

**APPLICATION FOR CONFIRMATION OF THE  
NATIONAL GRID (VIKING LINK INTERCONNECTOR)  
COMPULSORY PURCHASE ORDER 2019**

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**CLOSING STATEMENT ON BEHALF OF  
THE ACQUIRING AUTHORITY**

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**INTRODUCTION**

1. National Grid Viking Link ('NGVL') seeks the confirmation of the National Grid (Viking Link Interconnector) Compulsory Purchase Order 2019 ('the Order'), made pursuant to s.10 and Schedule 3 of the Electricity Act 1989 ('the 1989 Act'), by which it seeks to acquire the land and rights necessary to construct, operate and maintain the Viking Link Interconnector, an electrical interconnector with a capacity of 1.4 gigawatt ('GW') between Denmark and the United Kingdom ('the Scheme'). The Scheme is necessary in order achieve an immediate c.30% addition to the UK's current installed interconnection capacity, helping the UK achieve the significant benefits of security of supply, offsetting the need for new energy generation, and long-term affordable energy.
2. Following the conclusion of the inquiry into the Order, NGVL considers that it has demonstrated a compelling case in the public interest, justifying the interference with the outstanding private rights to which the Order would give rise, that there are no legal or physical impediments to the delivery of the Scheme, and that the Order should therefore be confirmed.
3. In these closing submissions we address the following matters in turn:
  - a. The Scheme;
  - b. The Order Land and surrounds;
  - c. The Compelling Case for Confirmation of the Order;

- d. Special Category Land;
- e. Outstanding objections;
- f. Other Comments; and
- g. Conclusion.

#### **THE SCHEME**

4. The Viking Link Interconnector is a proposed 1400 MW (1.4 GW) High Voltage Direct Current ('HVDC') electricity interconnector between the British and Danish electricity transmission systems, connecting at the National Grid Electricity Transmission plc ('NGET') Substation at Bicker Fen in Lincolnshire and at Revising in South Jutland, Denmark. The Viking Link Interconnector will be approximately 760km long and will allow electricity to be exchanged between Great Britain and Denmark equivalent to approximately 1.3% of Great Britain's current usage.
5. The key components of the Viking Link Interconnector, which are shown on BoP1<sup>1</sup>, comprise:
  - a. The installation of approximately 650km of HVDC submarine cables, which will cross through UK, Dutch, German and Danish territorial waters in the North Sea and come ashore at 'landfall points' in the UK and Denmark;
  - b. The construction of a converter station at each end of the interconnector in the UK and Denmark, required in order to convert the HVDC electricity passing through the submarine cables to the countries' existing electricity networks, which operate High Voltage Alternating Current ('HVAC') electricity transmission systems;
  - c. The installation of underground onshore cables in the UK and Denmark, to connect the landfall points to the convertor stations, and the convertor stations to existing sub-stations;
  - d. New equipment within the existing NGET Substation in the UK, where the Viking Link Interconnector will connect to the British National Electricity Transmission System ('NETS'); and

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<sup>1</sup> CDD6.

- e. New equipment within an existing substation in Denmark to connect the Viking Link Interconnector to the Danish electricity transmission system.
6. The Order relates specifically to the land and new rights required for that part of the Viking Link Interconnector on the UK mainland ('the UK Onshore Scheme'), which comprises the following main components:
- a. At the proposed landfall, two submarine HVDC installed through the Mean Low Water Springs ('MLWS') point on the beach at Boygrift in East Lindsey, with an onshore joint connecting the submarine and onshore cables in a Transition Joint Pit ('TJP');
  - b. From the TJP, two onshore HVDC cables installed between the landfall at Boygrift and the converter station at North Ing Drove in South Holland;
  - c. Construction of associated Temporary Construction Compounds ('TCC'), Temporary Works Areas ('TWA') and temporary vehicle access arrangements to facilitate the necessary construction work;
  - d. Erection of converter station buildings and outdoor electrical equipment together with the construction of internal roads, erection of security fencing and provision of landscaping at North Ing Drove in South Holland;
  - e. Construction of a permanent access road from the A52 to the converter station site including a bridge crossing over Hammond Beck;
  - f. Installation of six onshore HVAC cables between the converter station at North Ing Drove and connection bays at the existing NGET Substation at Bicker Fen;
  - g. Installation of link pillars at joint bays along the HVAC cable route for inspection and maintenance purposes, contained within fenced areas;
  - h. Installation of temporary and permanent land drainage works together with the provision of temporary water management areas to assist with construction activities; and
  - i. Installation of fibre-optic cable(s) with the HVDC cables for the purpose of monitoring cable performance and with the HVAC cables for the purpose of monitoring cable performance and communication along the HVAC route.

## THE ORDER LAND AND SURROUNDINGS

### Introduction

7. The Order Land (shown outlined in red on the Maps that accompany the Order)<sup>2</sup> comprises a linear route running through four different local authority areas: (from broadly north to south) East Lindsey District Council; North Kesteven District Council; Boston Borough Council; and South Holland District Council.
8. The route may be divided into five principal areas, being:
  - a. The Landfall point: land at Boygrift in East Lindsey, near Sandilands on the Lincolnshire coast;<sup>3</sup>
  - b. The HVDC cable corridor: a corridor approximately 68 km (42 miles) in length between the landfall point and the converter station;<sup>4</sup>
  - c. The Converter station site: land with a total footprint of approximately 30ha including landscaping at North Ing Drove, South Holland;<sup>5</sup>
  - d. The HVAC cable corridor: a corridor approximately 2 km (1.25 miles) in length between the converter station and the connection point;<sup>6</sup> and
  - e. The connection point: land at the existing NGET Substation at Bicker Fen.<sup>7</sup>
9. Of these, NGVL is proposing to acquire freehold title to the converter station site and its access. Over the rest of the Order Land, NGVL seeks to acquire a range of specific rights tailored to its particular needs and to facilitate construction, operation and maintenance, as described below and in the Proof of Evidence of Mr Heselton.<sup>8</sup>

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<sup>2</sup> CDD.

<sup>3</sup> Heselton Appendix 3, plan 416

<sup>4</sup> Ibid, plans ending 431 to 438.

<sup>5</sup> Ibid, plans ending 438.

<sup>6</sup> Ibid, plan ending 440.

<sup>7</sup> Ibid, plan ending 442.

<sup>8</sup> See in particular section 4.

10. The Order Land is a mixture of owner-occupied freehold land and land which is subject to Leases, Agricultural Holdings Act tenancies, Farm Business Tenancies and licences/profit à prendre relationships.
11. The majority of the Order Land is arable with some grass land. The agricultural land is a mixture of mainly Agricultural Land Classification ('ALC') Grades 1, 2 and 3 land. The quality of the agricultural land affected has required careful consideration by NGVL to ensure its long-term productivity. Fuller details of the type of land, its general cropping regime and the mitigation measures to be employed by NGVL are given in the proof of evidence of Mr Royle.<sup>9</sup>
12. A summary description of the five key areas along the route is as follows.

**The Landfall**

13. The land immediately at the landfall location comprises the promenade and sea defence, an area of sand dunes and the now-closed Sandilands golf course. All of the areas of open space in respect of which NGVL is seeking a s.19 certificate are located within this area. Open space is dealt with further below.

**The HVDC Cable Corridor**

14. The agricultural land to the north east of the route, between the landfall and Alford, is gently undulating land on the coastal plain. It has medium to heavy loam soils growing winter combinable crops of wheat, barley and oilseed rape. There are several small fields of grass used for grazing or poultry ranges. Land quality in this area is good to moderate being mainly of ALC grade 3a and 3b quality with localised patches of very good ALC grade 2 land.
15. The central section of the route, between Alford and West Keal, crosses undulating land on the Lincolnshire Wolds Area of Outstanding Natural Beauty ('AONB')<sup>10</sup> where soils are light to medium loam and often shallow, overlying chalk on the elevated sections. This land is used to grow mainly winter combinable crops of wheat, barley and oilseed rape with occasional break crops of sugar beet, spring maize, potatoes, peas or field beans where soils are deeper and more freely drained. Land quality in this area is good or very good, ALC 2 and 3a.
16. The southern section of the route, between Stickford and Bicker is fen land. Soils vary from

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<sup>9</sup> See in particular sections 4 and 5.

<sup>10</sup> A map showing the extent of the AONB is included in Heselton Appendices, Appendix 3.

heavy loams to light or medium silty loams. Heavier land is generally cropped with winter combinable crops of cereals and oilseed rape and is usually good quality ALC subgrade 3a. More extensive tracts of light or medium silty soils, close to the River Witham and south of the A17 are very productive and include vegetables and root crops. This land is good or very good quality ALC grade 2 and subgrade 3a with localised areas of excellent quality ALC grade 1 land.

17. The HVDC route also encompasses the following notable physical features: the road crossings of the A52, A111, A1104, A16, A158 and A17;<sup>11</sup> the West Fen Drain and the South Forty Foot Drain both of which are classified as main rivers and for which the Environment Agency has responsibility;<sup>12</sup> the River Witham;<sup>13</sup> and the Network Rail crossing close to Swineshead.<sup>14</sup>

**The Converter Station Site and Access Road**

18. The converter station site is located in fen land with medium loam soils occupying silt ridges and heavy loam in clayey hollows. This land is used for growing mainly winter combinable crops of wheat, barley and oilseed rape with occasional potato or vegetable crops. This land is very good quality land classified mainly as ALC Grade 2. The access road intersects land mainly of good or very good quality classified as ALC grades 2 and 3a and is used for growing winter combinable crops of wheat, oilseed rape and barley with occasional spring break crops of linseed or Maize. To the east of the access road the land is very productive and includes vegetable, root and cereal crops in rotation.

**The HVAC Cable Corridor**

19. This relatively short corridor typically occupies fen land with medium loam soils occupying silt ridges and heavy loam in clayey hollows. This area is a mixture of arable and grazing land.

**Connection Point**

20. The land at the connection point to the National Grid substation at Bicker Fen comprises an area of grassland and landscaping surrounding the existing operational substation.

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<sup>11</sup> Heselton Appendix 3, plans 418 to 425.

<sup>12</sup> Ibid, plans ending 426 and 427.

<sup>13</sup> Ibid, plan ending 428.

<sup>14</sup> Ibid, plan ending 429.

**THE COMPELLING FOR CASE FOR CONFIRMATION OF THE ORDER****Need for the Viking Link Interconnector**

21. As was noted in opening, the UK is facing unprecedented challenges to its energy market. In just two years' time, by 2021, around a quarter of its existing generating capacity will have been lost as old or unacceptably polluting plant closes. It has targets to obtain 15% of its energy from renewable sources by 2020, and to reduce carbon emissions by 80% of 1990 levels by 2050 – which latter target requires the power sector to be largely decarbonised by the 2030s;<sup>15</sup> indeed, Government is now moving towards a commitment to a UK goal of net-zero greenhouse gas emissions by 2050. This means that the profile of generation is also changing, with more reliable 'baseload' power sources such as coal and gas fired plants being replaced with intermittent renewable sources such as wind.
22. At the same time, demand for energy continues to rise, driven by a growing population and ever-increasing demand for heating and electricity services. National Grid's Future Energy Scenarios ('FES'), the forecasts used across the energy industry to inform the development of the UK's gas and electricity systems, predict that by 2050, an increase in capacity will be required of between 85 and 165% over existing.<sup>16</sup>
23. It is in this context, and with the aim of maintaining an energy supply that is sustainable, secure and reliable, that Government has expressly recognised, in the National Policy Statements referred to above, an immediate need for new sources of energy generation.<sup>17</sup>
24. As was set out, those same Government policy documents also acknowledge that developing new sources of energy generation alone is not however a complete solution. Those sources must be supported by appropriate transmission and distribution infrastructure, capable of handling increases in demand and supporting the more complex system of supply that will

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<sup>15</sup> DECC, *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity* (July 2011), quoted at Wells p.9 [3.21].

<sup>16</sup> FES July 2018, quoted at Wells p.6 [3.9].

<sup>17</sup> See e.g. NPS EN-1, [2.2.20] and [3.7.7].

result from diversified and predominantly renewable-based energy sources<sup>18</sup> and electricity interconnectors such the Scheme underlying the Order are acknowledged as having a vital role to play in achieving this.<sup>19</sup>

25. Consequently, Government's March 2016 *National Infrastructure Delivery Plan 2016-2021* confirmed the Government's ambition to achieve at least 9GW of additional interconnection capacity, comparing to the 5GW of current installed capacity.<sup>20</sup> This has more recently been supplemented by National Grid's own analysis, which has indicated that a total capacity of 17.4GW (or an additional 12.4GW of interconnection capacity) would provide "*optimal benefit*".
26. Indeed, Government and National Grid are not alone in considering interconnectors to have a significant role to play in the reshaping of our energy market, with the benefits additionally being endorsed by the Institution of Civil Engineers, the National Infrastructure Commission, and the UK Parliamentary Office of Science and Technology, who particularly noted the potential for interconnection to offset the need to build new generating capacity.<sup>21</sup>
27. The contribution that the Scheme will make to the existing need for interconnection is very substantial indeed. In offering 1.4GW of installed capacity, it will provide an immediate additional c. 30% to the UK's current installed capacity, helping the UK achieve the benefits of security of supply, affordable energy and offsetting the need for new energy generation – all of which benefits are achievable (with the exception of the convertor station in South Holland DC) without any long-term above-ground presence.
28. It will be observed that no objector to the Order disputes that a compelling need for the Scheme exists. In accepting that need, they join all four host local planning authorities for the

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<sup>18</sup> See e.g. NPS EN-1 [3.7.2]; EN-5 [1.1.1].

<sup>19</sup> See e.g. NPS EN-1 [3.3.1].

<sup>20</sup> Quoted at Wells, p.19 [3.64].

<sup>21</sup> See Wells, p.15 [3.49]-[3.51].



Scheme,<sup>22</sup> Natural England, and the Secretary of State (acting by his Inspector) who determined the East Lindsey appeal.

29. The need for interconnection as part of diverse range of technologies that can contribute to the country's growing energy needs, and consequently the need for the Scheme, is in the circumstances unassailable.

#### **Need for the land and rights sought**

##### The critical need for the Order to be confirmed

30. If the Order is not granted, the UK Onshore Scheme would not be capable of implementation in a timely fashion or, indeed, at all. This would have extremely serious consequences not just for the UK parts of the project, but also those in Denmark and, indeed, in international waters. Failure to implement the Scheme would be a failure to achieve direct Government policy on interconnection and, as a consequence, also a failure to achieve a secure and affordable supply of energy via transmission capacity which provides access to a large market of low carbon generation.
31. Further detail about the nature of the impacts that might arise if these policy objectives were not met was given in oral evidence by Mr McIntosh, in response to questions from the Inspector.
32. He explained that the principal area in which a decision not to confirm the Order would resonate was security of supply, and that the implications could be felt in both the short and long term.
33. In terms of the short-term implications of reduced security of supply, Mr McIntosh drew attention primarily to the risk of imbalances in demand and supply, to which the UK is inherently more vulnerable because of its island nation status.
34. As existing coal and gas 'base load' generating capacity is retired in order to meet climate change targets and is replaced by intermittent renewable generation, it will become ever more difficult to bridge the UK's emerging energy gap. This issue will only be exacerbated by

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<sup>22</sup> Although ELDC initially refused the application for planning permission, they abandoned that opposition prior to the November 2018 inquiry and signed a Statement of Common Ground acknowledging that the Project represented key strategic infrastructure required "to meet a national need".

rising demand for electricity over the next few years. Indeed, it is possible that, in the absence of additional interconnection capacity of the kind to be provided by the Scheme, the UK may be unable to satisfy demand on days of low generation coupled with high demand (such as a low wind/ low solar day in cold weather, as occurs in the winter). This in turn will increase the risk of reductions in both the system frequency and system voltage. These interrelated problems pose a very significant management issue for the network operator (NGET) and, furthermore, have the potential to impact the use of domestic appliances by the public.

35. Both of these factors would also endanger the stability of the electrical system, with the further potential to lead to either load shedding, which might involve either a managed or emergency shut down of electrical supplies to certain groups of users or regions of the UK,<sup>23</sup> or indeed system failure (i.e. a total or partial blackout).
36. The consequences of these events could be very serious and would include, in the first instance, loss of productivity in industry and financial losses to all sections of society; risks to health and wellbeing e.g. through the loss of essential services, heating and lighting; and ultimately (in a worst case scenario) loss of life.
37. Over the longer term, the absence of interconnection and the flexibility it brings would result in a change to international and national strategic energy policy and planning decisions that follow from it. For example, it might result in increasing reliance on gas or other fossil fuels, with adverse implications for the cost of energy, as well as sustained or increased carbon emissions, increasing environmental pollution and compromising Government policy, notably 'net zero' carbon emissions by 2050 as June 2019.
38. If there were more frequent imbalances in supply and demand, this would also be likely to have adverse consequences for prices. Interconnection assists by enabling the network operator to access electricity from cheaper sources. Similarly, it enables the network operator to export power at times of surplus supply, which surpluses would normally cost the network operator money and reduce the efficiency of the system.
39. The confirmation of the Order will allow the Scheme to be implemented and thereby assist in avoiding these adverse effects. Although NGVL has been successful in entering into Heads of

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<sup>23</sup> Load shedding would take place in accordance with the relevant published Grid Code. A summary or extract is to be provided.

Terms with the majority of affected landowners across the route, some interests do remain outstanding, not least because there are a small number of unknown ownerships in the Order Land, for which it has not been possible to establish the identity of the landowners following reasonable and diligent enquiry.<sup>24</sup> Furthermore, as the agreed Heads of Terms are not contractually binding, it is important that NGVL is confident that it has compulsory purchase powers in reserve before committing to implementing the Scheme.

40. Even where option agreements have been secured, there remains a residual risk that any such agreement could be unenforceable because, for example, the counterparty was acting under a legal disability. This risk is also overcome through the inclusion of all land and rights in the confirmed Order.
41. Without the certainty that all interests can be secured in a timescale which will enable the component elements of the Viking Link Interconnector to be co-ordinated and delivered within a reasonable time period, NGVL would simply not be able to proceed.
42. Consequently, the need for the Order to be confirmed without delay is critical.

The justification for the inclusion of the land and rights proposed to be acquired

43. No objection (either outstanding or now withdrawn) has suggested that any of the land or rights proposed to be acquired are not required for the purposes of constructing or thereafter operating the UK Onshore Scheme. Notwithstanding this, NGVL has sought to provide a full justification for all of the land and rights required in the evidence of Messrs Symons and Heselton.
44. As set out in Mr Symons's evidence, the physical extent and legal scope of the land and rights proposed to be acquired is driven by the physical characteristics of the infrastructure, the construction and operational requirements of the same, and the stage of design development reached to date. Based on its understanding of these factors, NGVL has then sought to take the minimum land and rights required to enable the cables to be laid and other infrastructure constructed, and thereafter operated and maintained safely and efficiently.
45. The land and rights proposed to be acquired fall into the following 10 categories, a summary

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<sup>24</sup> The Eversheds Sutherland letter to the Inspector of 24 June 2019 sets out further detail of the diligent enquiries undertaken.

justification for which of each follows thereafter.<sup>25</sup>

- a. Freehold acquisition;
- b. Cable construction rights;
- c. Access only rights;
- d. Drainage rights;
- e. Access and Drainage rights;
- f. Construction compound rights;
- g. HVDC cable rights;
- h. HVAC cable rights;
- i. Landfall zone rights; and
- j. Substation connection rights.

Freehold acquisition

- 46. Freehold acquisition is only sought in respect of a limited number of plots for the purposes of above ground permanent infrastructure, namely at the converter station (CPO Plot 42-16), and the access road thereto (CPO Plots 42- 33; 42-34; 43-01 to 43-09 inclusive and 44-01; 44-02). In these instances, freehold acquisition is required to ensure that NGVL has the necessary exclusive possession and control of the land required for the safe construction, operation and maintenance of, and access to, this installation.
- 47. With regards to the land shown hatched black on the plan at BoP7,<sup>26</sup> once the construction works have been completed, there may be an opportunity to return some of this area back to the former landowners. NGVL is open to discussions in this respect, subject to the retention of appropriate easement rights for the HVAC and HVDC cables that will be installed under that land, and appropriate rights of access to the converter station and landscaping.

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<sup>25</sup> For fuller details of the justification for each category of land and rights see Heselton section 4 and the references therein to the evidence of Mr Symons.

<sup>26</sup> CDD6.

Cable construction rights

48. The cable construction rights are required in order to facilitate the installation of the HVDC and HVAC cables and associated equipment. These rights are sought over the entirety of the Order Land comprising the HVDC and HVAC land rights corridors, which are approximately 60m and 75m wide respectively for construction purposes.
49. Although the majority of the works will be carried out within a 30m working width (for the HVDC cables) and a 50m working width (for the HVAC cables) using a mixture of trenched and trenchless techniques, rights are required over the greater widths of 60 and 75m respectively in order to accommodate the space required at crossing points;<sup>27</sup> the space required for access and egress, vehicles, equipment, and site establishment to install a cable joint bay; the need to allow sufficient flexibility to enable the cable to be routed round any obstacles/constraints which may be encountered during construction, including but not limited to archaeology; and the need for flexibility in locating the cable joint bays (the location of which has not yet been determined in advance of detailed design) along the route, based upon matters including the logistics of cable delivery lengths and cable installation calculations and design, with the intention of minimising the number of joint bays needed.
50. Both the 30m HVDC and 50m HVAC working widths are required in order to allow for the working areas needed to allow the safe and efficient movement of the personnel, plant and machinery used to perform the construction activities; areas for the storage of topsoil and subsoil; a temporary haul road and passing places; and fencing and drainage. The difference between the two working widths is that the narrower HVDC route requires the installation of two cables within one trench, whereas the wider HVAC route requires the installation of six cables within two trenches.

Access only rights

51. These comprise rights of access, with or without vehicles, plant and machinery, to facilitate the construction, installation, commissioning, inspection, maintenance, repair, alteration, renewal, replacement, removal and decommissioning of the HVDC and HVAC cables, including rights to carry out minor works to facilitate such access. They are necessary to allow NGVL to take access to the construction/permanent rights corridor to and from the nearest public

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<sup>27</sup> Explained further in Symons, pp.13-14 [4.34] to [4.40].

highway for construction and periodically thereafter for maintenance and inspection.<sup>28</sup>

#### Drainage rights

52. These comprise rights to carry out de-watering and drainage works and to install, alter or reinstate land drainage systems, including the right to access the land with or without vehicles, plant and machinery to undertake those works.
53. The drainage rights are required in order to mitigate any impacts on existing land drainage present within the agricultural land covered by the Scheme, and (in respect of dewatering) to assist with the construction of the cables.<sup>29</sup>

#### Access and drainage rights

54. These rights are sought where both access and drainage rights, as described above, are required. The justification for the acquisition of the combined rights is the same as for the discrete rights.

#### Construction compound rights

55. These comprise rights to erect, create, use and remove works compounds in order to facilitate the installation of the cables. The rights relate to the 10 TCCs and 18 TWAs proposed across the route.
56. TCCs are required for the storage of plant and machinery and for stockpiling materials, as well as the provision of site management offices, parking and welfare facilities for construction personnel. They are divided into two typologies, 'primary' and 'secondary'. While their overall function/purpose is the same, primary TCCs will be larger in size (approximately 1.5 ha) and will be in place for the duration of cable construction. Secondary TCCs will be approximately 1.1 ha and will likely be in place for the majority of construction, but not the full duration of the work.
57. TWAs are required at various locations along the HVDC route and at one location along the HVAC route. They are typically located at areas where works require a larger area than the typical working width such as at locations where trenchless construction methods are

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<sup>28</sup> Symons, pp.27-28 [4.102]-[4.106].

<sup>29</sup> Symons, pp.25-26 [4.85]-4.90]; Royle, pp. 38-47 [5.122]-[5.177].

proposed. TWAs are however smaller than the TCCs and will cover an area of approximately 0.43 ha, utilised for laydown of construction plant and equipment and storage whilst works are being undertaken in the vicinity. It is unlikely that the TWAs will remain in place for the full construction programme.<sup>30</sup>

#### HVDC and HVAC cable rights

58. These comprise rights required in connection with the use, maintenance and decommissioning of the HVDC and HVAC cables respectively, and to protect and prevent interference with them. Although the rights are sought over the entirety of the areas within which HVDC and HVAC cables may be laid, this is only because the final location of the permanent infrastructure is not yet known. The final corridors over which rights will be taken will be limited to:
- a. For the HVDC route, 25m or 15m depending on whether trenched or trenchless installation techniques were used; and
  - b. For the HVAC route, 50m or 25m depending on whether trenched or trenchless installation techniques were used.
59. These widths reflect the extent of the physical infrastructure to be laid, together with access for maintenance and a protective buffer. The greater area allowed for where trenchless construction techniques are used is due to the increased width required to allow the cable ducts to be drilled at the correct spacing to maintain the cables' thermal independence from one another.<sup>31</sup>
60. The single exception to the limited 'rights corridor' approach is in respect of the access rights within the HVDC cable rights package. In respect of these rights, NGVL requires such access rights as may be necessary over the Order Land to the 'rights corridor' to avoid being cut off from the nearest public highway and being left without any access. The access right within the HVDC Cable Rights package may therefore be applied to and acquired over any of the Order Land affected by this package and is not subject to the width restrictions described.

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<sup>30</sup> Symons, pp. 26-27 [4.93]-[4.101].

<sup>31</sup> Symons, pp. 10-14 and [4.24]-[4.41] and pp.21-24 [4.68]-[4.82].

Landfall zone rights

61. These comprise rights required in connection with the ongoing use, maintenance and future decommissioning of the HVDC cables and to protect and prevent interference with them within the landfall zone. The infrastructure in this area is particularly critical because it is the point where two HVDC submarine cables and one subsea fibre optic monitoring cable come ashore and connect to the onshore HVDC cables.
62. At present the exact location and spacing of the cables is not yet known and as a result the permanent land take requirement is also less certain. The bespoke Landfall Zone Rights package therefore gives NGVL the flexibility to acquire such new rights as are necessary for the ongoing use, maintenance and future decommissioning of the UK Onshore Scheme in this critical area, instead of limiting it to the rights corridor approach adopted elsewhere along the route.

Substation connection rights

63. These comprise rights required in connection with the ongoing use, maintenance and future decommissioning of the cables and to protect and prevent interference with them. The package also includes rights to facilitate the 'unlicensed works' to connect the HVAC cables to the NGET Substation at Bicker Fen, being works that are not regulated and are not required to be undertaken by NGET. In summary, they amount to access, equipment installation and commissioning thereof. Rights are required to facilitate those works during construction, and permanent rights are required in connection with the ongoing operation and future maintenance of the infrastructure.

**Compliance with the CPO Guidance**Attempts to acquire by agreement

64. As was set out in opening, it is always NGVL's preference to acquire the land and rights it requires by agreement, consistent with the requirements of paragraph 2 of MHCLG's Guidance on Compulsory Purchase Process and the Crichel Down Rules (Feb 2018) ('the Guidance'), and it has been extremely effective at doing so for the purposes of the Scheme.
65. Engagement with affected landowners in relation to the prospective acquisition of their land began c. two years ago in September 2017, following earlier engagement in relation to land



referencing (February 2016) and scheme development (April 2016 onwards), and has continued to date.<sup>32</sup> Engagement relating to land acquisition has been conducted principally by Dalcour Maclaren with support from the NGVL Land team, in accordance with the National Grid Land Rights Strategy ('LRS').

66. As explained in the evidence of Mr Heselton,<sup>33</sup> the LRS is a specially-designed strategy, developed by National Grid to ensure a consistent and Guidance-compliant approach to acquiring land and rights for all of their infrastructure projects. It is under continuous review to ensure that it is still fit for purpose, meets National Grid's aims, and meets the expectations of third-party landowners and occupiers. The most recent review took place in 2017, when it was found that the LRS continued to perform well.
67. In accordance with the LRS' requirements, NGVL has sought to enter into option agreements to secure the land and rights it requires. For this purpose, Heads of Terms ('HoTs') were first sent out to affected landowners in November 2017, with revised HoTs being issued in May 2018, following their amendment in response to landowner feedback.<sup>34</sup>
68. As well as providing for a range of mitigation measures for landowners,<sup>35</sup> those HoTs have made generous provision for landowner compensation in excess of statutory requirements, in order to encourage and incentivise voluntary agreement. For underground cables, NGVL has offered 80% of the open market freehold land value for the area of the permanent easement. The 80% is paid to represent the diminution in the value of the easement strip due to the presence of the cable. 25% of that agreed value is paid on completion of the Option, 50% paid on taking entry to the land and the remaining 25% paid on completion of the deed.
69. In respect of any permanent land take, NGVL offered an uplift of 20% on land values for HoTs signed at an early stage, and a 10% uplift on land values thereafter. In practice, these enhanced values have remained on offer up to the present time.<sup>36</sup>

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<sup>32</sup> As set out in Heselton Appendix 1.

<sup>33</sup> Heselton, pp.16-17 [5.2]-[5.3].

<sup>34</sup> The nature of the changes made are set out in greater detail in Heselton Appendix 2.

<sup>35</sup> See for example the cable depth and reinstatement clauses within the HoTs at Heselton Appendix 5.

<sup>36</sup> Heselton, pp.19-20 [5.4].

70. A great number of face to face or other personal meetings have also been held in order to listen to and resolve any landowners concerns or queries.<sup>37</sup> In particular, in order to engage in relation to landowner concerns relating to the future drainage of their agricultural land, meetings were also held between affected landowners and NGVL’s appointed soils and drainage consultancy, LDS – including some 34 meetings at initial survey stage and a further 60 between March-May 2018.<sup>38</sup>
71. As a direct result of this strongly proactive approach, NGVL has been able to enter into HoTs in respect of the necessary interests in over 98.8% of the HVDC route, and 100% of the HVAC route.
72. In the circumstances, there can be no doubt that NGVL has complied with paragraphs 2 (requirement to take reasonable steps to acquire by agreement),<sup>39</sup> 3 (making reasonable initial offers and engaging constructively), and 16 (evidence of meaningful attempts to negotiate) of the Guidance as required.

Availability of other consents

73. The UK Onshore Scheme has been granted planning permission in accordance with extant and emerging planning policy at a local and national level in all four local planning authority areas in which it is required. The dates on which those planning permissions were granted are as follows:
- a. Boston Borough Council - 12 September 2018;
  - b. North Kesteven District Council - 18 September 2018;
  - c. South Holland District Council - 8 October 2018; and
  - d. East Lindsey District Council - 12 December 2018 (on appeal).
74. Similarly, the Danish equivalent of planning permission for the Danish Onshore Scheme was granted in February 2018.

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<sup>37</sup> Full details are provided for each of the objectors in Heselton Appendix 4.

<sup>38</sup> Royle, pp. 9-8 [4.15] and [4.24].

<sup>39</sup> See further below the section dealing with the oral evidence of Mr Hurst, a local valuer, who confirmed his view that NGVL had discharge its obligation in this respect.

75. Of the other consents required in order to deliver the Scheme as a whole, only:
- a. The variation to the already-granted marine licence for the installation of the submarine cables in UK territorial waters; and
  - b. Gas and Electricity Markets Authority ('GEMA') consent;
- remain outstanding.
76. As the variation in respect of the marine licence is being sought only to ensure that the boundary aligns correctly with the planning permission granted by ELDC, NGVL has no reason to believe that it will not be forthcoming. As was reported by Ms Wells in oral evidence, the MMO are understood to be aiming for a decision by mid-August 2019.
77. As regards the GEMA consent, as explained in NGVL's Opening, by virtue of paragraph 2(1) of Schedule 3 to the 1989 Act, no order may be made which authorises the compulsory purchase of land (or rights in land) belonging to another 1989 Act licence holder, unless and until consent to the making of the order has been obtained from the Gas and Electricity Markets Authority (GEMA/OfGEM).
78. The only land to which this requirement could apply is land owned by NGET at the NGET Substation (Plots 41-01, 41-02, 41-03, 41-21 and 41-22), which is the subject of Heads of Terms between NGVL and NGET for the acquisition of rights to enable NGVL to install its cables. NGET have now also entered into an Asset Protection Agreement with NGVL and on the strength of those documents have withdrawn their objection to the Order.
79. NGVL is however still seeking consent to the inclusion of this land in the Order from OfGEM, in order to ensure that in the event that any unknown interest in NGET's land comes to light, NGVL will be in possession of compulsory purchase powers that it can in fact exercise. BEIS are liaising with OfGEM regarding the issuing of the consent and, again, there is no reason to believe that this will not be forthcoming.
80. In the circumstances, there are considered to be no planning or other consenting-related impediments to delivery of any part of the Scheme, in the UK or elsewhere, consistent with paragraph 15 of the Guidance.

#### Delivery

81. The Scheme is being jointly developed and financed by NGVL and Energinet on equal terms (i.e. on a 50:50 basis) in a business arrangement termed an 'Unincorporated Joint Venture'

- (‘UJV’). Energinet is an independent public enterprise owned by the Danish state as represented by the Ministry of Energy, Utilities and Climate, which owns, operates and develops the Danish electricity and gas transmission systems.
82. NGVL is responsible for developing, constructing and financing the UK Onshore Scheme. Energinet is responsible for developing, constructing, and financing the equivalent Danish onshore scheme. NGVL and Energinet will have joint responsibility for delivery of the offshore works associated with the submarine cables.
83. The current programme sees the implementation of the Scheme commence in Q3 2019 with completion taking place four years later in Q3/4 2023. The following is a summary of the key milestones in the current timetable:
- a. Danish Onshore Scheme commences in Q3 2019 with contractor mobilisation and conduct of detailed design and pre-commencement activities Q3 2019 onwards.
  - b. Danish construction activities due to commence in Q3 2020 and will be predominantly complete by Q3 2022.
  - c. UK Onshore Scheme contractor to mobilise and conduct detailed design activities with pre-commencement works from Q3 2019 onwards.
  - d. UK Onshore construction activities due to commence in Q2 2020 and will be complete by Q4 2023.
  - e. Offshore Scheme Contractor mobilisation and pre-commencement work to be undertaken from Q3 2019.
  - f. Construction activities for the Offshore Scheme due to start in Q2 2021 with completion being targeted for Q2 2023.
  - g. Testing and commissioning of the Viking Link Interconnector will take place during Q3/Q4 2023 with operation anticipated to begin Q4 2023.
84. Each part of the overall Scheme will be closely monitored by NGVL and Energinet to ensure a coordinated approach.
85. No party has questioned the ability of either party to the UJV to deliver the Scheme in a timely manner.
86. It is important that NGVL has the certainty that it will be able to access and acquire rights to all of the land comprising the UK Onshore Scheme at the earliest possible opportunity,

otherwise the carefully programmed construction timetable will be put at risk and the benefits of the project delayed.

#### Funding

87. The Scheme is being jointly developed and financed by NGVL and Energinet on equal terms.
88. NGVL is part of the National Grid group of companies ('National Grid') but is separate from the National Grid systems operator which operates the high voltage transmission network in Great Britain and owns the high voltage transmission network in England and Wales.
89. NGVL, through its parent company National Grid, has a superb track record in delivering major infrastructure projects, including interconnectors. It also has an excellent financial standing.
90. The ultimate parent and controlling company of National Grid is National Grid plc which has a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange. National Grid plc is a constituent of the Financial Times Stock Exchange (FTSE) 100 Index and is an internationally recognised leader in the safe development and operation of large capacity, multi-user, energy transmission systems.
91. National Grid Holdings One plc (NGH1) operates as a subsidiary of National Grid plc. NGH1 holds investments in, and provides finance to, fellow subsidiary companies, such as National Grid Interconnector Holdings Limited ("NGIH"), which in turn provides finance to project specific subsidiaries.
92. NGVL has assessed the costs of implementing the UK Onshore Scheme and acquiring the necessary land and rights over land needed to facilitate it. On 26th September 2018, the National Grid plc board made a commitment (a positive Financial Investment Decision) to fund the Viking Link Interconnector from its operational revenues, including the costs of acquiring the necessary land and rights over land needed for the UK Onshore Scheme, whether such land/rights are acquired by agreement or purchased compulsorily.
93. Funding for the UK Onshore Scheme, including the acquisition of land and new rights and the Scheme's implementation, will therefore be managed from within the National Grid's own resources, credit facilities, and routine debt financing. The scheme is not dependent on grants or financial contributions from third parties or other bodies.
94. National Grid plc manages its funding strategy from a Group perspective and on average expects to issue £2-3 billion of long-term debt each year, to fund capital expenditure and to refinance maturing debt across the Group. The Group also has access to short-term debt

instruments. External debt is raised across a number of entities in the Group (regulated operating companies, intermediate holding companies and National Grid plc). As a result, it benefits from flexibility, with access to the best value funding available.

95. National Grid plc is rated at the same level by Standard & Poor's (S&P), Moody's and Fitch (BBB+/Baa1/BBB+ respectively) and remains on Stable outlook for all three agencies. NGH1 (which holds investments in, and provides finance to, fellow subsidiary companies, such as NGIH, which in turn provides finance to project specific subsidiaries, such as NGVL) is rated by S&P and is currently rated A- (in line with National Grid plc's Corporate Rating).
96. As per other operating companies, NGVL will have access to an inter-company facility it can draw on to cover operational expenditure (OPEX) and capital expenditure (CAPEX), allowing it to borrow from National Grid plc (its ultimate parent).
97. The requisite funding will therefore be available to meet both the construction and land acquisition/compulsory purchase compensation costs associated with the UK Onshore Scheme as and when required, including any advance payments of compensation and blight claims.
98. Funding for the Danish Onshore Scheme was approved by the Danish Minister for Energy, Utility and Climate on 25th October 2017.<sup>40</sup>
99. In accordance with paragraphs 13 and 14 of the Guidance, all the necessary resources are likely to be available within a reasonable time-scale, in particular funding is available now or will be available early in the process for both acquiring the necessary land/rights over land and implementing the Scheme.

#### Human rights

100. As has consistently been made clear in the documents supporting NGVL's application for confirmation of the Order, careful consideration has been given by NGVL to the human rights implications of its proposed exercise of compulsory purchase powers. In particular, it has had regard to the risk of interference with affected persons' rights under Articles 6 (right to a fair trial), 8 (respect for home and private life) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions).

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<sup>40</sup> McIntosh, pp.13-15 [7.14]-[7.35].

101. Articles 8 and Article 1 of the First Protocol are ‘qualified’ rights, which may be infringed provided that certain conditions are satisfied. In the case of Article 8, the right may be infringed *“in accordance with the law”* and where *“necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”*.
102. In the case of Article 1 of the First Protocol, deprivation of possessions will only be permitted *“in the public interest and subject to the conditions provided for by law and by the general principles of international law”*.
103. The Viking Link Interconnector has been extensively publicised and consultation has taken place with the community and key stakeholders in the region. All those affected by the Order have been notified and have had the opportunity to submit objections. The four landowners whose objections have not been withdrawn have additionally had the opportunity to be heard at this inquiry, even if most chose not to avail themselves of it. These statutory processes are in compliance with Article 6 of the Convention and as such there will be no unlawful interference with any Article 6 rights.
104. Whilst owners and occupiers of the Order Land may be deprived of their property/interest in property if the Order is confirmed, this will be done in accordance with the law. NGVL is only seeking to purchase the freehold title to the Order Land in two specific instances, being for the converter station and the permanent access road to ensure safety and security, with all other Order Land being affected by the acquisition of new rights only. In addition, the land included within the Order has been limited to the minimum required for the Viking Link Interconnector infrastructure to be installed, operated and maintained, and the route of the underground cables and associated infrastructure has been selected so as to minimise the impact on settlements and land use as far as possible.
105. The Order is being promoted in the public interest as required by Article 1 of the First Protocol and interference with private interests to the extent proposed is considered to be proportionate to the compelling public interest associated with the delivery of new interconnection capacity pursuant to the Scheme.
106. Furthermore, those whose interests are acquired under the Order will also be entitled to any compensation payable in accordance with the Compulsory Purchase Compensation Code. The Compensation Code has been held to be compliant with Article 8 and Article 1 of the First

Protocol to the Convention.

107. In all the circumstances, NGVL has had appropriate regard to the human rights implications of the Order and there are no such considerations that militate against its confirmation. Paragraph 12 of the Guidance insofar as it requires consideration of human rights issues is accordingly satisfied.

#### Equalities

108. In promoting the Order, consistent with s.149(1) of the Equality Act 2010<sup>41</sup>, NGVL has undertaken an extensive community consultation and landowner engagement exercise.
109. As a consequence of that engagement, NGVL is aware of the potential for adverse health impacts during construction on two residents with learning difficulties (one a minor) (i.e. having the protected characteristics of 'age' and 'disability') living in close proximity to the HVDC cable installation route. One of the properties is near a TWA and the other is close to a TCC.
110. As explained in the evidence of Mr McIntosh,<sup>42</sup> following consultation with the families, NGVL was able to identify a package of 'assistance' measures, primarily focussed upon providing advance notice of works and any road closures, and ensuring that there is particularly close liaison with the families, so as to avoid any distressing 'unexpected' activity in the vicinity of the family homes. Contact details have been provided to the families, so they are able to speak directly to a member of the NGVL team if they have any questions or concerns.
111. In view of the measures proposed, it is not considered that the UK Onshore Scheme will give rise to any unacceptable effects on these persons, and NGVL has been given no indication that this view is not one shared by their families or others.
112. Subject to the above, the UK Onshore Scheme will not give rise to any impacts or differential impacts on persons who share a relevant protected characteristic as defined in the Equality Act, or upon persons who do not share such relevant protected characteristic and the Scheme is acceptable in this respect also.

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<sup>41</sup> CD A.3.

<sup>42</sup> McIntosh, pp.20-21 [9.17]-[9.19].



**SPECIAL CATEGORY LAND****Statutory Undertakers' Land**

113. As set out in NGVL's Opening Statement, NGVL is itself a statutory undertaker for the purposes of the Acquisition of Land Act 1981 ('the 1981 Act')<sup>43</sup> and, as such, s.17 (which provides for an order to go through Special Parliamentary Procedure ('SPP') in the event of outstanding objections by a statutory undertaker) does not apply.<sup>44</sup>
114. All four of the remaining objectors are however statutory undertakers, although only two have made representations to 'the appropriate Minister' (i.e. that undertaker's Secretary of State) for the purposes of Schedule 3 of the 1981 Act: Network Rail ('NR') and Canal and River Trust ('CRT').
115. Paragraph 3 of Schedule 3 to the 1981 Act provides that an order relating to the acquisition of rights over the land of a statutory undertaker that is the subject of any outstanding objection by the statutory undertaker (para 3(1)) shall not be confirmed unless the appropriate Minister has certified that the right can be purchased without 'serious detriment' to the undertaking (para 3(2)).
116. Although it is for the appropriate Minister to issue the relevant certificate confirming that he is satisfied that no serious detriment will arise as a result of the acquisition of the undertaker's land (s.16) , or rights over that land (Sch 3 [3]), the evidence in support of any allegation of serious detriment is presented at the CPO inquiry and it is conventional for the Inspector to include within his Report to the 'confirming authority' (i.e. the Secretary of State having power to authorise the Order) his view as to whether the alleged 'serious detriment' has been made out. The 'appropriate Minister' (who may or may not be the 'confirming authority') will then typically take this view into account in determining whether a certificate should be issued.
117. Although both NR and CRT are understood to have alleged<sup>45</sup> that serious detriment would be

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<sup>43</sup> As applied by Schedule 3[5] of the 1989 Act.

<sup>44</sup> NGVL Opening Statement, [26]-[30].

<sup>45</sup> See NR's letter of 3<sup>rd</sup> June 2019. It is understood, based on a comment made in their letter of objection, that CRT wrote to the Department for Environment Food and Rural Affairs making a representation under Schedule 3[3] but NGVL does not have a copy of the same. To the extent that no representation was in

caused to their respective undertakings, and that Schedule 3 is therefore engaged, neither has provided any substantive evidence at all of the cause, nature or extent of that alleged harm.

118. Notwithstanding the total absence of evidence described, NGVL has itself sought to furnish the inquiry and the SoS with evidence as to how the Scheme will interact with NR and CRT's interests, and how any impacts can be acceptably managed.
119. In relation to NR's undertaking, Mr McPhee gave evidence to the effect that the construction methodology and asset protection measures proposed to be used by NGVL in relation to the crossing of NR assets means that the Project will not have a detrimental impact on the operation of the railway, whether considered over the short, medium or long term.<sup>46</sup>
120. In relation to CRT's interests, Mr Symons has explained how watercourses such as the River Witham can be crossed without any adverse impact. In particular, it has been confirmed<sup>47</sup> that the electrical cables will be installed in ducts beneath the River Witham using a trenchless technique called horizontal directional drilling, so as to avoid any interference with the river and to ensure that it can be safely navigated during the construction period. No temporary bridges are proposed to be constructed over the river, the cable ducts will be more than 3.5m below the hard bed level of the river and the HDD shaft sites will be more than 5m from the water's edge (indeed, they will actually be about 70m away). Indeed, NGVL has agreed to observe all the relevant parts of CRT's Code of Practice in respect of 'service crossings'. Once the cables are in situ beneath the river, they will have no impact at all upon its use.
121. Moreover, NGVL is required to comply with the conditions attached to the relevant planning permissions, which require the submission to and approval by the local planning authority of a construction method statement, which is to include details in relation to the crossing of watercourses (including the River Witham) by HDD. As the River Witham is the boundary between East Lindsey District and Boston Borough Councils, like conditions are included within both planning permissions.<sup>48</sup>

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fact made within the objection period, Schedule 3 would not be engaged in respect of CRT's interest and no certificate would be required.

<sup>46</sup> See further McPhee at Sections 4 and 5.

<sup>47</sup> McIntosh Appendix at p.3 OBJ2.

<sup>48</sup> See Condition 5 CDC7 and Condition 4 CDC4.

122. The Cable Construction Rights and HVDC Cable Rights proposed to be acquired over CRT land (to enable NGVL to install, operate, maintain and protect electrical cables) can therefore be acquired without causing serious detriment to the carrying on of CRT's undertaking.
123. In such circumstances and given that the requirement is for there to be serious detriment to the undertaking (as opposed to mere detriment), it is difficult to see how the Inspector or appropriate Minister could conclude that the requisite detriment had been established.
124. Further commentary on the question of serious detriment is provided below, when addressing CRT's appearance at the inquiry.

### **Crown Land**

125. There are no proposals to compulsorily acquire any Crown land. No such land is included within the Order Land.
126. The proposed works and the rights being sought by NGVL do however affect a number of Crown land interests, principally with regards to an area of land owned by the Duchy of Lancaster over which NGVL is seeking voluntary rights for the permanent access to the converter site, and also in relation to land owned by Highways England Historical Railways Estate ('HEHRE').
127. The advanced state of those negotiations was set out in the evidence of Mr Heselton<sup>49</sup> and elaborated upon by both him and Ms Wells in oral evidence to the inquiry. At the time of writing, those agreements have not yet been concluded but NGVL understands that they are likely to be so in the very near future. Indeed, letters of comfort have been provided by both the Duchy and HRHRE and were supplied to the Inspector on Day 1 of the Inquiry (Docs NGVL/INQ/5 and 6).
128. The need to acquire interests in or over Crown land outside of the scope of the Order does not represent a legal or other impediment to the delivery of the Scheme.
129. Paragraph 15 of the Guidance makes clear that the Acquiring Authority need only show that it is "*unlikely*" that the Scheme will be blocked by any physical or legal impediments to implementation. Provided that the SoS is satisfied that the need to acquire rights over Crown land will not be likely to present an impediment to delivery of the Scheme (as described

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<sup>49</sup> Heselton, pp.24-25 [7.2].

above), then there is no reason why the Order cannot be confirmed without more. He does not need to have received confirmation that the agreements have been concluded.

130. For the avoidance of any doubt, there is no certification process in relation to Crown land.

**Open Space**

131. Paragraph 6 of Schedule 3 to the 1981 Act contains restrictions which apply to the acquisition of rights over land forming part of a common, open space or fuel or field garden allotment, with open space (the only category relevant in present circumstances) being defined as:

*“any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground”*

132. A compulsory purchase order which authorises the compulsory purchase of rights over land forming part of open space shall be subject to SPP, unless the Secretary of State for Housing, Communities and Local Government certifies, *inter alia*, that the land, when burdened with the new right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before (Sch 3 para 6(1)(a)).

133. There are seven plots of land included within the Order Land which satisfy the definition of open space set out above:

- a. Plot 01-11 is a section of beach, walkway and walkway/slipway leading to Moggs Eye Beach at Boygrift which is owned by East Lindsey District Council.
- b. Plots 01-07 and 01-10 comprise of an area of grassland/sand dunes and seawall. Despite NGVL having made diligent enquiries the ownership of these plots is unknown.
- c. Plots 01-04, 01-06, 01-08, 01-09 comprise of walkway/public cycle track and sea defences. These plots are owned by Lincolnshire County Council.

134. The aforementioned plots comprise partly of open space land known as the ‘Sandhills’ which was designated as such by the Lindsey Council (Sandhills) Act 1932 and partly of land which albeit not designated as open space, is ‘open space’ for the purposes of paragraph 6(5) of Schedule 3 to the 1981 Act due to its use by the public for the purposes of recreation (‘the Open Space Land’).

135. The Open Space Land is currently freely accessible to, and is in use by the general public for, recreational activities such as dog walking and other leisure activities.

136. Access Only Rights are sought over Plots 01-04, 01-09, 01-10 and 01-11; Cable Construction Rights and Landfall Zone Rights are sought over Plots 01-06, 01-07 and 01-08.
137. The Statement of Case provides a detailed description of the way in which the rights will be exercised over the Open Space Land during construction and operation, and the extent to which they will interfere with the public use of the open space.<sup>50</sup> From this description, it is clear that the open space will in practice remain open to the public for continued use throughout the construction and operational phases of the Scheme. On limited occasions during the construction phase (which would be two to three months in this location), access may be temporarily disrupted by the presence of NGVL construction vehicles, which will need to be accompanied by banksmen or controlled crossings implemented to ensure the safety of those users of the land. During the operational phase, such disruption would be limited to isolated occasions on which vehicle access was necessary in order to effect emergency repairs (routine inspections being carried out on foot), in relation to which access similar measures would be taken as at the construction phase (i.e. the use of banksmen and controlled crossings) to ensure public safety.
138. Consequently, there would be some very minor interference with the public's use of the Open Space Land during the Scheme's construction phase, but this would be extremely limited in both duration and extent.
139. By an application to the Secretary of State for Housing, Communities and Local Government ('MHCLG') dated 19 January 2019, NGVL therefore sought a certificate under paragraph 6(1)(a) Schedule 3 to the 1981 Act in respect of the Open Space Land on the basis that *"when burdened with that right, [the open space] will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before"*.
140. On 30 April 2019 MHCLG wrote to NGVL's solicitors directing NGVL to give public notice of the SoS's intention to grant the certificate sought.<sup>51</sup> NGVL wrote to affected landowners enclosing a copy of the relevant notice on 4 June 2019, and notices were published in accordance with

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<sup>50</sup> Statement of Case, p.59 [15.15]-[15.22].

<sup>51</sup> A copy of the letter is included at Appendix 16 of the Compliance Bundle supplied to the Inspector at the opening of the inquiry.

MHCLG's direction between 13-20 June 2019.<sup>52</sup>

141. In the circumstances, NGVL is satisfied that the open space certificate can properly be granted and that the need to acquire rights over such land is also unlikely present an impediment to delivery of the Scheme. The Inspector is accordingly invited to recommend that the s.19 certificate be granted.

## **OUTSTANDING OBJECTIONS**

### **Introduction**

142. Only one of the four outstanding objectors appeared at the inquiry. As such the position in relation to the remaining three remains precisely as set out in the Acquiring Authority's Opening Statement,<sup>53</sup> the content of which is not repeated here.
143. Only CRT appeared in person, and whilst their Counsel confirmed her "*great confidence*" that an agreement would be concluded "*in the not too distant future*", submissions were made in respect of the approach that the SoS ought to take to the question of whether serious detriment arises, which it is necessary to address.
144. NGVL does not suggest, and has never suggested, that the burden of proof in relation to serious detriment lies with the statutory undertaker affected. Similarly, it is acknowledged that the appropriate Minister must be positively satisfied that no such detriment arises in order to grant a certificate. However, in the absence of any indication by the undertaker (who might be expected to be best placed to identify any adverse impacts likely to be suffered by their undertaking as the result of any given proposal) as to the nature and extent of any potential detriment, and how it arises, then it is difficult to understand the basis upon which the SoS could reasonably conclude that any such detriment was in fact likely to arise. This is particularly the case where, as here, the acquiring authority has presented a positive case that there would be no harm.
145. The failure of CRT (or any other statutory undertaker) to produce any evidence in support of its claim that serious detriment would arise in the absence of agreement with it is in NGVL's

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<sup>52</sup> Copies of the letter and notices are included at Appendices 17 and 18 of the Compliance Bundle.

<sup>53</sup> See NGVL Opening Statement at [22]-[36].

submission indicative of the absence of any such detriment. CRT was aware that NGVL's case is that no serious detriment arises and has had the opportunity<sup>54</sup> to make good its assertion, but has not done so.

146. In any event, as set out further above, NGVL has itself presented positive evidence by Messrs Symons and McPhee making clear why no serious detriment arises either in the case of CRT's undertaking or that of NR and, in the circumstances, it is considered that the Inspector should recommend that the relevant certificates are issued.

### **OTHER COMMENTS**

#### **Mr Hurst**

147. The only other person to attend the inquiry was Mr Robert Hurst, a local valuer. Mr Hurst acts in relation to a number of landowners affected by the Scheme, albeit that he confirmed that he was attending the inquiry only as an informed member of the public and did not have specific instructions to represent the interests of any of his clients at the inquiry.<sup>55</sup>
148. Mr Hurst confirmed that he did not object to the principle of the order, and as a valuer understood the need for promoters to use compulsory purchase power as a back up to voluntary agreements. He also confirmed his view that NGVL had demonstrated that it had made reasonable attempts to acquire by agreement as required by the Guidance.
149. Mr Hurst's main concern was that the grant of the Order might disincentivise NGVL from converting the agreed HoTs into completed agreements. However, as the Inspector noted, that concern essentially amounts to a suggestion that the Order should not be confirmed because agreements that would make the Order unnecessary have not been completed; this makes no sense.

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<sup>54</sup> Both when making its objection and at the 4 June 2019 evidence deadline.

<sup>55</sup> Mr Hurst did confirm that all but one of his clients, the Environment Agency, had signed up to Heads of Terms agreements with NGVL.

**CONCLUSION**

150. The Scheme is one for which there is a compelling national need, which has been recognised both in its designation at EU level as a ‘Project of Common Interest’, and through the grant of planning permission in the four host local authority areas. In the absence of its grant, the very substantial benefits of the project, in terms of security and affordability of supply and offsetting the need for new energy generation, would be put at risk or lost all together, increasing the risk of the serious adverse effects for the network operator and the public described above.
151. NGVL is in a position to fund and deliver the Scheme now, with works being scheduled to commence in Q3 2019. All the necessary planning and other consents for the UK Onshore Scheme are in place.
152. Although the Order includes special category land, this does not present an impediment to delivery of the Scheme:
- a. the affected open space would be no less advantageous to persons using it once burdened with the rights NGVL seeks, and MHCLG has already indicated it is minded to grant the certificate sought; and
  - b. there is no reasonable basis for concluding that any of the statutory undertakers’ land would suffer serious detriment as a consequence of the rights proposed to be taken over it and the Inspector should recommend that certificates be granted in respect of NR, and CRT’s<sup>56</sup> interests, in the event that their objections are not ultimately withdrawn.<sup>57</sup>
153. There are no other legal, physical or other impediments to the delivery of the Scheme.
154. Negotiations with the four outstanding objectors are very advanced and it is anticipated that all objections will be withdrawn in short order. To the extent that any remain, however, no party has raised any ‘in principle’ objection to the Scheme itself or the crossing of their asset. All technical issues have been resolved and the outstanding matters being negotiated relate to commercial issues such as the amount of any insurance and parent company guarantees for

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<sup>56</sup> Insofar as a relevant objection was actually made.

<sup>57</sup> No certificate is required where the relevant statutory undertaker’s objection is withdrawn.



any indemnity provision. None of the outstanding objections justify refusal or modification of the Order.

155. The human rights implications have been carefully assessed and all interferences would be justified and proportionate.
156. In the circumstances, the Order should be confirmed without modification.

**Michael Humphries QC**

**Rebecca Clutten**

26 June 2019

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