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Act 2008 (Hornsea Project Three (UK) Limited) – Statutory Undertakers' Land

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national**grid**

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1. Application Under s127 of the Planning Act 2008 (Hornsea Project Three (UK) Limited) – Statutory Undertakers’ Land

1.1 Introduction

- 1.1.1 National Grid Electricity Transmission plc (the Applicant) submitted, on 29 August 2025, an application for development consent to the Secretary of State for the Norwich to Tilbury project (the project) (application reference EN020027). The application was accepted by the Planning Inspectorate on 26 September 2025.

1.2 Section 127 of the Planning Act 2008

- 1.2.1 The **3.1 Draft Development Consent Order [Revision G]** includes provision for the compulsory acquisition of land and rights in land, including the acquisition of land and rights in “statutory undertakers’ land”, as defined by s.127 of the Planning Act 2008, as amended (the 2008 Act). As the **3.1 Draft Development Consent Order [Revision G]** will affect statutory undertakers’ land or interests in land, the Applicant believes that s.127 is engaged by the **3.1 Draft Development Consent Order [Revision G]**.
- 1.2.2 Section 127 applies to land (statutory undertakers’ land) if:
- The land has been acquired by a statutory undertaker for the purposes of its undertaking;
 - A representation has been made, and not withdrawn, about an application for development consent; and
 - The Secretary of State is satisfied that:
 - The land is used for the purposes of carrying on the statutory undertakers’ undertaking; or
 - An interest in land is held for those purposes.
- 1.2.3 For the purposes of s.127, “land” includes any interest in or right over land (as defined in s.159 of the 2008 Act).

1.3 Section 138 of the Planning Act 2008

- 1.3.1 The **3.1 Draft Development Consent Order [Revision G]** also includes the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers, and as such the Applicant believes that s.138 of the Planning Act 2008, as amended (the 2008 Act), is engaged by the **3.1 Draft Development Consent Order [Revision G]**.

- 1.3.2 Section 138 applies to land if:
- a) There subsists over the land a relevant right; or
 - b) There is on, under or over the land relevant apparatus.
- 1.3.3 Section 138 provides that the **3.1 Draft Development Consent Order [Revision G]** may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the **3.1 Draft Development Consent Order [Revision G]** relates.

1.4 This application

- 1.4.1 The relevant statutory undertaker for the purposes of this application is Hornsea Project Three (UK) Limited (Hornsea Three). The Applicant proposes to acquire interests and rights in land, such land or interest in the land having been acquired by Hornsea Three (Hornsea Three's Land) for the purposes of its undertaking.
- 1.4.2 Hornsea Three has made a representation to the Planning Inspectorate in relation to the application for development consent (REP4-368). The Applicant is in ongoing discussions with Hornsea Three regarding the application, but its representation has not currently been withdrawn.
- 1.4.3 If that representation is not withdrawn and the Secretary of State is satisfied that the land or an interest in the land is used for the purposes of carrying on Hornsea Three's statutory undertaking, then the **3.1 Draft Development Consent Order [Revision G]** may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land, by the creation of a new right over land, to the extent that the Secretary of State is satisfied that the requirements of s.127 have been met.
- 1.4.4 Further, the **3.1 Draft Development Consent Order [Revision G]** may only include provision of a power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers to the extent that the requirements of s.138 are met.
- 1.4.5 The Applicant is, therefore, making this application to the Secretary of State pursuant to s.127 and s.138 of the 2008 Act.
- 1.4.6 The following documents were submitted as part of the application for development consent in August 2025, have been updated throughout the examination and are relied upon to support this application under s.127:
- **2.2 Land Plans – Section A-H [Revision F];**
 - **2.3 Work Plans – [Section A (Revision B), Section B [REP6-014], Section C (Revision C), Section D (Revision B), Section E [APP-021], Section F [REP6-016], Section G [REP5-021]];**
 - **3.1 Draft Development Consent Order [Revision G];**
 - **3.2 Explanatory Memorandum [Revision G];**
 - **4.1 Statement of Reasons [Revision D]; and**
 - **4.3 Book of Reference [Revision F].**

- 1.4.7 The **4.1 Statement of Reasons [Revision D]** sets out the justification for seeking compulsory acquisition powers within the **3.1 Draft Development Consent Order [Revision G]**.

1.5 Need Case

- 1.5.1 The need for the project has been established in the **5.6 Planning Statement (Revision B)** and **4.1 Statement of Reasons (Revision D)** and is underpinned by National Policy Statements EN-1 (2024) and EN-5 (2024).
- 1.5.2 Consistent with the Government's Net Zero target, there has been, and continues to be, growth in the volume of renewable and zero carbon generation that is seeking to connect to the electricity transmission system in the East Anglia and South-East regions. UK Government policy clearly sets out the critical requirement for significant reinforcement of the transmission system to facilitate the connection of renewable energy sources and to transport electricity to where it is used. The National Energy System Operator (NESO) published Clean Power 2030: Advice on achieving clean power for Great Britain by 2030 (NESO, 2024). This report states that *'Three projects have been identified as critical to delivering a network which supports the clean power pathways, but at present have delivery dates after 2030. Support is therefore needed to bring these projects forward for 2030 delivery. These are projects in East Anglia and in the southeast that are critical for connecting offshore wind in the North Sea and supporting the flow of clean power. Our assessment suggests that without these projects, the clean power objective would not be achieved, leaving the clean power target short by around 1.6% in 2030 (assuming a typical weather year) and consumers could face extra constraint costs of around £4.2 billion in 2030.'* The Project is specified as two of those three projects. The critical and urgent nature of the project is therefore also recognised in the strongest terms in a recent report in achieving Clean Power 2030 objectives. It is clear that there is a compelling case and established need for the Project and that it will deliver national economic, social and environmental benefits in line with the Government's clear objectives of delivering sustainable development.
- 1.5.3 East Anglia's 400 kV electricity transmission network was built in the 1960s. It was built to supply regional demand, centred on Norwich and Ipswich. For many years, the only significant power stations generating in the East Anglia region were the Sizewell A and the Sizewell B nuclear power stations, Spalding North and Sutton Bridge gas fired power stations, and some further smaller 132 kV connected gas fired power stations.
- 1.5.4 This generation capacity has recently been added to by several offshore windfarms with the existing generation totalling 6,552.4 MW of installed capacity. This is expected to grow substantially in coming years. In the East Anglia region, connection agreements have been signed for 26,919.9 MW of new generation (total generation of 33,472.3 MW minus existing generation of 6,552.4 MW). These future connection agreements comprise a large volume of offshore wind generation (including East Anglia Offshore Wind), gas-fired generation, energy storage projects, and a nuclear power station (at Sizewell C).
- 1.5.5 Without reinforcement, the capacity of the East Anglia and South-East existing network is insufficient to accommodate the connection of the proposed new power sources. The 'Thermal Boundary Export Limit' – the physical maximum energy capacity the system can accommodate during planned system faults – would be

exceeded, preventing export of power to demand centres beyond East Anglia. In these circumstances, generators connecting in the area would be required to reduce their output and would be compensated via a 'constraint' payment. These costs would be passed on to end consumers. National Grid ESO (now NESO) analysis shows that, in this case, predicted constraint costs are likely to significantly exceed those of reinforcement.

- 1.5.6 The planning policy support for the Project is very strong. The PA 2008 requires that the application is determined in accordance with the relevant NPS unless certain exceptions apply. The identification of the Project as CNP in NPS EN-1 (DESNZ, 2024a) means that in determining the application the Secretary of State will need to consider the particular circumstances of an application, but will take as a starting point for decision making where non-Habitats Regulations residual impacts remain that such infrastructure is to be treated as if it has met any test requiring a clear outweighing of harm, exceptionally, or very special circumstances within NPS EN-1 (DESNZ, 2024a), NPS EN-5 (DESNZ, 2024b) or any other planning policy. NPS EN 1 and NPS EN-5 establish the urgency of the need for electricity infrastructure.
- 1.5.7 In the Clean Power 2030 report, NESO lays out pathways for how Great Britain can reach a clean power system by 2030. The report identifies that offshore wind will be the bedrock of that system, providing over half of Great Britain's generation, with onshore wind and solar providing another 29%. New dispatchable low carbon technologies, such as using carbon capture and storage or hydrogen, add significant value to the system, with even relatively small levels of operational capacity materially reducing the overall challenge for the rest of the programme.
- 1.5.8 Associated with the new energy generation, the report identifies the need for a major network expansion, in line with published plans for the transmission network and with further strengthening at distribution level.
- 1.5.9 The report identifies the Project as critical to delivering a network which supports the clean power pathways, but at present has a delivery date after 2030. Support is therefore needed to bring the Project forward for 2030 delivery.
- 1.5.10 The policy position supporting the need case for the Project is further supported in the updated EN-1 and EN-5 which came into force on 6 January 2026. The updated EN-1 and E-5 set out the government's commitment to the Clean Power Action Plan 2030, which aims for at least 95% of the UK's electricity generation to come from clean sources by 2030 and emphasises the urgency and critical national priority (CNP) of developing low-carbon infrastructure, thereby supporting the need case established in the ES. Given the PA 2008 requirements set out in section 104, the clear statements in the NPS weigh strongly in favour of granting development consent for all energy projects in general and highlights the urgent need for new electricity transmission projects, and that need has been established.

1.6 Proposed Works

- 1.6.1 The works which are proposed over land which Hornsea Three occupies or has a right or option in in connection with the project include, in particular, the following:
 - Works at the junction of the Norwich Main substation access road (which is shared by both Projects) and Mangreen Lane, including temporary works to facilitate safe operation of the bellmouth such as vegetation cut back to improve visibility splays.

- Construction of overhead line close to the location of Hornsea Three's underground cable.
- Works within or in relation to the existing substation, including the construction of two joint bays, the construction of gantry towers and the construction of overhead lines; Hornsea Three's underground cable runs through the centre of the substation close to where these works will take place.
- Temporary works in relation to a pulling zone for conductor stringing.

Table 1.1 Proposed Works and Locations

Easting, Northing	Plot numbers	Work	Works Description
621480, 302186	A-1/3	Work. No. 2	Works as shown on section A Sheet 1 of the Works Plans. To construct and install a new overhead electric transmission line. Pylon Working areas The working areas around each new pylon would be cleared of vegetation and fenced appropriately. Access to each pylon location would be installed. Temporary appropriate technology / material would be required adjacent to each new pylon location, on which to place plant such as cranes and piling rigs. The stone working areas would typically be 60 m x 60 m (or 70 m x 70 m for angle/terminal/low-height suspension structures and 80 m x 80 m for low-height tension structures). Materials would be brought to site on HGVs and would include the steelwork for the pylons and the conductors (i.e. cabling) wrapped around large drums. The base of the pylons would involve the excavation of the soil. Piling (which may include percussive) would be required at some pylon locations, subject to the ground conditions. A sample series of ground investigation has been completed (the remaining ground investigation would be undertaken by the Main Works Contractor(s) before detailed design) which would inform the foundation designs. Different foundation types can be used for lattice pylons, such as pad and column, vertical tube piles or bored mini-pile foundations, depending on the local ground conditions. The type of foundation to be used is typically identified during the detailed design stage by the Main Works Contractor(s) following intrusive ground investigation surveys.

Easting, Northing	Plot numbers	Work	Works Description
			The following works would be required to install foundations: 1. Excavations are required for each pylon leg; 2. Foundation formwork (mould) is then inserted, cast, and filled with concrete; 3. The concrete is left to harden (set); 4. The excavated hole is backfilled to ground level; and 5. The foundation formwork would be removed and any remaining sub-soil subject to its make up would be distributed on site or removed from site. In areas with poorer ground conditions that are unsuitable for pad and column foundations, vertical steel tube pile foundations or bored mini-pile foundations can be used. These are connected by a pile cap at or below ground level. Using a piling hammer supported by a piling rig, steel tube piles are driven into the ground. A maximum transportable length of up to 15 m is driven at a time, and if longer piles are required, additional sections are welded together before continuing the drive. Following the installation of working areas and the appropriate foundations, pylon steelwork can be assembled, and the pylons can be erected. Lattice pylons comprise many separate steel members. These are delivered to site in bundles by HGV. The steelwork for the pylons would be bolted together on the ground and each pylon would be assembled in sections beginning with each of the four steelwork legs being fastened to the stubs. The pylon would be erected using a mobile crane to lift the assembled steelwork into position. Overhead Line Craft persons help guide the sections into place and bolt the pylon together. Pylon Stringing Positions The conductors would typically be installed in sections between tension pylons, where the overhead line changes direction. A bowtie shaped pulling site would be established, for tension/angle pylons, at one end of the section with the conductors running out from a tensioning site at the other end of the section, to keep the wires off the ground.

Easting, Northing	Plot numbers	Work	Works Description
621264, 302187, 620997, 301923, 621108, 301844	A-1/5, A-1/10	Work No. 2	Works shown on section A Sheet 1 of the Works Plans to in relation to the pulling zone. The proposed works comprise the establishment and use of a temporary pulling zone to facilitate the installation of overhead line conductors associated with the Proposed Development. The works would include the temporary occupation of land, installation of access arrangements and working areas, positioning of conductor drums and pulling and tensioning equipment, conductor stringing operations, installation of associated fittings, and all ancillary activities necessary to facilitate the safe installation of the overhead line. Upon completion of the works, temporary equipment would be removed and the land reinstated as appropriate.
620997, 301923	A-1/8	Work No. 2	Access route into works area.
621276, 302442, 621930, 302492, 621615, 302294, 621688, 302162 621851, 302419, 621582 , 302452	A-1/1, A-1/2, A1/4, A-1/6 A- 1/56, A-1/58	Work No. 1	Works as shown on Section A Sheet 1 of the Works Plans to construct and install two new gantries within Norwich Main Substation associated with the overhead transmission electric line (Route RG) (Work No. 2), including— The proposed works comprise the construction and installation of new gantries within the Main Substation associated with the Proposed Development, including foundations and steelwork; the installation of conductors, busbars, switchgear, fittings, downleads and down-droppers; the installation of fibre-optic conductors and associated equipment; modification of existing apparatus where required; temporary conductor pulling and tensioning works; and all associated construction, access, landscaping, mitigation and ancillary works necessary to facilitate connection of the Proposed Development to the existing transmission network.
622272, 303029, 622150, 303035 622202, 303022, 622193, 303020	A-1/48, A-1/49 A-1/50, A-1/51 A-1/52, A-1/53 A-1/54, A-1/57		Works as shown on Section A Sheet 1 of the Works Plans to show works at the junction of the Norwich Main substation access road and Mangreen Lane, Installation of bellmouth junctions are as detailed in 2.6.3 Design and Layout Plans – Traffic & Transport [APP-043] .

Easting, Northing	Plot numbers	Work	Works Description
622208, 303024, 622168, 302991 622123, 303017, 622194, 302996			

- 1.6.2 The Applicant understands that the works to the junction of Mangreen Lane and the shared Norwich Main substation access road might be undertaken by another party prior to the Applicant's works in the area. In that event, the Applicant's works will be limited to vegetation clearance to improve visibility splays. If further works are required, these will still not cause serious detriment to Hornsea Three's undertaking because the access road provides the main access to the Norwich Main substation and so access will be retained.
- 1.6.3 The construction of OHL is unlikely to have any impact on Hornsea Three's underground cable. The location of the underground cable is at the very edge of the limit of deviation for OHL and there is unlikely to be any oversailing. In any event, even if there was, there is no engineering reason why an underground cable cannot be oversailed by an OHL.
- 1.6.4 The works to be undertaken within the existing substation close to Hornsea Three's underground cable are common within an operational substation. Although the busbar arrangement within the substation oversails ducting in which Hornsea Three have their underground cable, this is a common interaction and already occurs in multiple locations on site.
- 1.6.5 In relation to works close to the cable installed by Hornsea Three, the Applicant will undertake a comprehensive risk assessment that evaluates the scope of work, proximity to the cable, ground conditions, and the equipment to be used. Based on this assessment, the contractor will establish a safe system of work, including defined exclusion zones, appropriate excavation methods, and emergency response procedures. These controls will be clearly communicated to all personnel through site briefings and method statements to ensure a consistent understanding of the risks and mitigation measures.
- 1.6.6 The Applicant will ensure that all personnel involved in the work are competent and adequately trained in appropriate safety procedures. Workers will be briefed on how to recognize potential hazards or visible damage to infrastructure. In the event of a suspected or confirmed cable strike, the delivery partners will immediately stop all work, evacuate the area, and notify the relevant emergency services if required and cable operator without delay.
- 1.6.7 No heavy equipment or stored materials will be placed directly over or in close proximity to the cable. Where necessary, physical barriers or protective systems will be installed to minimize the risk of accidental impact or loading.

- 1.6.8 Close coordination with Hornsea Three will be maintained throughout the duration of the project. Regular communication will be upheld to address any changes in conditions or unforeseen risks.
- 1.6.9 Finally, the Applicant understands that Hornsea Three has an interest in relation to a lease agreement over two plots which are included within the Order land for temporary possession purposes and to be used for temporary works in relation to a pulling zone for the Applicant's conductor stringing. However, the Applicant is unaware of any apparatus or actual use by Hornsea Three of that land and does not believe that there will be any interaction by virtue of the works. In any event, as this relates to temporary works, there are no permanent land interactions with Hornsea Three's land rights for the purposes of section 127.

1.7 Section 127 Application

- 1.7.1 Section 127 of the 2008 Act applies where a statutory undertaker makes a representation (which is not withdrawn). In these circumstances, the **3.1 Draft Development Consent Order [Revision G]** may only include a provision authorising the compulsory acquisition of statutory undertakers' land where the Secretary of State is satisfied that:
- The land may be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - The land can be replaced by other land belonging to, or available for acquisition by, the statutory undertaker without serious detriment to the carrying on of the undertaking.
- 1.7.2 Sections 127(2) and (3) are set out below:
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).*
- (3) The matters are that the nature and situation of the land are such that—*
- (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or*
- (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*
- 1.7.3 Sections 127(5) and (6) contain equivalent wording in respect of acquiring rights over statutory undertaker's land and are set out below:
- (5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).*
- (6) The matters are that the nature and situation of the land are such that—*
- (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or*

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

- 1.7.4 There is no statutory definition of “serious detriment”. The test for “serious detriment” is wide and holistic, it being more than a mere disadvantage. In the Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport regarding The Lake Lothing (Lowestoft) Third Crossing Order 2020, the Examining Authority recognised at paragraph 8.5.138. *“that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach”*.

1.8 Statutory Undertakers’ Land

- 1.8.1 No land owned by Hornsea Three needs to be compulsorily acquired; only rights over land which Hornsea Three occupies or has a right or option in. Therefore, ss.127(2) and (3) of the 2008 Act are not engaged.
- 1.8.2 The Applicant understands that the rights and interests in the plots set out in Table 1.2 below have been acquired by Hornsea Three for the purposes of its undertaking. Interests and rights in the plots set out in Table 1.2 are required by the Applicant in order to deliver the project. Therefore, ss.127(5) and (6) are engaged.
- 1.8.3 Below is a broad description of the purpose for which Hornsea Three’s Land is required and the rights that would need to be acquired (in the context of the interface works described in Paragraph 1.6 above); see further the **4.3 Book of Reference (Revision F)** and noting as is explained in the Book of Reference that where multiple types of interest, rights or powers are sought over a given plot (such as temporary use for construction, mitigation, maintenance, as well as permanent rights of access), the plot is coloured according to the most extensive (higher class of right) required:
- **Class 1 (Compulsory Acquisition of Land)** – acquisition of all interests and rights in the land.
 - **Class 2 (Compulsory Acquisition of Rights – Overhead Line)** – acquisition of rights by the creation of new rights, the imposition of restrictions, or the acquisition of existing rights or benefits of existing restrictions
 - **Class 5 (Compulsory Acquisition of Rights – Access)** – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions

Table 1.2 Land affected and interest or right to be acquired

Hornsea Three’s Land (plot number)	Interest or right to be acquired
N/A	Class 1 (Compulsory Acquisition of Land) - in relation to land owned by Hornsea Three
A-1/1, A-1/2, A-1/4, A-1/56, A-1/58	Class 1 (Compulsory Acquisition of Land) - in relation to land in which Hornsea Three has apparatus or easements
A-1/3	Class 2 (Compulsory Acquisition of Rights – Overhead Lines)

Hornsea Three's Land (plot number)	Interest or right to be acquired
A-1/8	Class 5 (Compulsory Acquisition of Rights – Access)
1.8.4	The procedure under s.127(5) only applies to the compulsory acquisition of a right, and therefore is not engaged by plots which are only subject to Articles 27 to 30 (inclusive) of the 3.1 Draft Development Consent Order [Revision G] which relate solely to temporary use.
1.8.5	The Applicant considers that there would be no serious detriment to Hornsea Three's undertaking if it were to acquire these rights and interests and that the criteria as set out in s.127 are satisfied for the reasons explained below.
1.8.6	The Applicant understands that Hornsea Three has completed the installation of the onshore grid connection cables for its offshore wind project, including the section which will connect into the Norwich substation. The works to be undertaken by the Applicant close to the installed cable are limited to those described at paragraph 1.6 above.
1.8.7	The limits of deviation for Work No. 2 (overhead line) overlap slightly with the location of Hornsea Three's underground cable. Therefore, there is the potential for the Applicant's final location for overhead line to oversail Hornsea Three's underground cable, although based on current design intentions this is unlikely. In any event, these works and the rights required for them would not impact Hornsea Three's undertaking as the two can co-exist.
1.8.8	Similarly, the nature of the works to be undertaken within the existing substation close to Hornsea Three's underground cable also allows the two projects to co-exist. Although the busbar arrangement within the substation might oversail ducting in which Hornsea Three have their underground cable, interactions between works of that kind and underground cabling are common within an operational substation.
1.8.9	Any works to the Norwich Main substation access road at the junction with Mangreen Lane will be undertaken in a manner which allows for continuing access to the substation and, therefore, to Hornsea Three's underground cable.
1.8.10	Hornsea Three will have the benefit of the protective provisions contained within Part 1 of Schedule 16 to the DCO. Paragraph 4 provides that the Applicant will not acquire any of Hornsea Three's apparatus without their agreement. The Applicant can confirm that it is not seeking to acquire any of Hornsea Three's apparatus, nor is it intending to remove any apparatus and so although Hornsea Three also has the benefit of paragraph 5, it is not thought that it would need to be engaged.
1.8.11	In the unlikely event that removal of the cable became necessary, paragraph 5 of the protective provisions would ensure that diverted apparatus and accompanying land rights are in place prior to its removal. This would avoid any serious detriment to Hornsea Three's undertaking.
1.8.12	In relation to any apparatus of Hornsea Three remaining in situ (i.e. its existing cable), Hornsea Three will have the protection of paragraph 6 of the protective provisions which provides for a process to be followed where works are to be undertaken near to Hornsea Three's apparatus. The Applicant will submit a plan to Hornsea Three and execute the works in accordance with that plan and any

reasonable requirements provided by Hornsea Three. These requirements can include in relation to securing access to apparatus which provides further protection for Hornsea Three in relation to its access road.

- 1.8.13 In addition to the protective provisions, the Applicant is in discussions with Hornsea Three to provide further protection through a side agreement. Notwithstanding that the side agreement to address future working between the parties is not yet concluded, the Applicant's view is that any interference caused (if at all) will not be a serious detriment to Hornsea Three carrying on its undertaking in light of the protections afforded to Hornsea Three in the Protective Provisions contained within Part 1 of Schedule 16 to the Order.

1.9 Conclusion

- 1.9.1 Given the need for the project (see in particular the need case as signposted in Paragraph 1.5 (Need Case)), the Applicant considers that there is a compelling case in the public interest for the inclusion of the compulsory acquisition powers within the **3.1 Draft Development Consent Order [Revision G]**.
- 1.9.2 For the reasons set out in this application, it is the Applicant's position that, pursuant to s.127 of the 2008 Act, the Secretary of State can be satisfied that the prescribed tests of s.127 have been met and that interests and rights in Hornsea Three's Land may be included for compulsory acquisition in the **3.1 Draft Development Consent Order [Revision G]**.

1.10 Section 138 Application

- 1.10.1 As noted above, the **3.1 Draft Development Consent Order [Revision G]** gives the Applicant the power to extinguish the rights of, or remove the apparatus belonging to, statutory undertakers over or within the order limits. However, this is only permitted where the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the draft DCO relates.
- 1.10.2 Section 138 of the 2008 Act is set out below:
- (1) This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—*
- a) there subsists over the land a relevant right, or*
- b) there is on, under or over the land relevant apparatus.*
- (2) "Relevant right" means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—*
- a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or*
- b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.*
- (3) "Relevant apparatus" means—*
- a) apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or*

b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.

(4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

- 1.10.3 The Applicant understands that there is a relevant right and/or relevant apparatus vested in Hornsea Three in, on or under the plots listed in Table 1.2 above.
- 1.10.4 For the purposes of this application, it is the Applicant's case that:
- a) Works associated with the project are necessary over the plots listed in Table 1.2 above (as described in Schedule 1 to the **3.1 Draft Development Consent Order [Revision G]** and shown on the Work Plans to carry out the project);
 - b) The project could affect relevant rights and/or relevant apparatus vested in or belonging to Hornsea Three as a result of carrying out the authorised development, in the unlikely circumstances where a diversion of the underground cable became necessary. However, in this eventuality, the Applicant would not remove any apparatus or rights until alternative apparatus and accompanying land rights had been re-provided as explained in paragraphs 1.8.10 and 1.8.11;
 - c) In the absence of powers for the Applicant to ultimately extinguish such rights and/or remove such apparatus, in the unanticipated event that diversions are required, the authorised development could not be guaranteed to be carried; and
 - d) Protective provisions have been included at Schedule 16 of the draft, which ensure that all appropriate steps must be taken by the Applicant to protect retained relevant apparatus and/or to ensure that alternative apparatus is provided on an equivalent basis – on which see paragraphs 1.8.10 to 1.8.13 above.
- 1.10.5 Therefore, taking account of the nature of the proposed works and the inclusion of protective provisions in the draft DCO, the Applicant contends that specifically in relation to section 138, the Secretary of State can be satisfied that the rights of Hornsea Three whilst potentially subject to extinguishment or removal, the powers to do so are necessary for the project to proceed but, nevertheless, the statutory undertaker's rights and apparatus are adequately protected by the protective provisions.

Abbreviations

Abbreviation	Full Reference
AIS	Air Insulated Switchgear
AONB	Area of Outstanding Natural Beauty
BNG	Biodiversity Net Gain
CPRSS	Corridor and Preliminary Routeing and Siting Study Report
CSE	Cable Sealing End
DCO	Development Consent Order
DNO	Distribution Network Operators
EACN	East Anglia Connection Node
EIA	Environmental Impact Assessment
ES	Environmental Statement
ESO	Electricity System Operator
GIS	Gas Insulated Switchgear
GW	Gigawatts
kV	Kilovolt
NSIP	Nationally Significant Infrastructure Project
NETS	National Electricity Transmission System
NETS SQSS	National Electricity Transmission System Security and Quality of Supply Standard
NGET	National Grid Electricity Transmission
Ofgem	Office of Gas and Electricity Markets
PEIR	Preliminary Environmental Information Report
SOBR	Strategic Options Backcheck and Review
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest

Glossary

Term	Description
Alignment	The proposed overhead line and underground cable route.
Ancient woodland	Land that has been continually wooded since at least 1600 in England. Regarded as 'irreplaceable habitat' in national planning policy and guidance. Ancient woodland greater than 2 ha is recorded on the Natural England Ancient Woodland Inventory.
Biodiversity	The variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.
Biodiversity Net Gain	An approach for developments to ensure habitats for wildlife are left in a measurably better state than they were before the development.
Cable	An insulated conductor designed for underground installation.
Cable Sealing End compound	Electrical infrastructure used as the transition point between overhead lines and underground cables. A compound on the ground acts as the principal transition point.
Conservation Area	An area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance as defined in s69(1)(a) in the Planning (Listed Building and Conservation Areas) Act 1990.
Development Consent Order	A statutory instrument which grants consents and other rights to build a Nationally Significant Infrastructure Project, as defined by the Planning Act 2008.
Distribution Network Operator	Companies that own and operate the power lines and infrastructure that connect the National Grid network to individual properties.

Appendix A.

Class of Rights

Appendix A

Class of Rights

- A.1.1 **Class 1 (Compulsory Acquisition of Land)** – acquisition of all interests and rights in the land.
- A.1.2 **Class 2 (Compulsory Acquisition of Rights – Overhead Line)** – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:
- with or without vehicles, plant and equipment to enter the land to construct the overhead electric line and thereafter to use, retain, inspect, maintain, repair, alter, renew and replace, decommission and leave in situ or remove;
 - with or without vehicles, plant and equipment to enter the land to fell, trim or lop trees and bushes which may obstruct or interfere with the rights sought by the undertaker;
 - with or without vehicles, plant and equipment to enter the land to access any adjoining land;
 - with or without vehicles, plant and equipment to enter the land to exercise the rights over and across any access route;
 - to require the landowner not to do or suffer anything to be done upon the land which may interfere with or cause damage to the overhead electric line, including without limitation impose clearance restrictions, not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
 - to fly over, use on, and recover from the land robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, including for the purposes of inspection and maintenance;
 - to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports) soakaways and attenuation ponds on the land, and thereafter to infill and/or retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
 - to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds;
 - including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
 - to carry out any other works, including environmental mitigation, necessary or expedient to the land and listed in Schedule 1 of the 3.1 Draft Development Consent Order (Revision F); and

- to carry out any activities ancillary or incidental thereto.

A.1.3

Class 5 (Compulsory Acquisition of Rights – Access) – acquisition of rights by the creation of new rights, the imposition of restrictions or restrictive covenants, or the acquisition of existing rights or benefits of existing restrictions:

- of way with or without vehicles, plant and equipment at all times over the land;
- to remove any buildings, structures, pylons, apparatus, equipment, and vegetation from that land;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with sight lines associated with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with sight lines, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land;
- to construct, use or maintain works (including the provision of means of access);
- to construct and install land drains cut off drainage and/or run-off drainage systems (including all necessary supports), soakaways and attenuation ponds on the land, and thereafter infill and/or to retain and make use of, including from time to time to inspect, cleanse, maintain, repair, remove, decommission and leave in situ, reinstate, renew, alter and replace, the same;
- to require the landowner not to do or suffer anything to be done upon the land which may interfere with the drainage systems, soakaways or attenuation ponds, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land insofar as it may interfere with the drainage systems, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land; and
- to carry out activities ancillary thereto.

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