) in relation to any land within the Order Limits unless−

(a) the Secretary of State has approved in writing a sum of money to cover the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; and

(b) the undertaker has put in place either−

(i) a guarantee for the sum of money that has been approved by the Secretary of State under sub-paragraph (1)(a) above; or

(ii) an alternative form of security for the sum of money that has been approved under sub-paragraph (1)(a) above.

(2) The undertaker must provide the Secretary of State with such information as he or she may reasonably require to enable the Secretary of State to determine the adequacy of the sum of money referred to in sub-paragraph (1)(a) above, such information to include−

(a) the interests in land affected; and

(b) the undertaker' s assessment of the proper level of compensation and its justification for the same.

(3) The provisions are−

(a) article 25 (Compulsory acquisition of land);

(b) article 27 (Compulsory acquisition of rights);

(c) article 29 (Private rights);

(d) article 31 (Acquisition of subsoil only);

(e) article 32 (Acquisition of land limited to subsoil lying more than 9 metres beneath the surface);

(f) article 34 (Rights under or over streets);

(g) article 35 (Temporary use of land for carrying out the authorised development); and

(h) article 36 (Temporary use of land for maintaining the authorised development).

(4) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 10 years after the date on which the relevant power is exercised.

(6) The undertaker is entitled to reduce amount of the guarantee or alternative form of security to be maintained under paragraph (5) where−

(a) the undertaker has made a payment of compensation under paragraph (4) to a claimant and provided evidence to the Secretary of State that such payment has been made; and

(b) the Secretary of State is satisfied that the reduced amount of the guarantee or alternative form of security proposed by the undertaker will cover the remaining liabilities to pay compensation under this Order in respect of the exercise of the powers in paragraph (3) over the remaining affected land and interests within the Order Limits.

Funding for implementation of the authorised development

83.−(1) Except for Work No. 12, the authorised development must not be commenced unless and until−

(a) the undertaker has provided the Secretary of State with written information to enable the Secretary of State to be satisfied that the authorised development is likely to be undertaken and will not be prevented due to difficulties in sourcing and securing the necessary funding; and

(b) the Secretary of State has given the undertaker written confirmation that the Secretary of State is satisfied that the authorised development is likely to be undertaken and will not be prevented due to difficulties in sourcing and securing the necessary funding.

(2) Work No. 12 must not be commenced unless and until−

(a) the undertaker has provided a guarantee or an alternative form of security, the amount to be approved by the Secretary of State, in respect of liabilities under the restoration scheme approved under Requirement SPC13 in Schedule 3 (Requirements) of this Order; or

(b) the Secretary of State has given written confirmation under sub-paragraph (1)(b) above.

ANNEX 2 – LETTER FROM HELIX FIDUCIARY

ANNEX 3 – LETTER FROM PwC

To HM Planning Inspectorate
Bristol
United Kingdom

Copy Helix Fiduciary AG, Zurich
Bircham Dyson Bell , London

Dear Sirs,

Manston Airport Development Consent Order

We confirm that we have provided to Helix Fiduciary AG, Zurich and Bircham Dyson Bell , London, a report of factual findings of the agreed-upon procedures regarding certain bank accounts which Helix Fiduciary AG operate for their clients.

We have corresponded directly with the banks in question and the report which is dated 5th July 2018 confirms the following;

- The ultimate beneficial owner(s) of each account in question;
- The net balances of cash and short-term investments and equities and similar positions;
- Confirmation that the accounts in question do not have their assets pledged in favour of the bank or any pledges or guarantees recorded by the bank in favour of another bank or third party.

The report details two structures where the assets are held by two branches of the bank and said branches have reported on two different dates, 19th June 2018 and 28th June 2018. The net combined balances of cash and short-term investments and equities and similar positions of the accounts in question at each branch of the bank exceed the currency equivalent of £15 million as of the reporting date of the respective branch.

Please understand that we can assume no obligations or liability whatsoever for this letter. This letter serves solely to inform HM Planning Inspectorate, Bristol, Helix Fiduciary AG, Zurich and Bircham Dyson Bell , London, about our works in respect to the procedures we have performed. This letter may not be used for any other purpose and may not be divulged to a third party.

PricewaterhouseCoopers AG

[redacted]

Zurich, 5 July 2018

PricewaterhouseCoopers AG, Birchstrasse 160, Postfach, CH-8050 Zürich, Switzerland
Telefon: +41 58 792 44 00, Telefax: +41 58 792 44 10, www.pwc.ch

Appendix 3

NORFOLK VANGUARD DCO FUNDING STATEMENT

Norfolk Vanguard Offshore Wind Farm

Funding Statement

Applicant: Norfolk Vanguard Limited
Document Reference: 4.2
Pursuant to APFP Regulation: 5(2)(h)

Date: June 2018
Revision: Version 1
Author: Womble Bond Dickinson

Photo: Kentish Flats Offshore Wind Farm

Document Reference: 4.2

June 2018

For and on behalf of Norfolk Vanguard Limited

Approved by: Rebecca Sherwood and Ruari Lean

Signed:

Date: 10/06/2018

Norfolk Vanguard Limited

Norfolk Vanguard Offshore Wind Farm

Funding Statement

Document Reference	4.2
APFP Regulation	5(2)(h)
Author	Womble Bond Dickinson
Date	10 June 2018
Revision	1

TABLE OF CONTENTS

1. INTRODUCTION

1.1 Norfolk Vanguard Limited (the Applicant) (Company Number 08141115), the applicant for the proposed Norfolk Vanguard Offshore Wind Farm Order (the Order) is a wholly owned subsidiary of Vattenfall Wind Power Limited (Company Number 06205750) (the Company). The Company is part of the Vattenfall Group which is Europe's fifth largest generator of electricity and the largest generator of heat.

1.2 The Applicant is a company created specifically for promoting, developing, constructing and operating the proposed offshore wind farm (the Project) for which the Order is sought.

1.3 The Applicant is planning to develop the Norfolk Vanguard Offshore Wind Farm (the Project) with up to 200 turbines and an installed capacity of up to 1,800 MW. The Project would be located approximately 47 km from the coast of Norfolk at its closest point to land, covering an area of approximately 592 km2 over two distinct areas, Norfolk Vanguard East and Norfolk Vanguard West. The Project will connect to the National Grid at Necton, Norfolk.

1.4 As the total installed electricity generating capacity will exceed 100 MW, the Project is deemed to be a Nationally Significant Infrastructure Project (NSIP), and therefore the Applicant is submitting an application to the Secretary of State under Section 37 of the Planning Act 2008 for a Development Consent Order (DCO) for the construction and operation of the Project. The Applicant is defined in the Order as the "undertaker" and will be the corporate body invested with the powers provided for in the Order.

1.5 The application for the Order includes a request that powers of compulsory acquisition be made available to the Applicant. Accordingly a Funding Statement is required to be submitted with the application for development consent, as per Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations).

1.6 This Statement explains how the Applicant proposes to fund the land and rights to be acquired and also the implementation of the Project. It is part of a suite of DCO application documents and should be read alongside those documents. In particular, this Statement should be read in conjunction with the Statement of Reasons (Document 4.1).

2. THE APPLICANT & THE COMPANY

2.1 The Applicant is a subsidiary of the Company, which is in turn part of the Vattenfall Group which is Europe's fifth largest generator of electricity and the largest generator of heat. The Vattenfall Group works in all parts of the electricity supply and distribution: generation, transmission, distribution and sales, and generates, distributes and sells heat. The Group has approximately 42,000 employees. The Parent Company, Vattenfall AB, is owned by the Swedish state.

2.2 The Company has extensive experience of the construction and operation of offshore wind farms in UK and European waters. In addition to owning and operating the existing Kentish Flats Offshore Wind Farm, the Thanet Offshore Wind Farm and the Ormonde Offshore Wind Farm, the Company completed the construction of the Kentish Flats Extension in 2015 and an application will shortly be made to the Secretary of State for the Thanet Extension. The Company is also exploring the potential to develop further offshore wind farms located in the North Sea, off the coast of Norfolk.

3. FUNDING THE PROJECT

3.1 The consolidated accounts of the Company for the year ended 2016/2017 stated a total fixed assets of £270,162,000. The last published accounts of the Applicant are at Annex 1 to this Statement.

3.2 The Applicant will have the ability to procure the financial resources necessary to fund the works to be authorised by the Order, subject to final Board authority. The Company has the experience and reputation to enable funds to be procured.

3.3 The Applicant intends to secure funding for construction of the Project after certainty is obtained on the planning consent, the tender process is complete for the major construction contracts and the investment case has been satisfied. Once these criteria are met the Applicant will take a final investment decision (FID) which will irrevocably commit funding.

3.4 The Company, working with the Applicant, is incentivised to develop a commercially viable project, given the significant development funds that have already been spent on the Project, which will meet its long term objectives to increase renewable energy generation capacity. This approach is the standard model for development of capital intensive generation assets.

3.5 The Company has been at the forefront of financing renewable energy projects for more than 10 years. In that time, it has been involved in many significant renewable energy transactions and construction projects in the UK. The Company has considerable experience and expertise in financing renewable energy projects.

3.6 The experience of the Company and of the wider industry is that there is no reason to believe that the required funding for the Project would not be available in the period during which compulsory acquisition powers would be available to the Applicant under the Order, if made.

3.7 The Secretary of State can therefore be satisfied that, as a result of the Company's experience and reputation, funds are likely to be available to meet the capital expenditure for:

- The cost of the Project;
- The cost of acquiring the land identified in the Order;
- The cost of compensation otherwise payable in accordance with the Order.

3.8 It should be noted that the Applicant could, by itself, secure the required funding for the Project. This would include all likely compensation liabilities resulting from the exercise of compulsory acquisition powers (set out in more detail in Section 4, and in the draft form of agreement which is attached to this Funding Statement at Annex 2 (the **Agreement**).

3.9 In summary, the Company has substantial net assets as well as a positive track record in the field of renewable energy development. The Company is therefore able to provide the required funding for the Project, including all likely compensation liabilities resulting from the exercise of compulsory acquisition powers.

4. FUNDING CLAIMS FOR COMPENSATION (INCLUDING BLIGHT)

4.1 The development of the Project requires the acquisition of interests in land, rights under and over land, and the temporary use of land. The Applicant has been advised that the total property cost estimates for the acquisition of the required interests in land should not exceed £10,143,000.

4.2 The Applicant and the Company will shortly enter into the Agreement, which will be in substantially the same form as attached to this Funding Statement at Annex 3.

4.3 In clause 4 of the Agreement, the Company undertakes to put the Applicant in funds for the payments of legitimately claimed compensation by a class of persons listed in the Agreement, or to pay the agreed or awarded funds direct to the relevant claimant.

4.4 The Agreement specifically states that the persons of the class specified in the Agreement in Schedule 3 may, through the provisions of the Contracts (Rights of Third Parties) Act 1999 enforce the obligation upon the Company to place the Applicant in funds to pay compensation for expropriation, injurious affection and claims under Part 1 of the Land Compensation Act 1973, if such claims are valid and appropriately made. (It should be noted that the Applicant does not anticipate that any claims under the 1973 Act will arise).

4.5 A Cap on liability of £10,143,000 is included in the Agreement. This cap is subject to indexation and is based on advice received by the Applicant on the likely level of compensation due to claimants for the compulsory acquisition of interests in their land.

4.6 As a result of this mechanism, the Examining Authority and Secretary of State can be assured that sufficient funding for payment of compensation will be available to the Applicant if compulsory acquisition powers are provided in the Order.

4.7 The Applicant has access to sufficient committed funds and resources available to meet:

4.7.1 The compensation arising from all compulsory acquisition of land and rights pursuant to the DCO

4.7.2 Any statutory blight claims that may arise.

4.8 It is not anticipated that claims for statutory blight will arise as a result of the promotion of the Order. Should claims for blight arise as a consequence of the application for the Order being made, and before it is known whether the Project will proceed, the costs of meeting blight claims that are upheld will be met from the capital reserves of the Applicant or the Company. Funding for blight claims made in advance of the making of the Order is provided for in the Agreement between those parties referred to above (see clause 3.1 and Schedule 2 Part 3). For blight claims validly made subsequent to the Order being made the Agreement will also apply.

5. CONCLUSIONS

5.1 Appropriate funding for liabilities for compensation arising from the acquisition of land and rights, the creation of new rights and for statutory blight will be available where compensation is appropriately and reasonably claimed. If the Applicant is unable to pay such compensation then the Company will put the Applicant in funds to enable it so to do, in accordance with the Agreement attached to this statement.

5.2 The Applicant will be able to secure appropriate funds both for compensation to landowners and for the construction of the Project. For this Project, Vattenfall Wind Power Limited will by the party providing the necessary Funding Agreement.

5.3 The Secretary of State can therefore be satisfied both that funding is likely to be available for claims for compensation by landowners and also that the Project is soundly backed and there is no reason to believe that, if the Order is made, the Project will not proceed.

ANNEX 1

Accounts for Vattenfall Wind Power Limited 2016-2017

Registered number: 06205750

VATTENFALL WIND POWER LIMITED

DIRECTORS' REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 DECEMBER 2016

VATTENFALL WIND POWER LIMITED

COMPANY INFORMATION

Directors	Gunnar Groebler Piers Guy Robert Zurawski Jonas Van Mansfeld (appointed 15 February 2016)
Company secretary	S Leece
Registered number	06205750
Registered office	First Floor 1 Tudor Street London EC4Y 0AH
Independent auditors	Ernst & Young 1 More London Place London SE1 2AF

VATTENFALL WIND POWER LIMITED

CONTENTS

VATTENFALL WIND POWER LIMITED

STRATEGIC REPORT
FOR THE YEAR ENDED 31 DECEMBER 2016

Introduction

This report provides an overview of the current year performance, position and main issues that have been considered by the directors.

Business review

For each of the six East Anglia Offshore Wind (EAOW) development areas and joint venture assets, agreements concerning progress have been reached. In 2016 Vattenfall has taken 100% ownership of the three areas called 4, 5 and 6 (through its 100% subsidiary undertaking Norfolk Vanguard Ltd) and Scottish Power has taken 100% ownership of three areas called 1, 2 and 3. The assets that remain in EAOW will be still jointly operated through the existing joint venture structure. Assets that contribute to all areas will continue to be jointly owned and operated from within the joint venture. With these transactions, all shareholder loans have been repaid by EAOW to both shareholders.

During the year the Company continued to develop and construct an onshore wind farm at the Ray Wind Farm in England within the United Kingdom. Mid 2017 the wind farm has all turbines producing power, and has taken over from its suppliers in the third quarter of 2017.

On 1 January 2016, the Company sold 49% of their shares in Ormonde Energy Limited, a subsidiary undertaking, to AMF Pensionsförsäkring AB.

In March 2016 a 5MW solar panel park has begun operation next to Vattenfall's Welsh wind farm, Pendine. With this park, Vattenfall shows its ambition to further develop its strategy into the solar panel market.

The ultimate parent undertaking is Vattenfall AB. One of the key focus areas of Vattenfall's strategy is building a more sustainable energy portfolio. Vattenfall has a committed and ambitious strategy for growth in renewable generation and plans to invest more than 50 billion Swedish Krona in new wind farms over the next five years.

In the financial year 2016, Vattenfall Group operated more than 1,000 turbines and had seven wind farms under construction in five countries, two of which were commissioned in 2016 and three of which were in the process of commissioning in 2016. The other wind farms are expected to commence operations in 2018.

The Company made a profit after taxation for the year ended 31 December 2016 of £81,990 thousand (2015: £15,281 thousand) based on turnover of £32,026 thousand (2015: £18,054 thousand).

Management monitors and measures the Company's operational asset performance on the basis of a set of balanced Key Performance Indicators including availability, operational expenses and safety. In relation to the development and construction projects, focus is on time, budget, quality and safety.

Principal risks and uncertainties

The Company is exposed to financial risk through its financial assets and liabilities. The key financial risk is that the proceeds from financial assets are not sufficient to fund the obligations arising from liabilities as they fall due. The most important components of financial risk are credit risk, liquidity risk and cash flow risk. Due to the nature of the Company's business and the assets and liabilities contained within the Company's Balance Sheet, the only financial risks the directors consider relevant to the Company are credit risk and liquidity risk. These risks are mitigated first with the Company being sufficiently equity funded and, second, by the nature of the balances owed, with these due to other Vattenfall group companies. Credit exposure represents the extent of credit-related losses that the Company may be subject to on amounts to be received from financial assets. The Company, while exposed to credit-related losses in the event of non-performance by counterparties does not expect any counterparties to fail to meet their obligations given their high credit rating.

Operational risks are mitigated by having contractual arrangements in place which result in adequate and timely services taking place when technical difficulties are experienced at the site.

[redacted] its behalf.

VATTENFALL WIND POWER LIMITED

DIRECTORS' REPORT
FOR THE YEAR ENDED 31 DECEMBER 2016

The directors present their report and the financial statements for the year ended 31 December 2016.

Directors' responsibilities statement

The directors are responsible for preparing the Strategic report, the Directors' report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice), including Financial Reporting Standard 101 'Reduced Disclosure Framework'. Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent;
- state whether applicable UK Accounting Standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the Company's transactions and disclose with reasonable accuracy at any time the financial position of the Company and to enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the Company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Principal activity

The Company's principal activities consist of the development, construction and operation of wind energy projects in the United Kingdom. The Company is a private limited company, domiciled in the United Kingdom and incorporated in England and Wales. During the year the Company's immediate parent undertaking was Vattenfall Vindkraft AB, a company registered in Sweden. The ultimate parent undertaking of the Company is Vattenfall AB, the Swedish based international utility company.

Going concern

The Company's cash flows are largely driven by its direct and intermediate parent companies and, as a consequence, the Company depends, in large parts, on the ability of these Vattenfall companies to continue as a going concern. The directors have considered the Company's funding and operational relationships with its direct and intermediate parents to date and have considered available relevant information relating to Vattenfall's ability to continue as a going concern. In addition, the directors have no reason to believe that the respective Vattenfall companies will not continue to fund the Company, should it become necessary, to enable it to continue in operational existence.

On the basis of these considerations, the directors have a reasonable expectation that the Company will be able to continue in operational existence for the foreseeable future. Therefore, they continue to adopt the going concern basis of accounting when preparing the financial statements.

DIRECTORS' REPORT (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2016

Results and dividends

The profit for the year, after taxation, amounted to £81,990 thousand (2015 - £15,281 thousand).

Dividend paid in the year is £nil (2015: £nil).

Directors

The directors who served during the year were:

Ole Nielsen (resigned 30 April 2017)
Martin Reinholdsson (resigned 1 July 2017)
Gunnar Groebler
Piers Guy
Robert Zurawski
Jonas Van Mansfeld (appointed 15 February 2016)
Peter Tornberg (appointed 6 April 2016, resigned 1 July 2017)
Anthony Wort (appointed 6 April 2016, resigned 1 July 2017)

Political and charitable contributions

During the year the Company made charitable contributions for educational purposes totalling £200 (2015: £7 thousand).

Future developments

The Company is continuously reviewing its business to stay responsive to the challenging energy market conditions and current low energy prices. Management has sourced its operation & maintenance with a service provider which allows for cost management and stability of cash flow. It is our policy to refrain from making any specific statements about expected future results. However, on the basis of risk analysis and adequate operational processes, we have faith that we will be able to tackle the challenges ahead and to stay on top of our operations.

Qualifying third party indemnity provisions

Certain directors benefited from qualifying third party indemnity provisions in place during the financial period and at the date of this report.

Disclosure of information to auditors

Each of the persons who are directors at the time when this Directors' report is approved has confirmed that:

- so far as the director is aware, there is no relevant audit information of which the Company's auditors are unaware, and
- the director has taken all the steps that ought to have been taken as a director in order to be aware of any relevant audit information and to establish that the Company's auditors are aware of that information.

Post balance sheet events

There have been no significant events affecting the Company since the year end.

DIRECTORS' REPORT (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2016

Auditors

The auditors, Ernst & Young, will be proposed for reappointment in accordance with section 485 of the Companies Act 2006.

[redacted] nd signed on its behalf.

INDEPENDENT AUDITORS' REPORT TO THE SHAREHOLDERS OF VATTENFALL WIND POWER LIMITED

We have audited the financial statements of Vattenfall Wind Power Limited for the year ended 31 December 2016, which comprise the Statement of Comprehensive Income, Balance Sheet, Statement of Changes in Equity, and the related notes 1 to 24. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice), including Financial Reporting Standard 101 'Reduced Disclosure Framework'.

This report is made solely to the Company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an Auditors' Report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of Directors and Auditors

As explained more fully in the Directors' Responsibilities Statement on page 3, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements. In addition, we read all the financial and non financial information in the Strategic Report and the Directors' Report to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by us in the course of performing the audit. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

Opinion on financial statements

In our opinion the financial statements:

- give a true and fair view of the state of the Company's affairs as at 31 December 2016 and of its profit for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including FRS 101 "Reduced Disclosure Framework"; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

Opinion on other matter prescribed by the Companies Act 2006

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Strategic Report and the Directors' Report for the financial year for which the financial statements are prepared is consistent with the financial statements;
- the Strategic Report and the Directors' Report have been prepared in accordance with applicable legal requirements.

Matters on which we are required to report by exception

In the light of our knowledge and understanding of the Company and its environment obtained in the course of the audit, we have not identified material misstatements in the Strategic Report and the Directors' Report.

We have nothing to report in respect of the following matters where the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit.

[redacted] Auditor)

for and on behalf of
Ernst & Young

London

8 September 2017

VATTENFALL WIND POWER LIMITED

STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 31 DECEMBER 2016

	Note	2016 £000	2015 £000
Turnover	4	**32,026**	18,054
Cost of sales		**(47,843)**	(13,320)
Gross (loss)/profit		**(15,817)**	4,734
Administrative expenses		**(24,736)**	(24,890)
Other operating income	5	**29,678**	10,961
Operating loss	6	**(10,875)**	(9,195)
Income from fixed assets investments	9	**9,551**	13,400
Profit on disposal of investments	14	**75,140**	-
Interest receivable and similar income	10	**12,776**	11,849
Interest payable and expenses	11	**(7,112)**	(447)
Profit before tax		**79,480**	15,607
Tax on profit	12	**2,510**	(326)
Profit for the year		**81,990**	15,281
Total comprehensive income for the year		**81,990**	15,281

There were no recognised gains and losses for 2016 or 2015 other than those included in the Statement of Comprehensive Income. All amounts relate to continuing operations.

The notes on pages 12 to 31 form part of these financial statements.

VATTENFALL WIND POWER LIMITED
REGISTERED NUMBER:06205750

BALANCE SHEET
AS AT 31 DECEMBER 2016

	Note		2016 £000		2015 £000
Tangible assets	13		**270,162**		218,207
Investments	14		**267,095**		341,798
Debtors due after more than 1 year	16		**-**		184,422
			537,257		744,427
Current assets					
Stocks	15	**3,890**		462	
Debtors due within 1 year	16	**621,141**		41,666	
Financial instruments	18	**1,126**		688	
		626,157		42,816	
Creditors: amounts falling due within one year	17	**(349,987)**		(62,480)	
Net current assets/(liabilities)			**276,170**		(19,664)
Total assets less current liabilities			**813,427**		724,763
Provisions for liabilities					
Deferred taxation	19	**(6,145)**		(4,481)	
Other provisions	20	**(12,336)**		(7,326)	
			(18,481)		(11,807)
Net assets			**794,946**		712,956
Capital and reserves					
Called up share capital	21		**682,000**		682,000
Retained earnings			**112,946**		30,956
			794,946		712,956

[redacted]d for issue by the board and were signed on its behalf by:

The notes on pages 12 to 31 form part of these financial statements.

VATTENFALL WIND POWER LIMITED

STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 31 DECEMBER 2016

	Called up share capital	Retained earnings	Total equity
	£000	£000	£000
At 1 January 2016	682,000	30,956	712,956
Comprehensive income for the year			
Profit for the year	-	81,990	81,990
Total comprehensive income for the year	-	81,990	81,990
At 31 December 2016	682,000	112,946	794,946

VATTENFALL WIND POWER LIMITED

STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 31 DECEMBER 2015

	Called up share capital	Retained earnings	Total equity
	£000	£000	£000
At 1 January 2015	682,000	15,675	697,675
Comprehensive income for the year			
Profit for the year	-	15,281	15,281
Total comprehensive income for the year	-	15,281	15,281
At 31 December 2015	682,000	30,956	712,956

The notes on pages 12 to 31 form part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2016

1. Authorisation of financial statements

The financial statements of Vattenfall Wind Power Limited (the "Company") for the year ended 31 December 2016 were approved by the board and authorised for issue on 7 September 2017 and the Balance Sheet was signed on the board's behalf by J Van Mansfeld. Vattenfall Wind Power Limited is incorporated and domiciled in England and Wales.

2. Accounting policies

2.1 Basis of preparation of financial statements

The financial statements have been prepared under the historical cost convention and in accordance with Financial Reporting Standard 101 'Reduced Disclosure Framework' and the Companies Act 2006.

The financial statements are prepared using rounding to the nearest thousand of the functional and presentational currency, GBP.

The preparation of financial statements in compliance with FRS 101 requires the use of certain critical accounting estimates. It also requires management to exercise judgment in applying the Company's accounting policies (see note 3).

The following principal accounting policies have been applied:

2.2 Financial reporting standard 101 - reduced disclosure exemptions

The Company has taken advantage of the following disclosure exemptions under FRS 101:

- the requirements of IFRS 7 Financial Instruments: Disclosures
- the requirements of paragraphs 91-99 of IFRS 13 Fair Value Measurement
- the requirement in paragraph 38 of IAS 1 'Presentation of Financial Statements' to present comparative information in respect of:
  - paragraph 79(a)(iv) of IAS 1;
  - paragraph 73(e) of IAS 16 Property, Plant and Equipment;
- the requirements of IAS 7 Statement of Cash Flows
- the requirements of paragraphs 30 and 31 of IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors
- the requirements of paragraph 17 and 18A of IAS 24 Related Party Disclosures
- the requirements in IAS 24 Related Party Disclosures to disclose related party transactions entered into between two or more members of a group, provided that any subsidiary which is a party to the transaction is wholly owned by such a member

2. Accounting policies (continued)

2.3 Change in accounting policy and disclosures

Unless otherwise stated, the accounting policies and method of computation adopted in the preparation of the financial statements are consistent with those of the previous year.

The following new and amended IFRS and IFRIC interpretations are mandatory as of 1 January 2016 unless otherwise stated and the impact of adoption is described below. There are no other changes to IFRS effective in 2016 which have a material impact on the Company.

IAS 1 Disclosure Initiative - Presentation of Financial Statements
The amendments clarify the materiality requirements in IAS 1, that specific line items in the Statement of Comprehensive Income and the Balance Sheet may be disaggregated and that entities have flexibility as to the order in which they present the notes to the financial statements. These amendments are intended to assist entities in applying judgement when meeting the presentation and disclosure requirements in IFRS, and do not affect recognition and measurement.

New standards and interpretations not yet effective:

The Company has elected not to early adopt the following revised and amended standards, which are not yet mandatory in the EU.

The list below includes only standards and interpretations that could have an impact on the financial statements of the Company.

- IFRS 9 Financial instruments (effective in the EU 1 January 2018)
- IFRS 15 Revenue from contracts with customers (effective in the EU 1 January 2018)
- IFRIC Interpretation 22 Foreign currency transactions and advance consideration (effective in the EU 1 January 2018)
- IFRS 16 Leases (effective in the EU 1 January 2019)

2.4 Revenue

Revenue is recognised to the extent that it is probable that the economic benefits will flow to the Company and the revenue can be reliably measured.

Revenue represents income earned from the sale of electricity, and separate sale of environmental credits, and excludes value added tax. Revenue is recognised or accrued at the time of supply. All revenue originates in the United Kingdom.

2.5 Development expenditure

Development expenditure is capitalised and held as assets under construction when the Company obtains planning consent and the project is expected to become technically and commercially viable such that the project is expected to generate sufficient net cash flow to allow recovery of such expenditure. Otherwise, development expenditure for new wind farm projects is expensed as incurred. On disposal of a project, previously capitalised development expenditure will be transferred to the Statement of Comprehensive Income in the same period in which revenue is recognised.

2. Accounting policies (continued)

2.6 Tangible fixed assets

All tangible fixed assets under the cost model are stated at historical cost less accumulated depreciation and any accumulated impairment losses. Historical cost includes expenditure that is directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

At each reporting date the Company assesses whether there is any indication of impairment. If such indication exists, the recoverable amount of the asset is determined which is the higher of its fair value less costs to sell and its value in use. An impairment loss is recognised where the carrying amount exceeds the recoverable amount.

The Company adds to the carrying amount of an item of fixed assets the cost of replacing part of such an item when that cost is incurred, if the replacement part is expected to provide incremental future benefits to the Company. The carrying amount of the replaced part is derecognised. Repairs and maintenance are charged to the Statement of Comprehensive Income during the period in which they are incurred.

Assets under construction are capitalised as separate component of property, plant and equipment. On completion, the cost of construction is transferred to the appropriate category. Assets under construction are not depreciated.

Borrowing costs directly attributable to assets under construction and which meet the recognition criteria in IAS 23 are capitalised as part of the cost of that asset.

Depreciation is charged so as to allocate the cost of assets less their residual value over their estimated useful lives, using the straight-line method.

The estimated useful lives range as follows:

Freehold property	-	20 years
Wind farm - gearboxes and generators	-	10 years
Solar farm	-	20 years
Fixtures, fittings & equipment	-	5 years
Wind farm - decommissioning asset	-	20 years
Wind farm - tower, blades, foundations etc	-	20 years

2.7 Leasing

Rentals paid under operating leases are charged to the Statement of Comprehensive Income on a straight line basis over the lease term.

2. Accounting policies (continued)

2.8 Impairment of fixed assets

Assets that are subject to depreciation are assessed at each Balance Sheet date to determine whether there is any indication that the assets are impaired. Where there is any indication that an asset may be impaired, the carrying value of the asset is tested for impairment. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. Non-financial assets that have been previously impaired are reviewed at each Balance Sheet date to assess whether there is any indication that the impairment losses recognised in prior periods may no longer exist or may have decreased.

2.9 Investments

Investments in subsidiaries and joint ventures are measured at cost less accumulated impairment. Where merger relief is applicable, the cost of the investment in a subsidiary undertaking is measured at the nominal value of the shares issued together with the fair value of any additional consideration paid.

The Company assesses investments for impairment whenever events or changes in circumstances indicate that the carrying value of an investment may not be recoverable. If any such indication of impairment exists, the Company makes an estimate of its recoverable amount. Where the carrying amount of an investment exceeds its recoverable amount, the investment is considered impaired and is written down to its recoverable amount.

Investments in unlisted company shares, whose market value can be reliably determined, are remeasured to market value at each Balance Sheet date. Gains and losses on remeasurement are recognised in the Statement of Comprehensive Income for the period. Where market value cannot be reliably determined, such investments are stated at historic cost less impairment.

2.10 Stocks

Stocks are stated at the lower of cost and net realisable value. Cost is based on the cost of purchase on a weighted average basis. Work in progress and finished goods include labour and attributable overheads.

At each Balance Sheet date, stocks are assessed for impairment. If stock is impaired, the carrying amount is reduced to its selling price less costs to complete and sell. The impairment loss is recognised immediately in the Statement of Comprehensive Income.

2.11 Debtors

Short term debtors are measured at transaction price, less any impairment. Loans receivable are measured initially at fair value, net of transaction costs, and are measured subsequently at amortised cost using the effective interest method, less any impairment.

2.12 Cash and cash equivalents

Cash is represented by cash in hand and deposits with financial institutions repayable without penalty on notice of not more than 24 hours. Cash equivalents are highly liquid investments that mature in no more than three months from the date of acquisition and that are readily convertible to known amounts of cash with insignificant risk of change in value.

2. Accounting policies (continued)

2.13 Borrowing costs

Where material to the Company, general and specific borrowing costs directly attributable to the acquisition, construction or production of qualifying assets, which are assets that necessarily take a substantial period of time to get ready for their intended use or sale, are added to the cost of those assets, until such time as the assets are substantially ready for their intended use or sale.

Investment income earned on the temporary investment of specific borrowings pending their expenditure on qualifying assets is deducted from the borrowing costs eligible for capitalisation.

All other borrowing costs are recognised in profit or loss in the period in which they are incurred.

2.14 Financial instruments

The Company recognises financial instruments when it becomes a party to the contractual arrangements of the instrument. Financial instruments are de-recognised when they are discharged or when the contractual terms expire. The Company's accounting policies in respect of financial instruments transactions are explained below:

Financial assets

The Company recognises its financial assets into one of the categories discussed below, depending on the purpose for which the asset was acquired.

Other than the financial assets in a qualifying hedging relationship, the Company's accounting policy for each category is as follows:

Fair value through profit or loss
Financial assets at fair value through profit and loss are carried in the Balance Sheet at fair value with changes in fair value recognised in finance revenue or finance expense in the Statement of Comprehensive Income.

Loans and receivables
Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. They arise principally through the provision of goods and services to customers (e.g. trade receivables), but also incorporate other types of contractual monetary asset. They are initially recognised at fair value plus transaction costs that are directly attributable to their acquisition or issue, and are subsequently carried at amortised cost using the effective interest rate method, less any provision for impairment.

Impairment provisions are recognised when there is objective evidence (such as significant financial difficulties on the part of the counterparty or default or significant delay in payment) that the Company will be unable to collect all of the amounts due under the terms receivable, the amount of such a provision being the difference between the net carrying amount and the present value of the future expected cash flows associated with the impaired receivable. For trade receivables, which are reported net, such provisions are recorded in a separate allowance account with the loss being recognised within administrative expenses in the Statement of Comprehensive Income. On confirmation that the trade receivable will not be collected, the gross carrying value of the asset is written off against the associated provision.

2. Accounting policies (continued)

2.14 Financial instruments (continued)

Financial liabilities

The Company classifies all of its financial liabilities as liabilities at amortised cost.

At amortised cost
Financial liabilities at amortised cost including bank borrowings are initially recognised at fair value net of any transaction costs directly attributable to the issue of the instrument. Such interest bearing liabilities are subsequently measured at amortised cost using the effective interest rate method, which ensures that any interest expense over the period to repayment is at a constant rate on the balance of the liability carried into the Balance Sheet.

2.15 Creditors

Creditors are obligations to pay for goods or services that have been acquired in the ordinary course of business from suppliers.

Creditors are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method.

2.16 Foreign currency translation

Functional and presentation currency

The Company's functional and presentational currency is GBP.

Transactions and balances

Foreign currency transactions are translated into the functional currency using the spot exchange rates at the dates of the transactions.

At each period end foreign currency monetary items are translated using the closing rate. Non-monetary items measured at historical cost are translated using the exchange rate at the date of the transaction and non-monetary items measured at fair value are measured using the exchange rate when fair value was determined.

Foreign exchange gains and losses resulting from the settlement of transactions and from the translation at period-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the Statement of Comprehensive Income except when deferred in other comprehensive income as qualifying cash flow hedges.

Foreign exchange gains and losses are presented in the Statement of Comprehensive Income within 'interest receivable and similar income' for gains or 'interest payable and expenses' for losses.

2.17 Interest expenses

Interest expenses are charged to the Statement of Comprehensive Income over the term of the debt using the effective interest method so that the amount charged is at a constant rate on the carrying amount. Issue costs are initially recognised as a reduction in the proceeds of the associated capital instrument.

2. Accounting policies (continued)

2.18 Pensions

Defined contribution pension plan

The Company operates a defined contribution plan for its employees. A defined contribution plan is a pension plan under which the Company pays fixed contributions into a separate entity. Once the contributions have been paid the Company has no further payments obligations.

The contributions are recognised as an expense in the Statement of Comprehensive Income when they fall due. Amounts not paid are shown in accruals as a liability in the Balance Sheet. The assets of the plan are held separately from the Company in independently administered funds.

2.19 Interest income

Interest income is recognised in the Statement of Comprehensive Income using the effective interest method.

2.20 Decommissioning provision

The Company has provided for the present value of estimated decommissioning costs from the time that the Company has an obligation to dismantle and remove a facility and restore the site on which it is located, and when a reasonable estimate of that provision can be made. The amount recognised is the present value of the estimated future expenditure determined in accordance with the local conditions and requirements. A corresponding tangible fixed asset of an amount equivalent to the provision is also created. This is subsequently depreciated as part of tangible assets.

Each year the decommissioning provision is subject to an unwinding of the discounted value in order to bring the provision up to the latest present value. The charge is included within interest payable in the Statement of Comprehensive Income.

Any change in the present value of the estimated expenditure is reflected as an adjustment to the provision and the fixed asset.

2.21 Provisions for liabilities

Provisions are made where an event has taken place that gives the Company a legal or constructive obligation that probably requires settlement by a transfer of economic benefit, and a reliable estimate can be made of the amount of the obligation.

Provisions are charged as an expense to the Statement of Comprehensive Income in the year that the Company becomes aware of the obligation, and are measured at the best estimate at the Balance Sheet date of the expenditure required to settle the obligation, taking into account relevant risks and uncertainties.

When payments are eventually made, they are charged to the provision carried in the Balance Sheet.

2. Accounting policies (continued)

2.22 Current and deferred taxation

The tax expense for the year comprises current and deferred tax. Tax is recognised in the Statement of Comprehensive Income, except that a change attributable to an item of income and expense recognised as other comprehensive income or to an item recognised directly in equity is also recognised in other comprehensive income or directly in equity respectively.

The current income tax charge is calculated on the basis of tax rates and laws that have been enacted or substantively enacted by the Balance Sheet date in the countries where the Company operates and generates income.

Deferred balances are recognised in respect of all temporary differences that have originated but not reversed by the Balance Sheet date, except that:

- The recognition of deferred tax assets is limited to the extent that it is probable that they will be recovered against the reversal of deferred tax liabilities or other future taxable profits; and
- Any deferred tax balances are reversed if and when all conditions for retaining associated tax allowances have been met.

Deferred tax balances are not recognised in respect of permanent differences except in respect of business combinations, when deferred tax is recognised on the differences between the fair values of assets acquired and the future tax deductions available for them and the differences between the fair values of liabilities acquired and the amount that will be assessed for tax. Deferred tax is determined using tax rates and laws that have been enacted or substantively enacted by the Balance Sheet date.

3. Judgments in applying accounting policies and key sources of estimation uncertainty

The preparation of financial statements requires management to make judgments, estimates and assumptions that affect the amounts reported for assets and liabilities as at the Balance Sheet date as well as revenues and expenses reported during the year.

The following estimates are dependent upon assumptions which could change in the next financial year and have a material effect on the carrying amounts of assets and liabilities recognised at the Balance Sheet date:

Decommissioning
Significant estimates and assumptions are made in determining this provision as there are numerous factors that will affect the ultimate liability payable. These factors include estimates of the extent and costs of rehabilitation activities, regulatory changes, cost increases and changes in discount rates. Those uncertainties may result in future actual expenditure differing from the amounts currently accounted for. The provision at the Balance Sheet date represents management's best estimate of the present value of the future closure costs required.

Renewable Obligation certificate (ROC)
The Company estimated the value of its entitlement to the ROC (Renewable Obligation Certificate) Buyout Fund in relation to the 2016/2017 administrative year. In estimating the value of its entitlement, the Company estimates the value of the Ofgem Buyout Funds for the appropriate years and the number of ROCs that will be presented for the respective years. In the Company's Balance Sheet, amounts owed by group undertakings include £NIL (2015: £NIL) of accrued income in respect of the Company's share of the Ofgem Buyout Funds.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2016

4. Turnover

The total turnover of the Company has been derived from its principal activity.

5. Other operating income

	2016 £000	2015 £000
Other operating income	**29,678**	10,961

Other operating income relates to costs recharged to other group undertakings.

6. Operating loss

The operating loss is stated after charging:

	2016 £000	2015 £000
Depreciation of tangible fixed assets	**14,269**	6,531
Impairment of tangible fixed assets	**61**	4,626
Exchange differences	**4,815**	742
Defined contribution pension cost	**1,043**	922
Lease of facilities and rates	**2,444**	1,166

7. Auditors' remuneration

The Company paid the following amounts to its auditors in respect of the audit of the financial statements. No other services are provided to the Company.

	2016 £000	2015 £000
Fees for audit services	**51**	56

8. Employees

Staff costs were as follows:

	2016 £000	2015 £000
Wages and salaries	**12,106**	10,204
Social security costs	**1,394**	1,193
Cost of defined contribution scheme	**1,043**	922
	14,543	12,319

Directors remuneration

The directors of the Company are also directors of the holding company and fellow subsidiaries. The directors remuneration for the year, apportioned to the Company based on the estimated individual director representation for the Company, amounts to £198 thousand (2015: £97 thousand). All of the remuneration was paid by another Vattenfall Group company.

The average monthly number of employees, including the directors, during the year was as follows:

	2016 No.	2015 *No.*
Employees, of which 7 (2015: 6) are directors	**221**	170

9. Income from investments

	2016 £000	2015 £000
Dividends received	**9,551**	13,400

10. Interest receivable and similar income

	2016 £000	2015 £000
Gain on foreign exchange transactions	**6,003**	6,073
Fair Value Movement on currency derivatives	**321**	235
Interest receivable from group companies	**6,452**	5,541
	12,776	11,849

11. Interest payable and expenses

	2016 £000	2015 £000
Interest payable on loans from group undertakings	**234**	431
Fair Value Movement on currency derivatives	**6,758**	-
Unwinding of discount on decommissioning provision	**120**	16
	7,112	447

12. Taxation

	2016 £000	2015 £000
Corporation tax		
Adjustments in respect of previous periods	**(427)**	363
Group taxation relief	**(3,747)**	(2,468)
Total current tax	**(4,174)**	(2,105)
Deferred tax		
Origination and reversal of timing differences	**2,753**	2,935
Changes to tax rates	**(1,324)**	(534)
Adjustments in respect of previous periods	**235**	30
Total deferred tax	**1,664**	2,431
Taxation on (loss)/profit on ordinary activities	**(2,510)**	326

12. Taxation (continued)

Factors affecting tax charge for the year

The tax assessed for the year is lower than (2015 - lower than) the standard rate of corporation tax in the UK of 20% (2015 - 20.25%). The differences are explained below:

	2016 £000	2015 £000
Profit on ordinary activities before tax	**79,480**	15,607
Profit on ordinary activities multiplied by standard rate of corporation tax in the UK of 20% (2015 - 20.25%)	**15,896**	3,161
Effects of:		
Expenses not deductible for tax purposes	**48**	20
Impact of changes in tax laws and rates	**(1,324)**	(534)
Adjustments to tax charge in respect of prior periods	**(192)**	393
Dividends from UK companies	**(1,910)**	(2,714)
Gain on disposal of investments	**(15,028)**	-
Total tax (credit)/charge for the year	**(2,510)**	326

Factors that may affect future tax charges

In the Budget 2016 the UK Government announced that the main rate of corporation tax would be reduced to 19% with effect from 1 April 2017 and to 17% with effect from 1 April 2020. These rates were substantively enacted before the Balance Sheet date and therefore the closing net deferred tax liability has been calculated at the rate applicable for the period in which the underlying temporary difference is expected to unwind.

Also at Budget 2016, the government announced its intention to reform the corporate tax loss relief rules. The key change to the rules is a proposed restriction to the amount of profit that can be offset by carried-forward losses to 50% from 1 April 2017. The proposed legislation would have been included in the 2017 Finance Act but the timetable for enactment needed to be accelerated in light of the general election, and this specific measure was dropped from the Bill. The expectation is that the proposed legislation will return in a new Finance Bill to be published after the general election. As the proposed legislation was not substantively enacted at the Balance Sheet date, the calculation of deferred tax has been performed according to the existing loss relief rules. There would be no material difference between the closing deferred tax liability at the balance sheet date under the new rules compared to the existing law.

Dividend income of £9,551 thousand received from a subsidiary company, Ormonde Energy Limited, was treated as non-taxable due to the application of the UK dividend exemption. Furthermore, a gain arising of £75,140 thousand in respect of the sale of shares in Ormonde Energy Limited and East Anglia Offshore Wind Limited was also treated as non-taxable due to the availability of the Substantial Shareholding Exemption to exempt the disposal from corporation tax.

13. Tangible fixed assets

	Freehold property £000	Wind farm £000	Solar farm £000	Fixture fittings equipme £0(
Cost or valuation				
At 1 January 2016	1,351	203,902	-	3,2[
Additions	-	-	-	1[
Transfers between classes	786	1,384	4,653	4[
Adjustment to asset	-	-	-	-
At 31 December 2016	2,137	205,286	4,653	3,9[
Depreciation				
At 1 January 2016	6	26,402	-	2,2[
Charge for the year on owned assets	93	13,064	232	5[
Impairment charge	-	-	-	-
At 31 December 2016	99	39,466	232	2,8[
Net book value				
At 31 December 2016	2,038	165,820	4,421	1,1[
At 31 December 2015	1,345	177,500	-	1,0(

Tangible fixed assets (continued)

The decommissioning asset increased based on updates made to the calculation of the decommissioning provision. The opposite effect is shown in the decommissioning provision (see Note 20).

14. Fixed asset investments

	Investments in subsidiary companies £000
Cost or valuation	
At 1 January 2016	**341,798**
Additions	**93,100**
Disposals	**(167,803)**
At 31 December 2016	**267,095**
Net book value	
At 31 December 2016	**267,095**
At 31 December 2015	341,798

14. Fixed asset investments (continued)

Additions

During the year the Company subscribed for 15,000,000 Ordinary shares of £1 each in Clashindarroch Wind Farm Limited for total consideration of £15,000 thousand.

During the year the Company provided additional capital to Ourack Wind Farm LLP at a total consideration of £1,000 thousand.

During the year the Company subscribed for 75,000,000 Ordinary shares of £1 each in Aberdeen Offshore Wind Farm Limited for total consideration of £75,000 thousand.

During the year the Company subscribed for 25 Ordinary shares of £1 each in Aberdeen Renewable Energy Group (AREG) for total consideration of £25.

During the year the Company subscribed for 2,100,000 Ordinary shares of £1 each in Aberdeen Renewable Energy Group (AREG) for total consideration of £2,100 thousand.

Disposals

During the year the Company disposed of 49% of their shareholding in Ormonde Energy Limited for total consideration of £162,553 thousand.

During the year the Company disposed of 5,250,000 Ordinary shares of £1 each in East Anglia Offshore Wind Limited for total consideration of £5,250 thousand.

The profit on disposals for the year totalled £75,140 thousand.

14. Fixed asset investments (continued)

Subsidiary undertakings

The following were subsidiary undertakings of the Company:

Name	Class of shares	Holding	Principal activity
Ormonde Energy Limited	Ordinary	100 %	Power generation
Border Wind Limited	Ordinary	100 %	Dormant
Border Wind Farm Limited	Ordinary	100 %	Dormant
BW Ops Limited	Ordinary	100 %	Dormant
Clashindarroch Wind Farm Limited	Ordinary	100 %	Power generation
Aberdeen Offshore Wind Farm Limited	Ordinary	100 %	Wind farm development
East Anglia Offshore Wind Limited (Joint venture)	Ordinary	50 %	Wind farm development
Aberdeen Wind Deployment Centre Limited	Ordinary	100 %	Dormant
Ourack Wind Farm One Limited	Ordinary	100 %	Dormant
Ourack Wind Farm Two Limited	Ordinary	100 %	Dormant
Ray Wind Farm Limited	Ordinary	100 %	Power generation

The aggregate of the share capital and reserves as at 31 December 2016 and of the profit or loss for the year ended on that date for the subsidiary undertakings were as follows:

	Aggregate of share capital and reserves £000	Profit/(loss) £000
Ormonde Energy Limited	**295,940**	**1,052**
Clashindarroch Wind Farm Limited	**16,057**	**(61)**
Aberdeen Offshore Wind Farm Limited	**85,241**	**12,299**
East Anglia Offshore Wind Limited (Joint venture)	**11,900**	**2,300**

15. Stocks

	2016 £000	2015 £000
Spare parts	**3,890**	462

16. Debtors

	2016 £000	2015 £000
Due after more than one year		
Amounts owed by group undertakings	-	184,422
	-	184,422
Due within one year		
Trade debtors	**281**	202
Amounts owed by group undertakings	**286,031**	24,970
Other debtors	**3,686**	3,271
Prepayments and accrued income	**331,143**	13,223
	621,141	41,666

17. Creditors: amounts falling due within one year

	2016 £000	2015 £000
Trade creditors	**14,559**	182
Amounts owed to group undertakings	**322,389**	53,754
Taxation and social security	**1,578**	348
Other creditors	**5,576**	1,436
Accruals and deferred income	**5,885**	6,760
	349,987	62,480

18. Financial instruments

	2016 £000	2015 £000
Financial assets		
Financial assets measured at fair value through profit or loss	**1,126**	688
Financial assets that are debt instruments measured at amortised cost	**619,275**	220,142
	620,401	220,830
Financial liabilities		
Financial liabilities measured at amortised cost	**(344,093)**	(55,777)
	(344,093)	(55,777)

Financial assets measured at fair value through profit or loss comprise bank balances and forward foreign currency derivative contracts.

Financial assets measured at amortised cost comprise loans and receivables, the majority of which are made up of amounts owed by group companies and accrued income.

Financial liabilities measured at amortised cost comprise mostly of amounts owed to group companies.

19. Deferred taxation

	2016 £000
At beginning of year	**(4,481)**
Charged to the Statement of Comprehensive Income	**(1,664)**
At end of year	**(6,145)**

The provision for deferred taxation is made up as follows:

	2016 £000	2015 £000
Accelerated capital allowances	**(9,336)**	(8,228)
Tax losses carried forward	**2,374**	2,779
Short term timing differences	**817**	968
	(6,145)	(4,481)

20. Other provisions

	Decommissioning provision £000
At 1 January 2016	**7,326**
Effect of change in estimate	**4,890**
Unwinding of discount	**120**
At 31 December 2016	**12,336**

Decommissioning provision

Provision has been made for estimated decommissioning costs which are calculated as the present value of estimated decommissioning costs using an average discount rate of 1.73% (2015: 2.55%).

During the year, the estimate for the decommissioning provision has been reviewed in light of current information. Based on this review the assumptions have been further scrutinised, resulting in an adjustment to the best estimate of the decommissioning provision required.

21. Share capital

	2016 £000	2015 £000
Shares classified as equity		
Allotted, called up and fully paid		
682,000,001 Ordinary shares of £1 each	**682,000**	682,000

22. Capital commitments

At 31 December the Company had capital commitments as follows:

	2016 £000	2015 £000
Contracted for but not provided in these financial statements	**-**	45,686

23. Commitments under operating leases

At 31 December 2016 the Company had future minimum lease payments under non-cancellable operating leases as follows:

	2016	2015
	£000	£000
Not later than 1 year	**318**	318
Later than 1 year and not later than 5 years	**169**	488
	487	806

The operating lease commitments disclosed above relate entirely to the rental of office premises on Tudor Street, London, the registered office of the Company.

In August 2008 the Company entered into a 25 year lease of an area of land where it operates. The operating lease rental charge is based on MWh generation. As such the commitment for the following year cannot be established in advance. The rental cost for the year ended 31 December 2016 was £527 thousand (2015: £190 thousand).

24. Ultimate parent undertaking and controlling party

At 31 December 2016, the immediate parent undertaking is Vattenfall Vindkraft AB, a company registered in Sweden. The Directors regard Vattenfall AB, a company registered in S-162 87 Stockholm, Sweden as the Company's controlling party and ultimate parent undertaking.

The results of Vattenfall Wind Power Limited are included in the consolidated financial statements of Vattenfall AB which are available from the Vattenfall website, http://corporate.vattenfall.com.

ANNEX 2

Proposed Funding Agreement

2018

Agreement
relating to
the proposed Norfolk Vanguard Offshore Wind Farm

Norfolk Vanguard Limited and
Vattenfall Wind Power Limited

Author	Womble Bond Dickinson
Date	10 June 2018
Revision	1

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CONTENTS

Clause **Page**

DATED

(1) **Norfolk Vanguard Limited**, a company incorporated in England and Wales (company number 08141115) whose registered office is at 1st Floor, 1 Tudor Street, London EC4Y 0AH (**NV**);

(2) **Vattenfall Wind Power Limited,** a company incorporated in England and Wales (company number 06205750) whose registered office is at 1st Floor, 1 Tudor Street, London EC4Y 0AH (the **Parent Co**).

RECITALS

(A) NV is seeking a DCO to authorise the construction of the Development.

(B) Powers to acquire the Specified Third Party Interests are sought in the Application.

(C) It is necessary for the Specified Third Party Interests to be acquired by NV in order for the Development to be carried out.

(D) The Parent Co, a company incorporated in England and Wales (company number 06205750) whose registered office is at 1st Floor, 1 Tudor Street, London EC4Y 0AH is the sole shareholder of NV.

(E) The Parent Co has agreed to fund 100% (one hundred percent) of the full Compensation and Costs of the acquisition of the Specified Third Party Interests on the terms of this Deed in the event of NV failing to settle a Claim following it being agreed or determined by the Lands Tribunal.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the contrary intention applies, the following definitions apply:

1990 Act	the Town and Country Planning Act 1990
Affiliate	in relation to any party, an entity which is the ultimate holding company or a parent undertaking of that party or a subsidiary undertaking of such ultimate holding company or parent undertaking and for the purpose of such definition "parent undertaking" and "subsidiary undertaking" shall have the meanings ascribed to them in Section 1162(2) of the Companies Act 2006 as amended provided always that: (i) for the purpose of determining if an entity is a subsidiary undertaking within Section 1162(2), the existence of any security over any shares in an entity which would otherwise be a subsidiary undertaking shall be ignored; and (ii) with regard to NV, its affiliates shall be deemed to include the Parent Co and its respective Affiliates (as hereinbefore defined);
Agreement Period	the period from and including the date of this Deed to and including the later of (a) the day after the Part 1 Claim Limitation Date or (b) the date the last Claim that is made before the

	relevant Limitation Date is settled;
Application	the application for the DCO to authorise the construction operation and maintenance of the Development known as the Norfolk Vanguard Offshore Wind Farm;
Blight Notice	any valid blight notice served on NV under the provisions of Sections 149 - 171 of the 1990 Act in respect of any Specified Third Party Interest;
Claim	a valid claim for compensation by a Specified Third Party under one or more of the Relevant Causes of Action in relation to the DCO and/or the Development;
Compensation	the amounts properly due to be paid to a Specified Third Party arising as a result of a successful Claim and determined in accordance with the Compensation Code and including statutory interest thereon calculated with the Compensation Code;
Compensation Code	the statutory regime including (without limitation) the Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973, Town and Country Planning Act 1990, Planning and Compensation Act 1991 and Planning and Compulsory Purchase Act 2004 and the case law governing compensation payments, liability to pay, and calculations arising from acquisition of land and/or rights or extinguishment overriding or other interference with rights by or under threat of compulsory acquisition pursuant to the powers contained in the DCO;
Compulsory Acquisition Actions	service of a Notice to Treat and/or the vesting of land pursuant to a Vesting Declaration or the overriding and extinguishment or other interference with rights in land;
Confidential Information	shall mean all analyses, computer files (whether or not reduced to written form), compilations, memoranda, notes, reports, studies, data, drawings, films, information and documentation of all kinds (including, without limitation, copies, extracts and summaries thereof and all other material containing or based in whole or in part on any such information whichever party may have prepared the same) disclosed by the Disclosing Party or its Affiliates in connection with this Deed (the "**Purpose**") in whatsoever form whether written, oral, electronically or otherwise, directly or indirectly to the Receiving Party or which comes into the possession or knowledge of the Receiving Party as a result of the Purpose, or the relationship of the parties hereto arising from this Deed, and whether

	before or after the date of this Deed;
Costs	the costs, liabilities and expenses that reasonably may be included in a Claim as specified in Schedule 1 and which are reasonably and properly incurred by a Specified Third Party;
DCO	the development consent order made pursuant to the Application;
Development	the nationally significant infrastructure project known as the Norfolk Vanguard Offshore Wind Farm;
Disclosing Party	any party who may have disclosed or may further disclose Confidential Information to a Receiving Party;
Index	the Retail Prices Index provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties to this Deed or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used;
Index Linked	adjusted in proportion to any increase in the Index between the date of this Deed and the date the particular payment is made calculated in accordance with Clause 7.1;
Lands Tribunal	the Lands Chamber of the Upper Tribunal;
Limitation Date	the date on which, if a reference is made to the Lands Tribunal, it could be defended by NV on the ground that the relevant period for such a claim has expired and the Limitation Act 1980 applies so as to time-bar the claim;
Notice to Treat	a notice to acquire land and/or rights served under the powers in the DCO and Section 5 of the Compulsory Purchase Act 1965;
Order Land	the land and rights specified in the book of reference certified as being the Book of Reference relating to the DCO by the order making authority;
Part 1 Claim Limitation Date	the date seven years and one day after the Relevant Date;
Part 1 Claims	claims for compensation for depreciation of land as a result of public works under Part 1 of the Land Compensation Act 1973;

Qualifying Interest	an interest in land affected by the Development as a result of: (a) its inclusion as Order Land in the DCO; (b) its inclusion as Order Land within the Application and subsequently the subject of a Blight Notice; (c) being affected by the use of the Development (for the purposes of this sub-paragraph only) shall mean that part of the Development on the Site and fulfilling the requirements for a Claim under Part 1 of the Land Compensation Act 1973;
Receiving Party	any party to whom a Disclosing Party may have disclosed or may further disclose Confidential Information;
Relevant Cause of Action	the statutory provisions relating to claims listed in Parts 1, 2 and 3 of Schedule 2 that relate to the Order Land;
Relevant Date	the date on which the Development is first used for the purpose of generating electricity for export into the distribution and or transmission network;
Relevant Requirements	all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including, but not limited to, the Bribery Act 2010;
Relevant Valuation Date	in relation to each Relevant Cause of Action, the date specified as being the Relevant Valuation Date in the relevant Part of Schedule 2;
Specified Date	The date on which a Claim is made under this Deed by a Specified Third Party;
Specified Third Party	that class of persons holding Specified Third Party Interests at the Relevant Valuation Date and as are further described in Schedule 3;
Specified Third Party Interests	those interests in the Order Land or Part 1 Claims held by Specified Third Parties who have from time to time a Claim in relation to the Development;
Statutory Interest	interest on any compensation calculated in accordance with the Acquisition of Land (Rate of Interest after Entry) Regulations 1995;
Vesting Declaration	a general vesting declaration made under the powers in the DCO and pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981;

Working Days	days on which clearing banks in the City of London are (or would be but for a strike, lock out or other stoppage affecting particular banks or banks generally) open during banking hours, excluding for the avoidance of doubt Saturdays and Sundays and bank or other public holidays.

2. GENERAL INTERPRETATION

Unless there is something in the subject or context which is inconsistent:

2.1 words importing the neuter gender only shall include the masculine or feminine gender (as the case may be) and words importing the masculine gender only shall include the feminine gender and vice versa;

2.2 words importing the singular number only shall include the plural number and vice versa;

2.3 words importing persons shall include firms, companies and corporations and vice versa;

2.4 any reference to a statute (whether or not specifically named in this Deed) shall include any amendment or re-enactment of it for the time being in force and shall include all instruments, orders, plans, regulations, bye-laws, permissions and directions for the time being made issued or given under it or deriving validity from it;

2.5 references to a clause or paragraph or schedule is, unless the context otherwise requires, to a clause or paragraph or schedule in this Deed and the index, the clause, paragraph and schedule titles or headings, and the recitals appearing in this Deed are for reference only and shall not affect the construction of this Deed ; and

2.6 words denoting an obligation on a party to do an act, matter or thing include an obligation to procure that it be done.

3. CONDITIONALITY AND LIMITATION

3.1 The Provisions of Clause 4 as they relate to the Claims described in Part 3 of Schedule 2 shall not be binding on the Parent Co until the Application has first been submitted to the Secretary of State by NV.

3.2 The provisions of Clause 4 as they relate to the Claims described in Part 1 of Schedule 2 shall not be binding on the Parent Co until each of the following has occurred:

3.2.1 the DCO has been made; and

3.2.2 Compulsory Acquisition Actions have been taken by NV.

3.3 The obligations in Clause 4 as they relate to Part 1 Claims shall not bind the Parent Co until each of the following has occurred:

3.3.1 the Relevant Date; and

3.3.2 twelve calendar months have elapsed following the Relevant Date.

3.4 Save for Part 1 Claims (to which the provisions of Clause 3.5 shall instead apply) the obligations in Clause 4 shall not be enforceable against the Parent Co in relation to any Claim after the Limitation Date if such Claim has not been communicated to NV or (if such Claim has been communicated to NV) no reference relating to that Claim has been made to the Lands Tribunal before the day immediately following the Limitation Date.

3.5 The obligations in Clause 4 shall not be enforceable against the Parent Co in relation to any Claim as referred to in Part 2 of Schedule 2 after the Part 1 Claim Limitation Date if such claim has not been communicated to NV or (if such Claim has been communicated to NV) no reference relating to that Claim has been made to the Lands Tribunal before the day immediately following the Part 1 Claim Limitation Date.

4. COVENANTS AS TO COMPENSATION PAYMENTS BY THE PARENT CO TO NV

4.1 If NV agrees in writing or is required (by court order Lands Tribunal award or other legally binding process) to pay an amount to a Specified Third Party in satisfaction of a Claim, the Parent Co shall, within 20 Working Days of receipt of a written demand from NV pay 100% (one hundred percent) of the agreed or assessed amount of the Claim to the Specified Third Party on behalf of NV or, in the absence of a demand from NV, within 20 Working Days of receipt of a valid written demand from the relevant Specified Third Party, pay the sum so due to be paid to it to the Specified Third Party on and subject to the terms of this Deed.

4.2 Statutory Interest shall be payable on any sum due under clause 4.1 in accordance with the Compensation Code.

4.3 The Parent Co shall not be obliged to make any payment pursuant to Clause 4.1 to the extent that the Specified Third Party has previously been paid such amount in respect of the relevant Claim.

4.4 The Parent Co shall not be obliged to make any payment pursuant to Clause 4.1 to the extent that it has previously paid such amounts in respect of any relevant Claims or Costs that in aggregate exceed the sum of (the "**Cap**") (£10,143,000 in total). The Parent Co shall be liable for 100% (one hundred percent) of any payment required to be made pursuant to Clause 4.1 subject to the Cap.

4.5 Save as expressly provided for in this Deed, the Parent Co covenants with NV not to determine its obligations to NV under this Deed during the Agreement Period.

4.6 Save as expressly provided for in this Deed, NV covenants with the Parent Co not to determine or waive the Parent Co's obligations to NV under this Deed during the Agreement Period.

5. THIRD PARTIES

5.1 The provisions of Clause 4 and 6 of this Deed (together with this Clause 5) shall be enforceable by Specified Third Parties pursuant to the Contracts (Rights of Third Parties) Act 1999 (provided always that a Specified Third Party shall only be entitled to enforce the provisions of Clause 4 in relation to Claims against NV by that Specified Third Party).

5.2 Subject to Clause 5.1, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 and the parties do not intend that any such third party rights are created by this Deed.

6. ASSIGNMENT AND NOVATION

6.1 Despite the provisions of Section 2(1) of the Contract (Rights of Third Parties) Act 1999, no party shall be required to seek the consent of any Specified Third Party to any assignment, parting with, dealing with or novation of any right or obligation under this Deed where Clause 6.2 applies.

6.2 The parties agree, for the benefit of each other and the Specified Third Parties, that each of the Parent Co and NV shall be entitled to assign their rights under this Deed, in whole or in part (or to novate their rights and obligations under this Deed) if:

6.2.1 in the case of the assignment or novation of this Deed by NV, such assignment is to a person to whom the Secretary of State has provided a consent under the DCO to receive a transfer of the powers in the DCO;

6.2.2 in the case of the assignment or novation of this Deed by the Parent Co, either:

(a) the assignment or novation is to a person (whether within a group company of the Parent Co or otherwise) which is of a broadly equivalent, or better, financial standing to the Parent Co at the time that the assignment or novation is made (and in determining the financial standing of the proposed assignee, regard shall be had to the strength of any relevant parent company support and any credit facilities in place for the benefit of the proposed assignee); or

(b) if not within (a) above in the event that the assignment or novation is to a person which is not of a broadly equivalent, or better, financial standing to the Parent Co at the time that the assignment or novation is made:

(i) the consent of all Specified Third Parties which are identifiable as Specified Third Parties or would qualify as such if the Relevant Valuation Date was (for the purposes of this clause only) deemed to be the date on which the consent of the relevant Specified Third Party interest to the intended assignment or novation is sought (if any) at the date of the proposed assignment or novation has been obtained in writing; or

(ii) a bank guarantee or bond has previously been secured in favour of all of the Specified Third Parties who are identifiable as Specified Third Parties or would qualify as such if the Relevant Valuation Date was (for the purposes of this clause only) deemed to be the date on which the bank guarantee is secured, to cover any outstanding Claims which have been made but not yet settled or which could be validly made at the date that the bank guarantee or bond is secured up to the maximum amount of the Cap and which can be called upon by the Specified Third Parties and in which case no consent of the Specified Third Parties shall be required prior to such assignment or novation taking effect.

7. INDEXATION

7.1 The Cap shall be adjusted by the application of the formula A =B x C/D where:

A is the sum actually payable on the Specified Date;

B is the original Cap mentioned in this Deed;

C is the value of the Index for the month before the Specified Date;

D is the value of the Index for the month before the date of this Deed; and

C/D is equal to or greater than 1.

8. NO WAIVER

No failure or delay on the part of any of the parties hereto to exercise any right or remedy under this Deed shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law.

9. CONFIDENTIALITY

9.1 The Receiving Party shall:

9.1.1 maintain the Disclosing Party's (and its Affiliates') Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and

degree of care than that which the Receiving Party applies to its own confidential information;

9.1.2 not without the prior written consent of the Disclosing Party, which shall not be unreasonably withheld or delayed, disclose the Confidential Information, other than to such of its directors or in board communications, to officers or employees or those of its Affiliates who need to know it for the Purpose, or to the Receiving Party's lawyers, accountants, bankers and other professional advisers or consultants who need to know it for advising in relation to the Purpose and provided that, (a) such disclosure is made under obligations of confidentiality on terms substantially the same as those contained herein, or (b) such employees, officers and directors are obliged by their contracts of employment or service not to disclose the same;

9.1.3 not use or permit the use of the Confidential Information disclosed to it pursuant to this Deed other than for or in connection with the Purpose;

9.1.4 not permit the disclosure and shall use its reasonable endeavours to prevent the disclosure of Confidential Information to or by any third party, without the Disclosing Party's prior consent in writing therefore; and

9.1.5 not copy, reproduce or reduce to writing any material part of the Confidential Information except as may be reasonably necessary for the Purpose.

9.2 The obligations and restrictions provided in Clause 9.1 above shall not apply to Confidential Information that is:

9.2.1 now or becomes public knowledge otherwise than by breach of this Deed by the Receiving Party;

9.2.2 lawfully in the possession of the Receiving Party prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence;

9.2.3 lawfully disclosed to the Receiving Party by a third party without breach by the Receiving Party or such third party of any obligation of confidentiality or non-use towards the Disclosing Party;

9.2.4 required to be disclosed by order of a court of a competent jurisdiction or to any government department or any governmental or regulatory agency or pursuant to the rules of any recognised stock exchange but only to the extent that disclosure thereto is compellable by law, provided always that wherever possible the Disclosing Party shall be given by the Receiving Party not less than two (2) days' prior notice of any action which it reasonably believes may result in any such requirement and the Receiving Party shall consult with the Disclosing Party in respect thereof;

9.2.5 required to be disclosed to such extent required for any judicial, arbitration or determinative procedure provided always that wherever possible the Disclosing Party shall be given by the Receiving Party not less than two (2) working days' notice of the requirement for such disclosure and details of the related procedure, and the Receiving Party shall consult with the Disclosing Party in respect thereof; or

9.2.6 required to be disclosed to such extent required to a Specified Third Party.

9.3 The Disclosing Party reserves all rights in the Confidential Information and no rights or obligations other than those expressly recited herein are granted or to be implied from this Deed. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual or industrial property right now or in the future held, made, obtained or licensable by the Disclosing Party.

9.4 The parties agree to keep the existence and nature of this Deed and the discussions between the parties regarding the Purpose confidential and not to release or make a publicity statement, advertisement or other disclosure with regard to this Deed without the prior written consent of the other Party.

9.5 On termination of this Deed for any reason, the Receiving Party shall on the written request of the Disclosing Party return and/or destroy all Confidential Information and certify in writing to the Disclosing Party that it has complied with such request. Provided, however, that the Receiving Party shall not be required to deliver up or destroy material prepared by or on behalf of the Receiving Party for the Purpose which contains or is based in whole or in part on the Confidential Information, nor to the extent that the making and retention of such Confidential Information is required by law or required as part of the Receiving Party's internal governance procedures, nor to deliver up or to destroy any hard drive, computer system or other electronic media storage device containing Confidential Information.

9.6 The Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information which is provided by or on behalf of the Disclosing Party to the Receiving Party and the Disclosing Party shall have no liability to the Receiving Party resulting from the use of such Confidential Information, any such use being at the risk of the Receiving Party.

9.7 Without prejudice to any other rights or remedies that the Disclosing Party may have, the parties acknowledge and agree that damages may not be an adequate remedy for any breach by a party (including, without limitation, its directors, officers, employees, affiliates, lawyers, accountants, bankers and other professional advisors) of the provisions of this Deed. Each party will be entitled to seek the remedies of injunction, specific performance or other equitable relief (or their equivalent in any other jurisdiction) for any threatened or actual breach of the provisions of this Deed by any of the other parties, including, without limitation, its directors, officers, employees, affiliates, lawyers, accountants, bankers and other professional advisors. Any breach of this Deed by the Receiving Party's directors, officers, employees, affiliates, lawyers, accountants, bankers and other professional advisors, shall be deemed to be a breach by the Receiving Party.

10. NOTICES

10.1 Any notice, acknowledgement, approval, consent or other document to be given or sent under this Deed may be delivered personally or sent by first class post or (subject to Clause 10.2) by such other method as (under the law in force at the time) is a proper form and mode of service for formal legal proceedings to the party to be served at that party's address appearing in this Deed or such other address as that party may notify to the other.

10.2 Notwithstanding Clause 10.1, electronic mail or any other similar form of communication (however called) is not a valid form of service or means of formal communication for the purposes of this Deed.

10.3 Any such notice or document shall be deemed to have been served:

10.3.1 if delivered, or faxed (unless notification is received by the sender that the fax has not been transmitted or received by the receiving terminal), at the time of delivery; and

10.3.2 if posted, at the expiration of 48 hours after the envelope containing the notice is put in the post.

10.4 A notice is to be treated as properly given if compliance is made with the provisions of section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

10.5 A notice to be given under this Deed may be given by the relevant party's solicitors.

11. ANTI-BRIBERY AND ANTI-CORRUPTION

11.1 Each party shall:

11.1.1 comply with all Relevant Requirements; and

11.1.2 have and shall maintain in place throughout the term of this Deed, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

11.2 For the purpose of this Clause 11, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act).

12. ENTIRE AGREEMENT

12.1 This Deed embodies and sets forth the entire agreement of the parties and supersedes all prior oral or written agreements, representations, warranties, understandings or arrangements relating to the subject matter of this Deed. None of the parties shall be entitled to rely on any agreement, representation, warranty understanding or arrangement which is not expressly set forth in this Deed.

13. SEVERABILITY

13.1 If any provision of this Deed or the application of such provision shall be held to be illegal or unenforceable the remainder of this Deed shall be unaffected thereby.

14. CHOICE OF LAW AND JURISDICTION

14.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including, but not limited to, any non-contractual disputes or claims) shall be governed by and construed in all respects in accordance with English law. The parties hereby submit to the exclusive jurisdiction of the English courts.

15. COUNTERPARTS

15.1 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

This Agreement is executed and delivered as a deed on the date first written above

SCHEDULE 1

The Costs

1. Subject to the terms of this Deed, the Costs comprise:

1.1 any costs, fees or expenses which NV is ordered to or otherwise obliged to pay to any Specified Third Party in the course of or as a result of any proceedings relating to the DCO and its implementation, including any costs, fees or expenses awarded by the High Court in any action for judicial review;

1.2 compensation for the acquisition of a Specified Third Party Interest, including the value of the land or rights, severance, injurious affection, disturbance and other matters not directly based on the value of land and as specified in Schedule 2;

1.3 compensation properly payable to a Specified Third Party Interest having the legal benefit of any rights or interests in the Order Land interfered with as a consequence of the exercise of compulsory purchase powers or vesting of land and/or rights in NV;

1.4 compensation for the acquisition of any other land which is acquired by NV following the service of a notice served pursuant to Section 8 of the Compulsory Purchase Act 1965, including the value of the land or rights, severance, injurious affection, disturbance and other matters not directly based on the value of land.

1.5 any advance payments made pursuant to Section 52 of the Land Compensation Act 1973 in respect of any interests referred to in paragraphs 1.2 - 1.4;

1.6 loss payments due pursuant to Part III of the Land Compensation Act 1973;

1.7 disturbance payments made pursuant to Section 37 of the Land Compensation Act 1973;

1.8 compensation pursuant to Section 20 of the Compulsory Purchase Act 1965;

1.9 stamp duty land tax and land registry fees arising out of the acquisition of any interest referred to in paragraphs 1.2-1.4 and the vesting of such interests in NV and stamp duty land tax thereon, if any;

1.10 any costs awarded to any Specified Third Party by the Lands Chamber of the Upper Tribunal;

1.11 any compensation to any Specified Third Party payable pursuant to section 8 of the Human Rights Act 1998;

2. The following provisions shall apply to the Costs:

2.1 Costs counted under one head shall not, to that extent, be counted under another;

2.2 Costs do not include any expenditure which has been incurred or ascertained otherwise than in accordance with the provisions of this Deed;

3. Costs may not be recovered under this Deed if they are capable of being recovered under any other form of agreement order or process.

SCHEDULE 2

Relevant Cause of Action

Part 1

Compulsory Acquisition Claims

A: Land Clauses Consolidation Act 1845

B: Land Compensation Act 1961

C: Compulsory Purchase Act 1965

D: Land Compensation Act 1973 (with the exception of Part 1)

The Relevant Valuation Date for the above Claims shall be determined in accordance with Section 5A of the Land Compensation Act 1961, save for claims under Section 10 of the Compulsory Purchase Act 1965 for which the Relevant Valuation Date shall be the date the right or covenant to which that Claim relates is first breached by NV or extinguished by statutory process.

Part 2

Part 1 Claims

E: Claims pursuant to Part 1 of the Land Compensation Act 1973 for depreciation caused by the use of public works on the Site.

The Relevant Valuation Date for claims under this Part shall be the Relevant Date.

Part 3

F: The Town & Country Planning Act Part 6, Chapter 2 & Schedule 13

The Relevant Valuation Date for such claims shall be the date of the service of a Blight Notice.

G: Human Rights Act 1998, Section 8

The Relevant Valuation Date for such claims shall be the date on which the relevant cause of action first arises.

SCHEDULE 3

THE SPECIFIED THIRD PARTIES

The Specified Third Parties are:

1. In relation to a Relevant Cause of Action listed under Part 1 of Schedule 2 the person who has a Claim as a result of their being a Qualifying Person as defined in Section 12 of the Acquisition of Land Act 1981 and holding an interest in the Order Land on the Relevant Valuation Date; or (in relation to a Claim under Section 10 of the Compulsory Purchase Act 1965) held a right that was extinguished or interfered with on the Relevant Date.

2. In relation to a Relevant Cause of Action under Part 2 of Schedule 2 the person who on the Relevant Date held a Qualifying Interest and also meeting the requirements of a valid claim under Part 1 of the Land Compensation Act 1973.

3. In relation to a Relevant Cause of Action made under Part 3 of Schedule 2 a person holding a Qualifying Interest and satisfying the requirements of a “qualifying interest” pursuant to Section 149(2) of the 1990 Act on the date the blight notice to which the Claim refers was served.

Executed as a Deed by

Norfolk Vanguard Limited

acting by a director

……

Director

……

Witness

Executed as a Deed by

Vattenfall Wind Power Limited

acting by a director

……

Director

……

Witness

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