

**ELECTRICITY ACT 1989  
AND THE  
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947**

**The Berwick Bank Wind Farm (Onshore Works) Compulsory Purchase Order 2023**

**STATEMENT OF REASONS**

**Berwick Bank Wind Farm Limited**

## 1. Introduction

- 1.1 This Statement of Reasons accompanies The Berwick Bank Wind Farm (Onshore Works) Compulsory Purchase Order 2023 (the “Order”). The Order has been made by Berwick Bank Wind Farm Limited (the “Acquiring Authority”). The Acquiring Authority holds a generation licence under the Electricity Act 1989 (the “1989 Act”). The Order has been made under Schedule 3 to the 1989 Act, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (the “1947 Act”).
- 1.2 The Acquiring Authority has made the Order to acquire the necessary rights and land to construct, operate and remove electricity transmission lines, plant and ancillary infrastructure between mean low water springs at Skateraw and the national electricity transmission system (or “grid”) connection point at Branxton. These works form the onshore link between the grid and the proposed Berwick Bank Wind Farm (referred to generally throughout this Statement of Reasons as the “Project”).
- 1.3 Berwick Bank Wind Farm, if consented, will be one of the largest offshore wind farms in the world, with a potential installed capacity of up to 4.1GW. By comparison, Torness nuclear power station - which neighbours the proposed landfall location for the transmission works - has a generation capacity of around 1.3GW. Berwick Bank Wind Farm would generate enough clean, renewable energy to power over 5 million homes. It would also save around 8 million tonnes CO<sub>2</sub> being released into the atmosphere, compared to other energy sources. Berwick Bank Wind Farm’s grid connection points have been determined by the national grid system operator as being Branxton in East Lothian and Blyth in Northumberland. The Acquiring Authority is responsible for constructing the infrastructure to connect the wind farm to where it has been given the grid connection points. The onshore (and offshore) transmission infrastructure will in due course be handed over to and owned and operated by an independent Offshore Transmission Operator (“OFTO”), in line with regulatory requirements.
- 1.4 The Acquiring Authority is attempting to negotiate voluntary acquisition of all the rights required for the onshore transmission works (“OnTW”) described below. In order to meet Project objectives within a reasonable timescale, promotion of the Order is required now in case such negotiations are unsuccessful. Voluntary negotiations will continue wherever possible.
- 1.5 The Order is necessary and in the public interest to allow connection of the wind farm to

the grid. There is a compelling case that the Order should be confirmed. Without the land and rights described in the Order, the Acquiring Authority could not be confident of having sufficient legal certainty to permit the construction and operation of the OnTW. Without the OnTW, the wind farm will not be connected to the grid. That lack of certainty would therefore put the whole Project at risk.

- 1.6 This Statement of Reasons sets out the Acquiring Authority's reasons for making the Order, and summarises its case for confirmation of the Order by the Scottish Ministers.
- 1.7 Throughout this Statement the "scheme" will be used to refer to the OnTW, i.e. those works for which the Order is sought. However, the wider scheme i.e. the Project including the offshore wind farm and transmission works remains relevant and must be taken into account in assessment of the need for the OnTW.
- 1.8 An application for planning permission in principle for the scheme has been submitted to East Lothian Council, together with an Environmental Impact Assessment ("EIA") Report. This Statement of Reasons does not intend to duplicate the detail contained within the application and EIA Report (which are publicly available on the Acquiring Authority's website) but instead describes why land and rights are required to deliver the scheme.
- 1.9 In the event that objections to the Order are made by persons with an interest and not withdrawn, the Scottish Ministers would order a public inquiry. In that event the Acquiring Authority may bring forward additional evidence and documentation including (but not limited to) the EIA Report.

## **2. Description of the order land**

- 2.1 This section of the Statement of Reasons describes the land required by the Acquiring Authority and identifies the existing nature and use of the land.
- 2.2 The scheme is more particularly described at Section 3 below but the application for planning permission in principle ("PPP") comprises onshore<sup>1</sup> electricity transmission infrastructure works (including substation or converter station<sup>2</sup>, cable bridge and buried cable) and associated

---

<sup>1</sup> And, as described in section 3 below, intertidal.

<sup>2</sup> As described below in section 3, the substation land will be used for either a substation or a converter station depending on whether HVAC or HVDC technology, respectively, is used to transmit electricity from the offshore wind farm to landfall. However, except when describing the technical requirements below, for ease of reference this is referred to elsewhere as a substation.

development, for Berwick Bank Wind Farm. The object of the scheme is to connect the Berwick Bank Wind Farm to the main grid connection point at Branxton.<sup>3</sup> The land required for the scheme, and specified in detail in the Order, referred to throughout this document as the “Order Land” is mostly within the red line boundary of the planning application.<sup>4</sup> These OnTW form part of the wider Project, being the construction and operation of the Berwick Bank Wind Farm. Figure 1 below shows the OnTW.

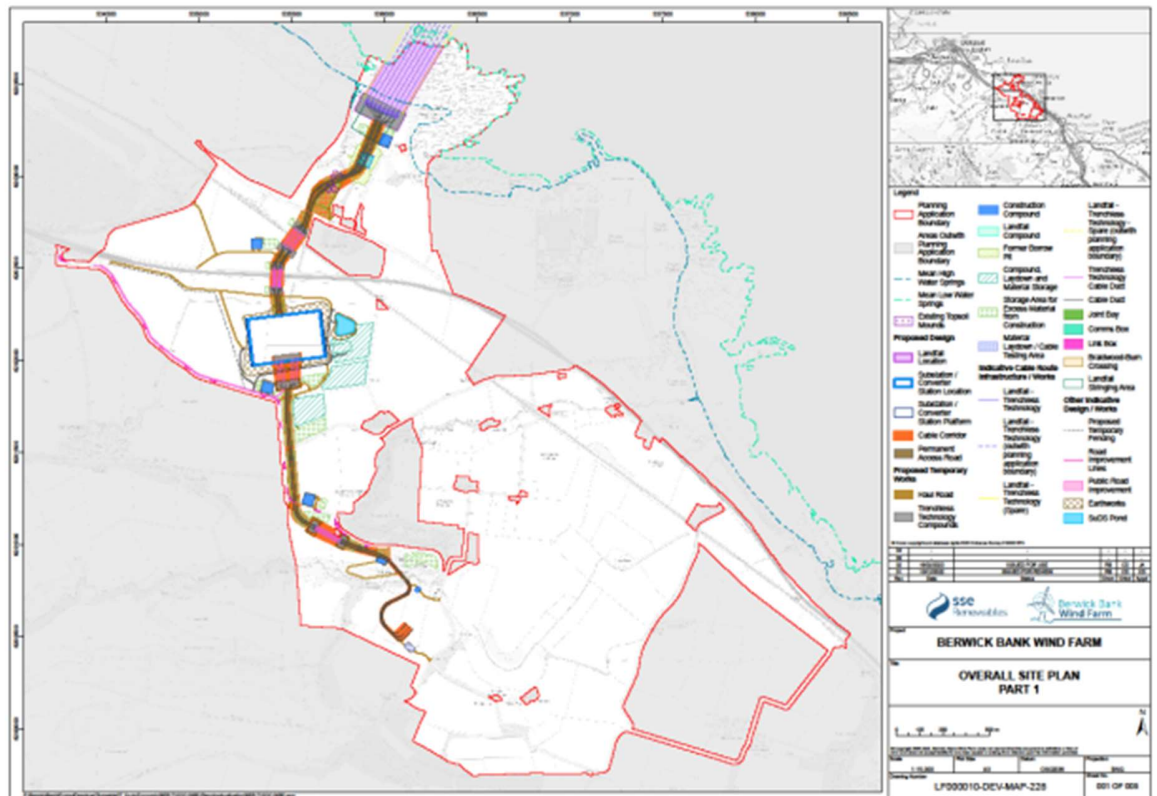


Figure 1 – Onshore Cable Route

2.3 Details of known interests and rights to be acquired are listed in the Schedule to the Order, which has been prepared based upon information gathered including through searching and reviewing the Land Register of Scotland and Register of Sasines, and site visits and discussions with landowners. There are four private landowners from whom land will be acquired<sup>5</sup>, ten private landowners (or groups of owners) who will have rights permanently

<sup>3</sup> Unless stated otherwise, distances in this Statement of Reasons are (a) measured point to point without taking into account terrain or other topographical features - the actual length of the electric lines and others may therefore vary; and (b) are approximate. The Order Maps are the definitive reference for the extent of areas over which rights are sought.

<sup>4</sup> As discussed in paragraph 10.11 *et seq* small areas of Order Land are outwith the red line boundary of the application for planning permission in principle.

<sup>5</sup> Although there are five plots, two plots share the same landowner.

created over their land and seven private landowners who will have temporary rights created over their land.

- 2.4 There are also a number of statutory undertakers (including Network Rail) with landholdings/apparatus within the Order Land. The route passes through land owned by an Electricity Act licence holder, EDF Nuclear Generation Limited (“EDF”). A number of public roads are crossed; in general, compulsory acquisition of rights is not sought for road crossings because these are to be the subject of separate applications under specific legislation.<sup>6</sup> Certain Crown Land is also subject to the Order. These special categories are discussed in Chapter 8 below.
- 2.5 The land use on, and immediately adjacent to, the foreshore is recreational including part of a Core Path. From landfall the route passes through agricultural land for approximately 1 km. Between landfall and public road U223 the route crosses a watercourse, which acts as a subsidiary to the “Dry Burn”. The route then crosses the U223 public road before the crossing of the East Coast Main Line (“ECML”) east of the railway sidings and west of the settlement of Skateraw. Following the ECML crossing, the cable route runs in a south westerly direction through a short section of agricultural land before passing under the A1. The route runs south for approximately 210 m to the substation location northwest of the settlement of Crowhill. The route then continues to run south through agricultural land for approximately 770 m where it crosses the Crowhill Road and Castledene Road before heading southeast for approximately 760 m where it crosses the Braidwood Burn. The route then continues for approximately 550 m before reaching the point of the main grid connection at the Scottish Power Transmission (“SPT”) Branxton Substation.
- 2.6 Cables will be installed under the ECML, major roads and under a Scheduled Ancient Monument using trenchless techniques (e.g. Horizontal Directional Drilling (“HDD”)). No significant interruption to normal use of the line or roads is anticipated though temporary traffic management of the road may be required to permit access at appropriate times. A crossing will be constructed to allow cables to be routed across the Braidwood Burn. This would also be utilised by construction traffic during the construction, and access for operations and maintenance be retained thereafter.
- 2.7 The majority of the Order Land will necessitate only temporary works and will be returned to its existing use once the cables have been installed, subject to permanent residual rights

---

<sup>6</sup> E.g. Schedule 4 paragraph 2 of the 1989 Act.

(e.g. access for maintenance). The main exceptions to this are the substation land at Skateraw (Plots 11j and 16a) and the crossing at the Braidwood Burn (Plots 22i, 22j, 25a, 25b and 26a) which will be required permanently.

2.8 The substation area will include permanent features including the substation itself, access roads, associated permanent drainage (including SuDs Pond) and earthworks. In addition to the substation features, permanent water crossings will also be required at three distinct points across the route. These include:

- Dry Burn Subsidiary: Construction of an extension (or replacement) of the existing culvert, including any associated fencing, headwalls and earthworks;
- Unnamed Watercourse (referred to as “Innerwick Burn”): Construction of a permanent crossing, including any associated fencing, headwalls and earthworks, located within the substation area described above;
- Braidwood Burn: Construction of a permanent crossing, including associated fencing, earthworks and headwalls.

These plots are currently used for agriculture. Areas of land along the route of the cables will have restrictions on use for the safeguarding of the cables and occupiers, but this should not prevent normal agricultural use. Certain small areas of land, particularly at cable joints, will require the installation of link boxes (estimated up to 3.2 m x 2.7 m) and comms boxes (estimated up to 2.5 m x 2.7 m). These will require ongoing access for testing and maintenance of the underground cable system. The link boxes may require fencing to be built around the cable joint for access and protection which would result in the area becoming unusable. It is estimated that such fences would be installed 1 m around the perimeter of the link box. As discussed below, the Acquiring Authority intends to work with landowners to minimise any impact on these areas.

### **3. Description of the scheme, why the order is being made**

3.1 The Acquiring Authority is a wholly owned subsidiary of SSE Renewables Limited.<sup>7</sup>

3.2 Berwick Bank Wind Farm is an offshore wind project, and the Order is to facilitate its OnTW which form part of the wider Project. The Project has a target completion date of 2031.

---

<sup>7</sup> Further details of the ownership structure are found at Chapter 11 below.

- 3.3 The Berwick Bank Wind Farm array area covers 1010.2 km<sup>2</sup>. The Acquiring Authority is seeking consent to build, operate, maintain and decommission the offshore and onshore infrastructure. The Acquiring Authority has a 50 year Agreement for Lease (“AfL”) with the Crown Estate Scotland (“CES”) and is seeking consent to operate the Project for 35 years. It may be desirable to ‘repower’ the Project to allow the wind farm to continue operating beyond 35 years, subject to appropriate review and consideration that will be made in the future.
- 3.4 As noted in Chapter 1, Berwick Bank Wind Farm has a potential installed capacity of up to 4.1GW. The National Grid Electricity System Operator (“NGESO”) has agreed to connection of 2.3GW at Branxton in 2026/27.
- 3.5 The Acquiring Authority holds a generation licence issued on 26 August 2022 under the 1989 Act.<sup>8</sup> That licence confers on the Acquiring Authority the powers and rights contained in Schedule 3 to the 1989 Act, i.e. the power of compulsory acquisition of land and rights in land.
- 3.6 Applications for section 36 consent and associated marine licences have been submitted to the Marine Scotland Licensing Operations Team (“MS-LOT”) for Berwick Bank Wind Farm and associated offshore transmission infrastructure. Those cover works seaward of mean high water springs (“MHWS”).
- 3.7 As referred to in paragraph 2.2 above, an application for PPP for the scheme, which covers works down to mean low water springs (“MLWS”), has been submitted to East Lothian Council as local planning authority under the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”). The Acquiring Authority seeks permission for development comprising onshore electricity transmission infrastructure (including substation or converter station, cable bridge and buried cable) and associated development, for Berwick Bank Wind Farm. The application is EIA development, and an EIA Report has been submitted with the application.
- 3.8 It is noted that the “intertidal area” or “intertidal zone”, i.e. the area between MHWS and MLWS is subject to both PPP and marine licence applications.
- 3.9 The scheme is comprised of a landfall point at Skateraw, an export cable corridor approximately 1,975 m in length from MLWS through the landfall point to a new substation near Skateraw, and a further approximately 2,100 m in length from the Skateraw substation to the SPT

---

<sup>8</sup> Document 1.

Branxton substation; together with ancillary development and rights to access and protect the cables/infrastructure. The scheme's ancillary development includes: transition joint bays between the offshore and onshore cables, joint bays, link boxes, construction compounds and lay down areas, existing road alignments and improvements, watercourse crossings (including bridges, culverts and scour protection), temporary drainage, temporary earthworks, temporary access tracks and junctions to the public road network, permanent access tracks and junctions to the public road network; and, at the substation: construction of a car park, internal roads, plant, buildings to house electrical equipment, control buildings, lighting, fencing, SuDS Pond, drainage, earthworks and landscaping.

3.10 Further detail of elements of the scheme are as follows:-

#### **Shore end export cables**

3.11 The shore end cables will use HDD or other Trenchless Technologies to pass between MLWS (with trenchless exit points seaward of MLWS) and the Transition Joint Bays located at the landfall point, which is landward of MHWS, close to Chapel Point and Skateraw Harbour.

#### **Transition Joint Bays**

3.12 A simple underground covered chamber (estimated up to 13 m by 3 m per joint bay) which encloses and protects the joints between the offshore and onshore export cables. The bays will be located a short distance inland from where the offshore export cables make landfall. It is estimated that a maximum of 8 transition joint bays will be required at landfall. Each transition joint bay will require a cast block for subsea anchor (estimated up to 2 m x 2 m). A link box (estimated up to 3.2 m x 2.7 m) and comms box (estimated up to 2.5 m x 2.7 m) will be required at each transition joint bay. These two boxes may be combined into one box that will have smaller footprint than the combined dimensions of the two boxes and fibre pit.

#### **Onshore export cables**

3.13 Up to 8 HV circuits (containing up to 3 cables each) will be required. These will form the onshore export cable corridor, which will vary in width along the length of its route. Its precise location and dimensions are subject to final design (including choice of High Voltage Direct Current ("HVDC")/ High Voltage Alternating Current ("HVAC") technology).

3.14 It should be noted that, as a result of that and the further requirements mentioned below, the width of areas where rights are to be acquired as shown in the Order Maps will typically



- be greater than the cable corridor widths mentioned in this section. Between the landfall and onshore substation the final cable corridor is anticipated to have an average width of 90 m and up to a maximum of 142 m, except at certain trenchless technology locations where it may be greater. This assumes a HVAC solution; a HVDC solution would likely have fewer circuits and the corridor width may therefore be narrower. Between the substation and SPT Branxton substation (connection point), the final cable corridor is anticipated to have an average width of 55 m and up to a maximum of 140 m, except at the connection point and certain trenchless technology locations where it may be greater.
- 3.15 Additional flexibility is needed at the connection point because the final corridor will depend on the final design of the SPT Branxton substation, which is not yet known. Additional flexibility in the width of the route is required at trenchless locations to ensure sufficient space to accommodate the drilling rig and associated plant and equipment for undertaking the trenchless construction at the entry point and a similar compound at the exit point is available. Appropriate set back distances will be required from the obstacle which is being passed by the trenchless technology, and local topography will be an important consideration in establishing the setback which is required in each case. Full trenchless technology site specific geotechnical and ground survey data has not been obtained, and flexibility is needed to account for unfavourable ground conditions and obstacles to be avoided, as well as to prevent interference with existing services etc. Accordingly, the precise location for each trenchless solution needs to be determined on the basis of further site specific survey information and detailed design. Following completion of further site information and detailed design, this is likely to require less width than is currently proposed. The sizing of entry and exit compounds are generally 40 x 90 m, however these dimensions can vary depending on site conditions.
- 3.16 Cable circuits will be located in trenches within the cable corridor, and each will typically be 1 m wide with a spacing of 2 m between the centre of each trench; there will generally be a space of approx. 11 m between the centre of the two innermost trenches to allow for access.
- 3.17 The typical trench depth would be 2.5 m for all scenarios with the minimum circuit depth 1.2 m (to the top of the cable duct). For each cable trench the installation works would also require a lay down and spoil area, haul roads and access, safety zones (including fenced off areas), temporary drainage systems and a topsoil storage area with a typical working construction corridor width of between 50 - 70 m.
- 3.18 As referred to above, the width of the corridor sought in the Order Land is greater than the

anticipated working corridor before final design due to the need to allow some flexibility in locating the construction corridor. This flexibility is required to allow unfavourable ground conditions and obstacles to be avoided, reduce interference with watercourses, and ensure that sufficient land is available to implement habitat and species protection measures. The route of the corridor will be refined upon completion of surveys, site investigation and detailed design. Once finalised, the land required can be reduced accordingly so that the minimum area of land is affected. Notably, the Cable Rights area will reduce following energisation (see paragraph 5.5, below).

- 3.19 Each continuous onshore cable will be made of smaller sections (approximately 300 m to 700 m long) which are joined together.

#### **Joint Bays**

- 3.20 A simple, underground chamber (estimated up to 13 m length x 3.5 m width) which encloses and protects the joints between separate sections of each onshore cable circuit. Joint bays will be located approximately every 300 m to 700 m along the onshore cable route, which may mean up to 8 locations. It is estimated that in addition to the 8 transition joint bays at landfall described above, 42 joint bays will be required along the cable route. These numbers are subject to change following detailed design. To minimise disruption, the Acquiring Authority is committed to taking reasonable endeavours to locate joint bays on corners or next to field boundaries where possible. A link box (estimated up to 3.2 m x 2.7 m) and comms box (estimated up to 2.5 m x 2.7 m) will be required at each joint bay. These two boxes may be combined into one box that will have smaller footprint than the combined dimensions of the two boxes.

#### **Substation/Converter Station**

- 3.21 The Acquiring Authority has a Connection Agreement with the NGENSO to connect the OnTW into the national electricity transmission system via the proposed Scottish Power Transmission plc ("SPT") 400 kV Branxton Substation. Construction of the proposed 400 kV Branxton Substation by SPT will be required to provide a connection point to receive power from the wind turbines and export it into the existing onshore electricity grid. However, the wind turbines cannot connect directly to the SPT substation. To be allowed to connect to the grid in the manner required by NGENSO under the Grid Code, onshore electrical equipment is required. The Acquiring Authority therefore requires its own onshore substation/converter station for this electrical equipment. The proposed location of the Acquiring Authority's substation/ converter station is approximately 680 m north-east of the settlement of Innerwick at grid reference, BNG 373065, 674532. It will take the

form of a HVAC/HVDC substation/converter station which will be located on a platform with a footprint of 106,600 m<sup>2</sup> (maximum 410 m length by 260 m width, excluding earthworks) with internal buildings of a maximum height of 21 m, with lightning rods that may be up to 25 m. Infrastructure is anticipated to comprise:-

- i. Operational Plant (e.g. switchgear, transformers, reactors, convertors, filters, busbars);
- ii. area for car parking and internal road;
- iii. control buildings;
- iv. lighting;
- v. perimeter security fencing;
- vi. site drainage (Including SuDs Pond and waste treatment);
- vii. associated earthworks;
- viii. oil containment;
- ix. ancillary equipment for metering, protection and substation services; and
- x. landscaping.

#### **Access points to main road**

3.22 Access will be required from the road network for the delivery of plant, materials and personnel. Access points either comprise of existing routes (which may require to be upgraded) or new temporary access tracks from the public road which will require to be formed. At some locations permanent access tracks to the substation from the public road will require to be formed. On completion of the cable installation works, the new temporary access routes will be removed and the land reinstated back to the original condition.

3.23 In order to complete the cable installation works below at the existing A1 trunk road and ECML, access will be required from the A1 to the west of the proposed cable route. This will be required to permit the delivery of all equipment and materials which will require high sided vehicles. This access would be managed using planned temporary traffic management operations to ensure continued safety of vehicles travelling on the A1 trunk road. An additional access will be created to the northwest of the works compound to facilitate access from low sided vehicles (cars, van etc.) for general site traffic requirements. The Acquiring Authority's contractors will apply for a Temporary Traffic Regulation Order at the appropriate time to facilitate this.

#### **Works Compounds and material storage/laydown areas**

3.24 Temporary works compounds with an anticipated maximum total area of 97,800 m<sup>2</sup> are required to facilitate the construction of the works. These include a main compound at

landfall, five or more compounds at a suitable spacing along the cable route and at appropriate locations within the substation area. Additional works compounds will also require to be formed at certain areas of the cable route to facilitate the construction of trenchless crossings. There are anticipated to be nine of these additional compounds, with a maximum total area of 53,200 m<sup>2</sup>. In these instances, the compounds would be fenced off, and specialist plant would be mobilised to undertake the drilling operations.

- 3.25 In addition to compounds, during the construction period significant areas will also be required for materials storage and laydown areas. These are generally located close to the cable route.

**Offshore Transmission Licence Holder (OFTO)**

- 3.26 Once the Project is commissioned and fully operational, Ofgem will appoint one or more OFTO(s) to own and operate the electricity apparatus within the scheme in accordance with The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (“the Tender Regulations”).
- 3.27 Two transmission technologies are being considered by the Acquiring Authority: HVDC and HVAC.
- 3.28 Section 4 of the 1989 Act prohibits a person from carrying out electricity transmission activities without a licence. Section 6C of the 1989 Act and the Tender Regulations prescribe the procedure for the granting of offshore transmission licences.
- 3.29 A person to whom an offshore transmission licence is granted must be certified as being independent before that licence is granted, pursuant to section 10A of the 1989 Act. Following construction and commissioning, neither the Acquiring Authority nor any other generation licence holder can be the transmission licence holder in respect of the transmission assets which include the onshore export cables and onshore substation, due to these independence requirements.
- 3.30 The Acquiring Authority has confirmed to NGENSO and SPT that they intend to use the “generator build” option for delivery of the transmission infrastructure. That means that a generation licence holder retains responsibility for the consenting and construction of the transmission infrastructure. Transfer to the OFTO will occur once the transmission infrastructure has been fully commissioned.
- 3.31 The OFTO will ultimately take ownership of and responsibility for the transmission assets. The OFTO will be selected by Ofgem through a competitive tendering exercise and not by

the generation licence holder. The identity of the OFTO therefore cannot be established until that process has been undertaken. Once the OFTO has been selected, the generation licence holder will enter into asset transfer agreements with the OFTO to transfer the transmission infrastructure, including the onshore works to which the Order relates, and all legal rights and interests associated therewith, which would include the land and rights sought under this Order.

#### **4. Purpose of the order and needs case**

- 4.1 The purpose of the Order is to grant to the Acquiring Authority the necessary land and rights in land to connect the proposed Berwick Bank Wind Farm to the grid. This will involve up to 8 high voltage (HV) circuits (totalling 24 cables) rated at 220 or 275 kV running between landfall and the substation at Skateraw. Between the Skateraw substation and the proposed grid connection at Branxton up to 6 HV circuits (totalling 18 cables) rated at 400 kV will be required.

##### **Cable Route Selection – Current Status and Overarching Considerations**

- 4.2 The route of the onshore cable corridor has been subject to significant consideration from engineering, planning and environmental perspectives. A summary of the overarching considerations that led to the current cable route, and the consequent need for this Order, are set out below.
- 4.3 As noted at above, the route is the subject of a planning application. While the Acquiring Authority has a high level of confidence in the overall design of the onshore transmission infrastructure in terms of land requirements, at this stage in the design process, sufficient land is being sought in this Order to allow the design of the onshore infrastructure to be refined. As with any project of this scale, the evolving assessment and design may result in planning permission or PPP being sought in limited additional areas, but no significant alteration of the cable route is anticipated. For example, additional areas may be sought where a more optimised or less disruptive solution becomes apparent during the detailed design stage as a result of additional information becoming available or previous unforeseen circumstance becoming apparent.

##### **Technical Constraints: Grid connection location/landfall points**

- 4.4 Determining suitable grid connection points is ultimately the responsibility of NGEN on receipt of the developer's grid connection application. NGEN assesses potential grid

connection points against certain criteria, including cost efficiency, technical (including environmental) and operational opportunities/constraints and consenting risk. Following these assessments, NGESO selected the new proposed 400 kV substation at Branxton as the most suitable location for connecting the Project to the grid. Agreements were initially signed on 5th January 2011. The latest versions of the agreements were signed on 6th February 2020, and these reflect the current capacity of the site.

#### **Technical Constraints: Landfall location**

4.5 Initially a desktop assessment identified 7 possible landfall locations on the East Lothian coast with potential to connect to the grid connection at Branxton. This initial feasibility assessment considered, at a preliminary stage, issues including:

- Physical environment and likely engineering solutions available at the sites;
- Space available at the site for construction and infrastructure, including Transition Joint Bays and pulling cable ashore;
- Access to the site;
- Effect of the site on onshore cable route and distance;
- Avoiding or minimising impacts on existing infrastructure and development; and
- Avoiding or minimising impacts on environmental receptors.

4.6 Following the initial feasibility assessment, potential locations at Skateraw and Thorntonloch were taken forward for further consideration. These comprised 3 of the 7 sites. 2 further studies were taken forward to develop the design definition: a detailed landfall feasibility and preliminary concept design (the “concept studies”). 2 sites at Thorntonloch were relatively compact and it was considered they should be combined for these concept studies. The concept studies have been completed for both the landfall sites at Skateraw (known as Landfall 3) and Thorntonloch Beach (known as Landfall 5/6).

#### **Skateraw Landfall (Landfall 3)**

4.7 The site considered for the landfall at Skateraw encompasses the low-lying land directly south of Barn Ness Coast SSSI between Chapel Point and where the Barn Ness Coastal SSSI comes inland to incorporate the paleocliff feature.

4.8 The considered landfall site can be separated into two areas, the low-lying land in front of the paleocliff and the higher land south of the paleocliff. The lower lying part of the site in front of the paleocliffs comprises of two fields separated by the Dry Burn. The eastern field in front of the paleocliff is an agricultural field used for livestock grazing and has an elevation of approximately 5 – 13 m Above Ordnance Datum (“AOD”). It is roughly trapezoidal in shape

with a length of approximately 320 m and a width of approximately 260 m at the western end of the site, narrowing to approximately 220 m at the eastern end of the site. The western field is an agricultural field used for arable crops and has an elevation of approximately 5 - 15 m AOD. It is roughly trapezoidal in shape with a length of approximately 225 m at the southern end of the site, narrowing to approximately 170 m at the northern end of the site and a width of 155 m. Both of these fields are reasonably flat and have a gentle slope towards the sea which is generally less than 5 degrees and represents a Holocene raised beach. There is evidence of terracing observed in the eastern field where localised slopes can be up to 15 degrees. These fields are backed by a 10 - 15 m high paleocliff which have slopes of up to 30 degrees.

- 4.9 The Barns Ness SSSI is designated for geological importance. NatureScot have been consulted and have confirmed that an open trench option through the SSSI, including the crucial areas would not be acceptable and that any work could not be undertaken within the crucial areas. Separation around the crucial areas of the SSSI has therefore been used in all landfall designs. The Barns Ness SSSI comes inshore to the west of the western field which limits the available space on the western side of the Dry Burn. It has been established that this western field would only have sufficient space to accommodate 6 No. HDD circuits. Therefore, based on the 8 No. required circuits, the land within the eastern field would also need to be utilised, requiring the likely need for a construction access to be provided across the Dry Burn. At the eastern landfall site, it has been established that there is sufficient working space to place the proposed 8 No. circuits and there is also additional space available if the assumed cable spacing is required to be increased.
- 4.10 The concept studies have considered and assessed the viability of bringing ashore the export cables using HDD and direct pipe methods. With the significant level difference (approximately 15 m) between the cliff tops and the foreshore, the concept studies have concluded that entry pits would be required on the lower ground.
- 4.11 Based on completed ground investigation and existing records, the bedrock for the landfall installation is expected to consist of interbedded medium to thickly bedded strong to very strong Limestone beds, thinly laminated to very thinly bedded very weak to medium strong sandstones, siltstones and mudstones. The completed concept studies have determined that HDD would be the most appropriate method at this landfall site with the installation of the proposed routes being undertaken in reasonably competent rock with only limited veneer cover of superficial deposit. Direct Pipe methods have been considered and it has been concluded that these will give limited benefit and are less cost effective.

- 4.12 The proposed landfall is in relatively close proximity to the Torness Power Station intake and outfalls. Further design development will require offshore infrastructure surveys to confirm possible separation distance related to these existing features to prevent potential issues with sediment release.
- 4.13 Construction access to the landfall areas to the west of the Dry Burn is considered to be challenging due to the topography created by the Dry Burn and the presence of Historic Scheduled Monuments located within the fields to the south of the considered landfall position. To access this landfall, it was therefore considered necessary that an access was formed to the eastern lower landing site and a permanent access bridge be constructed in front of the paleoclipf over the Dry Burn. The access track to the eastern low landfall requires a level of upgrading and widening to accommodate with anticipated plant. An existing culvert which conveys a minor burn is also required to be upgraded and extended to accommodate the landfall access provision and to ultimately support the final cable route. The northern field on top of the paleoclipf has been identified as an appropriate location for the placement of the main work offices and carpark for the landfall operations, leaving sufficient space on the lower field for the drilling and pulling operations.

#### **Thorntonloch Landfall (Landfall 5/6)**

- 4.14 The Thorntonloch landfall is located approximately 1.3 km south of the Torness Nuclear Power Station in close proximity to Thorntonloch Beach. The landfall area considered was composed of two discrete areas, to the north and south.
- 4.15 The northern landfall section comprises a compact site near the centre of Thorntonloch Beach between Thornley House to the north and a grassy cliff to the south. The site is an agricultural field which is understood to be used for arable crops and livestock grazing. The Landfall 5 site is at an elevation of approximately 12 - 18 m AOD and is roughly trapezoidal in shape with a length of approximately 120 m and a width of approximately 150 m at the western end of the site, narrowing to approximately 90 m at the eastern end of the site. A small watercourse (burn) runs along the southern boundary, separating the landfall areas. The southern landfall section is located on top of a grassy cliff and is an agricultural field used for arable crops and livestock grazing. The elevation of the field ranges between 16 - 30 m AOD, with most of the site predominantly 20 - 30 m AOD. This section of the site is roughly rectangular in shape with a length of approximately 80 m and width of approximately 600 m. There is a steep coastal cliff that forms the eastern boundary of the site which has slopes ranging between 20 degrees and 30 degrees (average angle approximately 25 degrees). The A1 trunk road is located in close proximity to the west of the landfall areas considered.



- 4.16 The geology at the Thorntonloch landfall is dominated by significant thicknesses of Glaciofluvial Deposits believed to be in the region of 8 - 10 m thick. These are predominantly coarse-grained sediments (Sand and Gravel) deposited by meltwater streams which locally contain lenses of finer material including silt, clay or organic material. These overlie Glacial Till deposits (Stiff gravelly clay with lenses of sand and gravel) which are anticipated to be in the region of 1 - 6 m before encountering rock of the Ballaggan Formation. This sequence comprises cyclic grey mudstone, siltstone, sandstone, and coal beds.
- 4.17 The landfall concept studies have considered and assessed the viability of bringing ashore the export cables using HDD, Direct Pipe and Open Trench methods. The studies concluded that the HDD option is considered extremely challenging from an engineering perspective for bringing ashore the required number of export cables at this landfall. From a spatial perspective only, the following was concluded: Landfall 5 could accommodate 3 No. HDD routes to the west of the A1 and 2 No. HDD routes to the east of the A1. Additional routes could be accommodated but would require significant earthworks to reduce levels and support the embankment associated with the adjacent A1 carriageway. Landfall 6 could accommodate 7 No. HDD routes to the west of the A1, the east of the A1 is not considered suitable for HDD installation due to insufficient space/topography.
- 4.18 Based on the findings of the undertaken ground investigation and historical information it is considered that the glaciofluvial deposits and non-cohesive glacial till are not drillable and would need to be removed from the HDD profile either by excavation (removal) or by pre casing the bore, both of these options have been considered. It has been determined that pre casing the bore through the Glaciofluvial deposits may be possible up to a length of 50 m. However, calculations on the anticipated bore profiles (based on currently available GI data) at this site indicate a requirement for pre casing lengths of 86 m and 115 m for west of the A1 in order to reach competent ground, and for pre casing lengths of between 66 m and 71 m for the potential 4 No. routes to the east of the A1. Through consultation with technical specialists, it was confirmed that there are no cases of this length being completed that they are aware of and they suggested that they consider the likelihood of success of such an operation to be low. A reduction in ground level can be undertaken to facilitate casing installation up to 50 m, this could be undertaken using standard excavation techniques or cofferdam structures. Calculations undertaken as part of the landfall assessment have indicated that in order to facilitate the reduced levels, excavations of between approximately 5 m and 16 m would be required, some of which would be required immediately adjacent and supporting the A1 trunk road.

- 4.19 Due to the lack of available space, it was also concluded that there is no redundancy in terms of land should one of the HDDs fail, thus rendering this part of the site unusable. It was therefore concluded that an HDD technique was not considered to be a viable solution, alternative methods such as direct pipe and open trenching have also been considered.
- 4.20 On consideration of the direct pipe method it was concluded that whilst the technology is relatively lacking in terms of international case histories, the engineering studies performed to date suggest it could potentially be a technically feasible option. However, given the lengths of the Direct Pipe (exacerbated by the need to commence these operations west of the A1) are in the region of 1.2 km, and a nominal diameter of the pipe is 1.2 m (any greater would mean additional thrusting machines and a subsequent lack of space) Health and Safety Executive (“HSE”) guidance indicates this should be considered “not acceptable” as human entry is required down the pipe in the event of breakdown. The direct pipe option was therefore discounted.
- 4.21 A review of an open trench methodology was also considered as part of the concept studies. Based on available ground investigation information and site observations, the nature of the expected excavated material was assessed. The bedrock is known to be both lithologically and structurally very variable. Instances of sandstones and calcareous sandstones have been identified and these would present a significant challenge owing to their hard nature. The equipment required to break rock of this nature is very specialised with significant noise related issues over protracted periods of time. As such, ripping progress is considered a significant risk. This was supported by field observations which indicated that ripping is likely to be “hard” and “requiring blasting” depending on which member of the Ballaggan Formation is encountered. It was therefore concluded that due to the high variability and significant engineering works for removal, this would affect the direct viability of the implementation of this methodology for the Project.

#### **Preferred Landfall**

- 4.22 As outlined above, the concept studies of options for the Thorntonloch landfall discounted HDD, direct pipe and open trench options, with these options not being considered to be viable from an engineering perspective. This resulted in the Landfall 3 (Skateraw) becoming the preferred landfall solution.

#### **Technical Constraints: Substation site selection**

- 4.23 Once NGESO had offered the grid connection point at Branxton and it had been accepted, the

Acquiring Authority undertook a site selection exercise to consider the substation technical requirements and the identified environmental constraints to determine the preferred site. The site selection process also included consultation with a range of stakeholders, including East Lothian Council, Scottish Environmental Protection Agency (“SEPA”), Scottish Natural Heritage (now NatureScot), Historic Environment Scotland (“HES”) as well the Community Council and SPT (being the operator of the future substation at Branxton). These consultations began in July 2020.

4.24 The principal reasons to be considered when selecting the substation site were:

- landscape and visual context;
- presence of man-made structures in the local environment;
- key engineering and design constraints;
- availability and size of land parcels;
- proximity to the grid connection in Branxton, to limit the extent of onshore cable route required;
- proximity to residential receptors; and
- local ecology impact.

4.25 The key engineering and design constraints included:

- sufficient area for HVAC or HVDC electrical solution (anticipated components described at paragraph 3.14 above);
- access availability to substation site;
- proximity to the selected landfall;
- viability of onshore cable route from landfall and to SPT Branxton 400 kV substation;
- existing natural topography and the potential partial screening it offered;
- the absence of sensitive ecological habitats; and
- the absence of cultural heritage or archaeological features in the immediate vicinity.

4.26 Based on the substation technical requirements, multiple potential substation sites were identified in the vicinity of the planned SPT Branxton 400 kV substation. The final site selection was informed by an assessment of technical and environmental constraints. The preferred site (known as Substation 8), located 210 m south of the A1, approximately 510 m south-west of the settlement of Skateraw, and approximately 720 m north-east of the settlement of Innerwick, was selected on the basis of meeting the criteria at para 4.24 and 4.25 above. It was considered that, while there were some constraints on or around the preferred site, the potential impacts that may arise from locating the proposed substation there were less than on other sites. The indicative location of the substation is shown on

Figure 2, below, labelled “Substation Site 8 (SS8)”. This is now referred to as the Skateraw substation.

- 4.27 An outline alignment of the cable route has been completed and the main access to the site has been identified. Further refinement of the cable route and alignment will be made upon receipt of site survey information and subsequent detailed design. Locations for the temporary construction compounds have been identified.

#### **Technical Constraints: Selection of Construction Compound locations**

- 4.28 Potential construction compound locations were identified from broad search areas between the landfall location and the substation site at Branxton. The construction compounds are required to service the onshore cable route installation activities as well as the substation site. Assessment of the size and number of compounds along the route was carried out based on consideration of the cable installation and substation construction works including cable length and specifications, calculation of the potential size and number of cable drums and vehicle and equipment requirements. This assessment assumed that all drilling rigs, cable pulling winches and associated equipment would be delivered to, stored and used at working locations only within separate HDD compound areas.
- 4.29 The initial assessment of areas along the route which were potentially suitable to accommodate the construction compounds was then carried out based on factors including access, health and safety, environmental factors, ground conditions and land use.
- 4.30 From the initial broad search areas, 8 potential sites for locating the necessary construction compounds were identified. These comprised:-
- a landfall construction compound immediately to the south of the proposed landing point to the west of the Dry Burn;
  - 6 compounds distributed along the cable route located at strategic positions to support the cable installation operations; and
  - a substation construction compound, including laydown and material storage area to the east and southeast of the proposed substation.

#### **Cable Route Selection**

- 4.31 The route from Landfall 5/6 was initially preferred, as it is shorter with less infrastructure crossings required. Therefore, work was initially focussed on trying to find a feasible solution

for Landfall 5/6. However, as stated above, a feasible solution could not be found for this landfall area due to spatial constraints and ground conditions. The crossing of the ECML and A1 road on route 2 (see Figure 2, below) was also deemed to be very high risk from a technical perspective as there are also glacial deposits at this location and there is significant raised ground level to the south-west of the railway corridor.

4.32 Therefore, as Landfall 3 had become the preferred site, the focus of the work was moved to the cable route from this landfall. The route from Landfall 3 to substation 8 also involves an ECML crossing, but this crossing is considered to be much lower risk on this route, as it is sited on a constructed embankment and therefore facilitates established trenchless undertrack crossing technologies to be deployed. The A1 crossing on this route is also on an embankment at the point of crossing but is concrete surfaced which decreases the settlement limits. The road crossing trenchless solution would be designed to avoid impact on the carriageway, however, to satisfy the roads authority, any risk of damage caused could be managed through a formal agreement with Transport Scotland which would require to be in place prior to construction.

4.33 Three routes were identified from substation 8 to the Branxton grid connection:

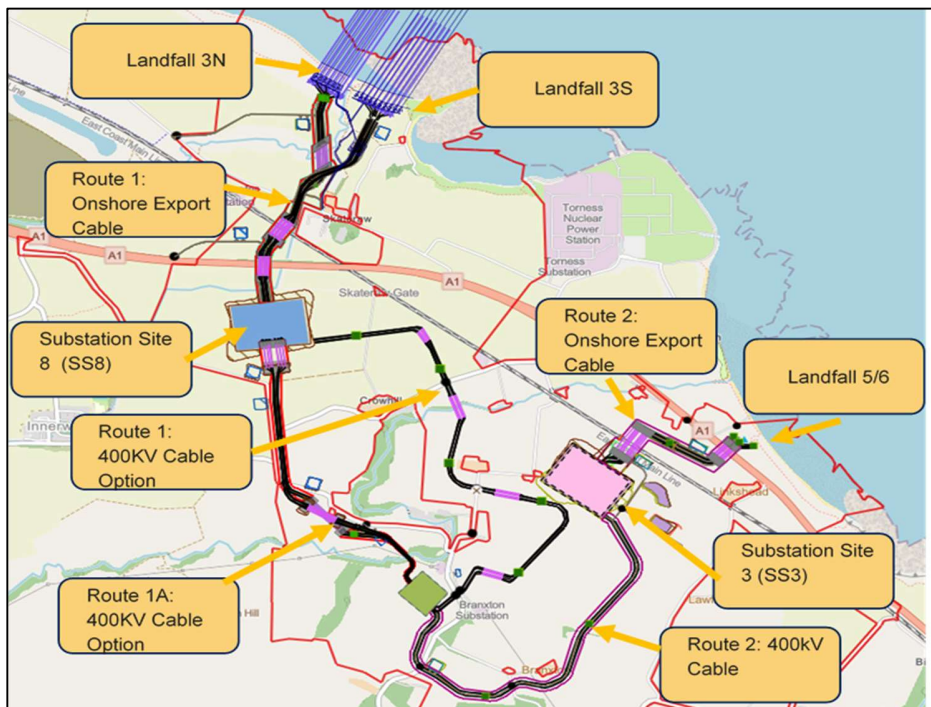


Figure 2 – Site/Route Selection

4.34 *Route 1.* The eastern route which involves crossing the two circuits of Torness 400 kV underground cables at two locations. These are directly buried i.e., un-ducted at these

locations, which resulted in “no mechanical impact” on these cables being specified by SPT. It is expected that this would only be possible to achieve if there is shallow rock present to drill through below the cable therefore reducing the risk of settlement of the cables above. The initial GI campaign indicated shallow rock at the western side of the northern crossing, but rock was not confirmed to the east. At the proposed southern crossing point, the nearest GI available is approximately 100 m south of the position, which has not established rock at shallow depth. Therefore, it is currently not possible with the available information to develop a design solution that would meet the SPT criteria for both the northern and southern crossings.

- 4.35 *Route 1A.* The western route involves crossing a burn within a ravine. The concept design of a crossing arrangement with a large arched culvert was undertaken. This study and a constructability assessment of the route highlighted that part of the proposed culvert solution and the cable route leading to the culvert are located below existing 400 kV overhead lines from Torness and strict controls will be required during construction to ensure that required clearances to these lines are observed. This route also requires a HDD under a scheduled monument south of Castledene property: discussions with HES have indicated that an acceptable solution can be found. The route runs parallel to the SPT Eastern Link cables in a relatively narrow corridor at one point – coordination with SPT has been established and there is a reasonable level of confidence that a joint solution can be determined. However, a final corridor needs to be confirmed by SPT following their detailed design. A formal coordination agreement with SPT is to be put in place.
- 4.36 On the above basis route 1A was selected from substation 8 to the grid connection.

#### **Overhead Lines**

- 4.37 The potential to connect between the landfall point at Skateraw and the grid connection at Branxton via overhead lines was deemed unfeasible on environmental grounds (in particular landscape and visual impact) during the selection process. A buried cable is therefore the most appropriate option as it will result in the least practical inconvenience in the long term, allowing the land to be returned to agricultural use. However, installation of underground cabling necessitates considerable engineering works and thus the compulsory purchase of sufficient land and rights to accommodate and undertake them.

#### **Avoidance of sensitive habitats/designated areas**

- 4.38 In accordance with its duties under, among others, Schedule 9 to the 1989 Act, the Acquiring Authority has in formulating the scheme had regard to the desirability of

preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. Mitigation has included design of the cable route/corridor to avoid, so far as reasonably possible, the impact on those features including on trees, hedgerows, watercourses and other sensitive habitats or designated areas. Designated cultural heritage sites were also avoided as far as possible. Where avoidance was not possible, for example in relation to the Scheduled Monument at Castledene, steps to mitigate the impact will be taken – for example, a trenchless solution is being discussed with HES for the Scheduled Monument.

#### **Site Specific Constraints**

- 4.39 To minimise land take as far as possible, the Acquiring Authority sought to identify the most direct route between the connection point at the proposed Branxton 400 kV substation and the most technically feasible/appropriate landfall point between Chapel Point and Skateraw Harbour. However, site specific constraints had to be considered and necessary adjustments made.

#### **Railway/roads/watercourses**

- 4.40 The cable route has been chosen to minimise the number of crossings of railways, major roads other infrastructure and watercourses and runs predominantly thorough agricultural fields. While a certain number of crossings are unavoidable, the use of HDD and similar trenchless technologies enable cables to be installed beneath the infrastructure and watercourses without the requirement to excavate trenches. The Acquiring Authority is in consultation with key stakeholders, including Network Rail and the relevant roads authorities, and these crossings are not anticipated to be an impediment to the scheme. The required width at the crossing point location is to provide the flexibility required for the identification and agreement of the cable route crossing alignment. Future site information (e.g. ground investigation) and the assessment and design process will inform and confirm the required HDD alignment and entry/exit points and will reduce the final corridor width required.

#### **Construction Period**

- 4.41 It is anticipated that the total construction period for the scheme will be approximately 40 months. However, works at any one location are likely to be for significantly less than the total period. This is reflected in the PPP application, which has divided the route into zones. The most significant duration of works is anticipated to be at the Skateraw substation, which is to be acquired.

### **Contribution to National and UK Energy policy**

- 4.42 Overall, the need for the Project of which the scheme forms an essential part is driven by the need to decarbonise the electricity system and contribute to energy security. The Berwick Bank Wind Farm will substantially contribute to these policies. This is discussed in Chapter 7 below, and it is submitted that they offer a compelling case in favour of making and confirmation of the Order.

### **Conclusion to Chapter 4**

- 4.43 This Chapter has set out the needs case for the scheme. First, it has set out that the selection of the route is constrained by two facts – the location of the proposed Berwick Bank Wind Farm which is the subject of leases from CES, and the location of the SPT connection point. Second, it has set out the legal and technical factors that have been taken into account in the choice of a route between those two fixed points. Those factors have been extensively studied by the Acquiring Authority, leading to the selection of the Order Land as the optimal route. These first two points demonstrate the need for the Order to be made for the land in question. Third, it has identified the need for the scheme itself, by reference to planning and energy policy (which is discussed in more detail at Chapter 7).
- 4.44 The Acquiring Authority are therefore satisfied that it is necessary in the public interest to make the Order, and they will ask the Scottish Ministers to confirm the Order accordingly.

## **5. Description of the plots to be acquired and new rights to be created**

- 5.1 The Schedule to the Order divides plots into two parts: Part II describes plots where the land is to be acquired; and Part III describes plots where only rights in that land are to be created. The vast majority of the land affected by the Order is land in which rights in land only, rather than acquisition of the land itself, are necessary.
- 5.2 The rights sought in land have been grouped together in classes. Some classes include rights under other classes.<sup>9</sup> The classes, and a summary of their content, are as follows:

---

<sup>9</sup> For example, Protective Rights include Pressure Protection Rights. Access Rights include Protective Rights (which therefore also include Pressure Protection Rights).



- 5.2.1 **Pressure Protection Rights:** These are rights necessary to avoid damage to infrastructure caused by blasting, piling or similar activities.
- 5.2.2 **Protective Rights:** These are rights necessary to avoid damage to infrastructure caused by works or structures on the land.
- 5.2.3 **Access Rights:** These are rights necessary to take access to and from the land, and to create, maintain and remove roads. These rights also include important rights for construction purposes including drainage, set down areas and temporary structures.
- 5.2.4 **Drainage Rights:** These are the same as Access Rights, except they are for areas that have been identified as requiring the installation of temporary drainage only.
- 5.2.5 **Construction Compound and Access Rights:** These are similar to Access Rights but are for compounds and accesses that are required temporarily for initial construction only and over which residual rights for operations and maintenance are not required.
- 5.2.6 **Cable Rights:** These are the rights to lay, maintain and remove the electricity lines and their associated infrastructure.
- 5.3 Drainage Rights and Construction Compound and Access Rights are to be exercisable only for a period of 5 years from the date entry is taken to the land following Notice to Treat or vesting under a General Vesting Declaration. Otherwise, the rights will be permanently exercisable over the land in order to provide for operation and maintenance of the cables. However, it is expected that exercise of most of the rights after the initial construction period will be infrequent.
- 5.4 In line with its principle of taking only the rights necessary for successful delivery of the scheme, the Acquiring Authority has applied to plot 6a, the quarry land, only the Pressure Protection Rights. It is considered that these rights will not unduly interfere with quarrying operations, however, the rights are important to avoid damage to the works.
- 5.5 In relation to Cable Rights, as described above the cable corridor must be wide enough to permit deviations during construction. However, paragraph 12 of Part I of the Schedule to the Order provides that from 3 months after energisation of the final underground electric line laid under the Cable Rights, the area over which rights to lay and maintain etc. the lines is

exercisable is limited to a distance of 8 m from the lines. This ensures that, once the corridor has been completed, only the minimum necessary width for ongoing operations is retained.<sup>10</sup>

**Plots to be acquired**

5.6 Plots 11j and 16a are to be acquired. These plots are necessary to form the proposed substation, associated infrastructure and landscaping works.

5.7 Plots 21i, 22j, 25a, 25b and 26a are also to be acquired. These plots are necessary to form a crossing over the Braidwood Burn. Earthworks in this area will be extensive, and access to the bridge/culvert is to be restricted on safety grounds and so acquisition of these plots is necessary.

**Rights to be created**

5.8 Other than the plots described above the remaining plots will have rights created over them to enable the works to be carried out. A description of the plots subject to the Order (i.e. the “CPO”), class of rights to be acquired, and a summary of the reasons why those rights are necessary follows in the table below. These reasons are provided to assist parties with an interest in the land, and the Scottish Ministers, but it should be noted that precise locations of infrastructure are likely to change at the final design stage, so the discussion should be treated as indicative only.

<b>CPO Plot</b>	<b>Acquisition Type</b>	<b>Reasons area is required</b>
1a	Cable Rights	This is the intertidal and landfall area where cables will come onshore (underground).
2a	Cable Rights	This is part of the cable route and working area. The cables will be underground.
3a	Cable Rights	This area is part of the cable route, including a set down area and settlement pond for construction.
3b	Drainage Rights	This area will be required for a settlement pond and drainage for the construction period only.

<sup>10</sup> Access Rights and other lesser rights will continue to apply to the wider corridor in order to ensure full access to, and protection for, the cables but as described above the exercise of such rights is likely to be infrequent during the operational period.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
4a	Cable Rights	This includes underground cables and part of the transition joint bays linking the offshore cable to onshore cable. Link boxes and manholes will be present.
5a	Cable Rights	Remainder of the transition joint bays. Also includes cable route and working areas, temporary construction compounds, material and soil storage and laydown areas, temporary haul roads and drainage infrastructure.
5b	Access Rights	Includes material storage, and topsoil storage areas plus haul roads.
5c	Access Rights	Required for access to the cable route and as a laydown area for materials.
6a	Pressure Protection Rights	This area is used for quarrying, and restrictions are necessary to protect the cables and other infrastructure.
7a	Drainage Rights	Temporary surface water drainage for duration of construction works, expected to comprise of a ditch or piped drainage into the Dry Burn.
8a	Cable Rights	Cable route across part of the U223 road and working area.
8b	Access Rights	Access to 8a/9a during construction and operations.
8c	Access Rights	Access to/from 8a/9a during construction and operations.
8d	Access Rights	Access to/from 8a/9a during construction and operations.
9a	Cable Rights	Cable route across part of the U223 road and working area.
9b	Access Rights	Access to/from 8a/9a during construction and operations.
9c	Access Rights	Access to/from 8a/9a during construction and operations.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
9d	Access Rights	Access during construction and operations.
9e	Access Rights	Access during construction and operations.
10a	Access Rights	Access during construction and operations, to be taken through the existing tunnel under the ECML.
11a	Cable Rights	Cable route and trenchless technology pad in connection with trenchless crossing of the ECML, material laydown areas and temporary drainage, settlement pond.
11b	Cable Rights	Cable route and trenchless technology pad in connection with trenchless crossing of the ECML and A1, material laydown areas and temporary drainage, settlement pond.
11c	Access Rights	Access during construction and operations.
11d	Access Rights	Access during construction and operations, temporary haul road.
11e	Access Rights	Access during construction and operations, temporary haul road.
11f	Access Rights	Access during construction and operations.
11g	Cable Rights	Cable route, trenchless technology pad in connection with trenchless crossing of the A1, haul roads and temporary drainage.
11h	Construction Compound and Access Rights	Access during construction, temporary haul road.
11i	Construction Compound and Access Rights	Access during construction, temporary haul road.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
11k	Access Rights	Access during construction and operations, temporary haul road.
11l	Access Rights	Access during construction and operations, temporary haul road.
12a	Cable Rights	Cable route passing underneath the ECML, provided to Network Rail standards.
13a	Construction Compound and Access Rights	Access during construction, haul road.
13b	Access Rights	Access during construction and operations, junction improvements, oversail.
13c	Access Rights	Access during construction and operations, junction improvements, oversail.
13d	Access Rights	Access during construction and operations, junction improvements, oversail.
13e	Access Rights	Access during construction and operations, junction improvements, oversail.
13f	Access Rights	Access during construction and operations, junction improvements, oversail.
14a	Cable Rights	Cables route and part trenchless technology pad, working areas, part of settlement pond.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
14b	Construction Compound and Access Rights	Temporary haul road, with cable protection (for NnG cables).
14c	Access Rights	Oversail, earthworks and road alignment
15a	Access Rights	Oversail, earthworks and road alignment, passing place.
15b	Access Rights	Oversail, earthworks and road alignment, passing place.
15c	Access Rights	Oversail, earthworks and road alignment, passing place.
16b	Access Rights	Oversail, earthworks and road alignment.
17a	Access Rights	Access during construction and operations, junction improvements, oversail.
17b	Access Rights	Access during construction and operations, road alignment, passing place, oversail.
18a	Access Rights	Access during construction and operations, road alignment, oversail.
18b	Cable Rights	Cable route and working area.
18c	Construction Compound and Access Rights	Access during construction and operations, material laydown area.
19a	Access Rights	Oversail, passing place, earthworks.
19b	Access Rights	Oversail, passing place, earthworks.
19c	Access Rights	Oversail, passing place, earthworks.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
19d	Access Rights	Oversail, road alignment, earthworks.
19e	Access Rights	Oversail, passing place, earthworks.
20a	Cable Rights	Cable route, temporary construction compound and haul roads.
20b	Construction Compound and Access Rights	Settlement pond, drainage, material laydown area .
20c	Drainage Rights	Temporary drainage outfall with drainage ditch in connection with trenchless technology pad.
21a	Access Rights	Oversail, passing place, earthworks.
21b	Access Rights	Oversail, passing place, earthworks.
21c	Access Rights	Oversail, passing place, earthworks.
21d	Drainage Rights	Temporary drainage in connection with trenchless technology pad.
22a	Cable Rights	Cable route, including trenchless technology pads in connection with scheduled monument and drainage.
22b	Construction Compound and Access Rights	Drainage, material laydown area.
22c	Access Rights	Road alignment, passing place.
22d	Cable Rights	Cable route for deviation purposes.

<b><u>CPO Plot</u></b>	<b><u>Acquisition Type</u></b>	<b><u>Reasons area is required</u></b>
22e	Access Rights	Access to/from cable route and laydown area.
22f	Access Rights	Road alignment and improvement works.
22g	Access Rights	Access to/from cable route and temporary haul roads, temporary drainage.
22h	Construction Compound and Access Rights	Material laydown area and construction compound.
23a	Access Rights	Temporary road realignment and improvement works, and associated earthworks/landscaping to be reinstated post-construction.
23b	Drainage Rights	Temporary drainage during construction works, in connection with trenchless technology pad and settlement pond.
24a	Drainage Rights	Temporary drainage during construction works in connection with trenchless technology pad and settlement pond.
24b	Drainage Rights	Temporary drainage during construction in connection with trenchless technology pad and settlement pond.
25c	Drainage Rights	Temporary drainage/watercourse management and access for Braidwood Burn crossing works.
25d	Cable Rights	Cable route and working area. Includes crossing of Braidwood Burn and the SPT substation site. The exact cable route will



<u>CPO Plot</u>	<u>Acquisition Type</u>	<u>Reasons area is required</u>
		depend upon the specification of the substation to be constructed at this location by SPT.
26b	Access Rights	Temporary haul road to access cable route from public road.
27a	Cable Rights	Cable route, provides for deviation while SPT design awaited. Access to/from cable corridor during construction and operations, haul road.
28a	Drainage Rights	Temporary drainage connection into existing outfall. Will join to culvert constructed under road.

#### **Relationship of Acquisition or New Rights with Existing Rights in Land**

- 5.9 None of the existing third party rights over the Order Land are to be extinguished. All of the known existing rights in land have been considered individually, which has enabled this decision to be taken. In particular, existing burdens, servitudes, rights of electricity licence holders are to be retained and no prohibition on the creation of new rights is sought. It is intended that the works will also accommodate existing utility apparatus as far as reasonably possible. Where not possible diversion of apparatus may necessary and the necessary rights to do this have been sought in the Order, but this is not considered to be a material interference with existing rights.

## **6. Legal basis for making the order, alternative powers considered and human rights**

### **Legal Basis for Making the Order**

- 6.1 Powers of compulsory acquisition are available to the holders of generation licences under the 1989 Act, subject to confirmation by the Scottish Ministers.<sup>11</sup>

<sup>11</sup> Section 10 and Schedule 3 to the 1989 Act.

6.2 The Acquiring Authority have been issued with a generation licence which is subject to Standard Condition 14. Standard Condition 14.2 provides:-

*“The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:*

*(a) the construction or extension of a generating station;*

*(b) the operation of a generating station; and/or*

*(c) the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of electric lines, and electrical plant associated with them, and any structures for housing or coverings such lines or plant, connecting a generating station with:*

*(i) the national electricity transmission system; or*

*(ii) a distribution system,*

*including, for the avoidance of doubt, whether these activities in sub-paragraph (c) are to be carried out by the licensee or another licence holder.”*

6.3 The land and rights sought are necessary to connect the offshore generating system to the grid connection point at Branxton and accordingly relate to the activities set out in Condition 14.2.

6.4 Ofgem guidance<sup>12</sup> has confirmed that the powers contained in Standard Condition 14 allow the holder of a generation licence to compulsorily acquire land and rights needed for the construction of the onshore transmission assets required for an offshore wind farm. There is precedent nearby to the scheme for the use of such powers: Scottish Ministers confirmed the Neart Na Gaoithe Offshore Wind Farm (Onshore Works) Compulsory Purchase Order 2013 on 26 June 2015.

6.5 Section 10 and paragraph 1 of Schedule 3 to the 1989 Act give the Acquiring Authority power to compulsorily acquire not only land, but also rights in land required for any purpose connected with the carrying on of the activities which they are authorised by their generation licence to carry on. The authorised purpose will include any use ancillary or incidental thereto and the creation and use of compounds, accesses and other ancillary rights is sought in order to enable the installation, maintenance and renewal of the cables.

---

<sup>12</sup> Offshore Transmission Coordination Project Conclusions Report (March 2012).

This power also enables the Acquiring Authority to acquire land required for the construction and operation of the substation to connect to the national electricity transmission system.

- 6.6 In making this Order, the Acquiring Authority has taken full account of the aforementioned Ofgem guidance, Scottish Government Circular 6/2011, its duties under the 1989 Act and, in its view, all other relevant laws and guidance.

#### **Alternative Powers Considered**

- 6.7 The Acquiring Authority has been mindful of the requirement to use the most specific compulsory acquisition power available to it (paragraph 19, Circular 6/2011). Except where there is specific reason to do otherwise the Acquiring Authority has therefore, for example, excluded public roads on the basis that its powers under Schedule 4 to the 1989 Act and other roads legislation will be sufficient for its authorised purposes.

- 6.8 The Acquiring Authority's powers to obtain necessary wayleaves under Schedule 4 to the 1989 Act are, however, considered insufficient as an alternative to its Schedule 3 powers for the following reasons:

6.8.1 Necessary wayleaves are restricted in their scope to, in summary, the installation and keeping of an electric line on land and access to that land. Necessary wayleaves do not include, for example, rights to take access across a third party's land to reach an electric line.

6.8.2 Following installation, the cable will be transferred to (and operated and maintained by) an OFTO. The 1989 Act does not envisage a scenario whereby the licence holder would change, so there is no provision for a necessary wayleave to be assigned. Rights to operate and maintain the cable secured by the Acquiring Authority could not therefore be assigned to an OFTO which would need to secure its own rights by means of a voluntary wayleave, lease or servitude. The paragraph 6(1) power to obtain necessary wayleaves could not be utilised by an OFTO given that it is only available to a licence holder that considers it necessary to install and keep a cable installed as the cable would already have been installed by the Acquiring Authority. This level of uncertainty would be unacceptable to an OFTO.

6.8.3 Necessary wayleaves are not registered or recorded against the title to land rendering ongoing management of the rights and the cables more difficult. This also

means that the existence and route of necessary wayleaves are less likely to be communicated to subsequent owners and the chance of accidental damage to the cables is increased through ignorance of their presence.

- 6.9 The Acquiring Authority accordingly considers that the powers contained within Section 10 and Schedule 3 of the 1989 Act are the most appropriate.

#### **Human Rights and Equalities**

- 6.10 The Human Rights Act 1998 incorporated into domestic law the European Convention of Human Rights ("the Convention"). The Convention includes provision in the form of Articles, the aim of which is to protect the right of the individual.
- 6.11 Section 6 of the Human Rights Act prohibits public authorities from acting in a way which is incompatible with the Convention. In exercising its powers of compulsory acquisition, the Acquiring Authority is acting as a public authority for the purpose of the Human Rights Act. The Acquiring Authority is therefore conscious of the need to strike a balance between the rights of the individual and the interests of the public.
- 6.12 Various Convention rights may be engaged in the process of making and considering a compulsory purchase order, notably Article 1 of the First Protocol which protects the right of everyone to the peaceful enjoyment of possessions; no-one can be deprived of possessions except pursuant to due process of law. Further, in relation to Article 8 (right to respect for private and family life and home), rights may only be restricted if the infringement is for a legitimate purpose and is fair and proportionate in the public interest.
- 6.13 The Order has the potential to infringe the rights of the affected parties. Such infringement has to be weighed against the public benefit in allowing the Order. There would be significant public benefit brought about by the Project to which the scheme relates. As demonstrated by the volume of policy supporting the development of low carbon renewable energy, and energy security, there is a clear public interest in enabling the development of offshore wind energy through the scheme works.<sup>13</sup> The public benefit should be weighed against the limited land take, that the majority of the land will accommodate underground cables which will not prevent the current use of the land continuing, and that the Acquiring Authority is seeking only such rights as are necessary to allow the Project to succeed. The commitment to taking only land, or rights in land, that are required is being progressed through refinement of plots following further investigation

---

<sup>13</sup> See Chapter 7, below.

and design.

- 6.14 The rights of owners of interests in the Order Land under the Human Rights Act have been taken into account by the Acquiring Authority when considering whether to make the Order and in considering the extent of the interests to be comprised in the Order. The Acquiring Authority considers that there is a compelling case in the public interest for confirmation of the Order and that, if confirmed, the Order would strike an appropriate balance between public and private interest and, in enabling the construction of Berwick Bank Wind Farm, would make a significant contribution towards the achievement of the Government's economic and environmental targets. The Acquiring Authority has had due regard to the requirement to minimise interference wherever possible and continues to seek to reduce the land required through detailed design.
- 6.15 The Acquiring Authority has also given due regard to, and complied with, its duties under the Equality Act 2010 including the Public Sector Equality Duty.
- 6.16 The Acquiring Authority remains committed to pursuing active engagement with landowners, particularly in relation to compulsory acquisition, including where possible to reach voluntary agreement. Those directly affected by the Order will be entitled to object to the Order, and follow the public inquiry process, should they wish to do so, and separately to statutory compensation.
- 6.17 Whilst the Acquiring Authority will continue to work with landowners to secure the necessary rights by agreement, only the exercise of compulsory purchase powers can deliver the land and the rights required to allow the implementation of the scheme to proceed with the degree of certainty and security required. Alternative powers would be inappropriate and jeopardise the delivery of the scheme. For these reasons and the reasons set out above, it is considered that compulsory purchase of the Order Land is necessary and justifiable in the public interest.

## **7. Planning position and policy background; views of any government departments**

### **Introduction**

- 7.1 This section of the Statement of Reasons outlines the legislative and policy context of the

scheme. In considering that context the scheme will be treated as an essential part of the wider Project, i.e. the Berwick Bank Wind Farm.

- 7.2 As outlined at paragraph 3.6 above, the Berwick Bank Wind Farm and associated offshore transmission infrastructure are the subject of a section 36 consent application and marine licensing applications to Scottish Ministers. However, the scheme comprised of the OnTW is the subject of an application for PPP to East Lothian Council as planning authority.
- 7.3 PPP has been sought because, as a complex infrastructure project, certain details will not be established until later. This includes in particular whether a HVDC or HVAC connection will be used and in turn whether a substation or converter station is required. Design parameters for both scenarios have been assessed and reported upon within the EIA Report accompanying the PPP application. Once contractors have been appointed they will implement the final design by submitting applications for matters specified in conditions or, if necessary, other applications (see for example the discussion in paragraphs 10.11 – 10.15 below).

### **Planning**

- 7.4 As permission for the scheme will be sought through PPP granted by the planning authority under the 1997 Act (followed by applications for approval of matters specified in conditions), the approach of the planning authority to determination is set out in section 25(1) of the 1997 Act. It provides that:

*“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise to be made in accordance with that plan.”*

#### *The Development Plan and local policy considerations*

- 7.5 In terms of Section 24 of the 1997 Act the development plan comprises: (a) National Planning Framework 4 (“NPF4”); and (b) East Lothian Council Local Development Plan (2018) (“LDP”) and associated Supplementary Guidance.
- 7.6 In the event of conflict between the provisions of the LDP and NPF4, the more recent is to prevail.<sup>14</sup> NPF4 was adopted on 13 February 2023 and is the more recent.
- 7.7 The LDP recognised at para.1.36 that “Locations on the coastline from Cockenzie to

---

<sup>14</sup> Planning (Scotland) Act 2019, s.13(2).

Torness may have potential to service or provide on-shore grid connections to off-shore renewable energy projects.” Para.1.61 listed as one of the objectives (and its three outcomes) of the LDP:

“Promote sustainable development [SOA: 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10]

- To ensure that new development, and the locations where and the way in which it is delivered, contributes to climate change and regeneration objectives, including reducing inequalities, the need to travel, green house gas emissions as well as energy consumption and waste, and to provide for appropriate renewable energy generation opportunities;
- To make efficient use of land, buildings and infrastructure, prioritising the development of previously developed land over greenfield land where appropriate, while recognising that the nature of East Lothian and the scale of strategic development requirements will likely require significant amounts of greenfield land, including prime quality agricultural land, to be used;
- To integrate land use and transport by selecting locations for new development that help to minimise the need to travel and that are well-served by a range of transport modes, particularly public transport and active travel opportunities, including the development of a multifunctional green network in the area, and to help reduce CO2 emissions; [underline added].

7.8 It is therefore considered that the scheme meets the LDP’s objective of promoting sustainable development.

7.9 At para.4.62 the LDP recorded that “The LDP helps facilitate the transition to a low carbon economy by supporting means of energy generation that help to reduce greenhouse gas emissions.” Accordingly, Policy SEH1: Sustainable Energy and Heat included the following policy statement: “The council supports the principle of ... energy generation from renewable or low carbon sources.” Specifically in relation to development of onshore works for offshore wind farms, para.4.88 of the LDP records that “The council endorses the support expressed in NPF3 for onshore links to offshore renewable energy installations, including at Cockenzie and the Forth coast extending to Torness, as part of National Development 4: High Voltage Energy Transmission Network.” While NPF3 has been superseded by NPF4, the support for offshore renewable energy is maintained and therefore this statement remains relevant.

7.10 Paragraphs 4.96 and 4.97 of the LDP noted as follows:

“4.96 There are significant plans for offshore wind to the east of the Firths of Forth and Tay. Proposals for grid connections for these projects are emerging, requiring

undersea cabling connecting with converter stations and substations. The existing high voltage transmission network infrastructure at Cockenzie and Torness, and that serving Crystal Rig Wind Farm in the Lammermuirs, present opportunities for new grid connections. However, sections of the coastline between Cockenzie and Torness have significant natural heritage assets. One new substation is consented near the former Cockenzie Power Station to serve the proposed Inch Cape offshore wind farm. NPF3 expects developers to work together to minimise impacts by combining infrastructure where possible. Opportunities for new grid connections in proximity to existing electricity grid infrastructure at Cockenzie and Torness should be prioritised before the use of any other location on the coast is considered. There are also operational harbours within the Area of Co-ordinated Actions (Policy EMP2) and these may have potential to service offshore windfarms.

4.97 Proposals with both onshore and offshore elements will need to coordinate between land based and marine planning systems. A marine license is likely to be required in addition to planning permission. Any environmental assessment processes should be aligned, ideally with combined screening, scoping and reporting covering all relevant consenting regimes. The coastline has a number of important natural and cultural heritage assets that must be taken into account.”

7.11 The LDP therefore adopted the following policy:

“PROP EGT3: Forth Coast Area of Co-ordinated Action

The Council supports the principle of electricity grid connections on the Forth coast from Cockenzie to Torness in order to facilitate off-shore energy generation, provided the following criteria are met:

- infrastructure is combined wherever possible;
- connection to existing infrastructure at Cockenzie and Torness prioritised; and
- proposals must not have an adverse effect on the integrity of the Firth of Forth SPA or any other European site either alone or in combination with other projects and plans.

Proposals must be accompanied by project-specific information to inform a Habitats Regulations Appraisal and, if necessary, an Appropriate Assessment under the Habitats Regulations.”

7.12 The scheme is therefore supported in policy and in principle by the LDP.

7.13 Additionally, it is noted that in August 2019 East Lothian Council's elected members unanimously agreed to declare a Climate Emergency. The resolution was to,



“Declare a Climate Emergency that requires urgent action to make all our Council Services net Zero Carbon as soon as reasonably practicable or in any case by 2045 and to lobby, support and work with all relevant agencies, partners and communities to fulfil this commitment. East Lothian Council will also commit to work with our communities and partners towards making East Lothian a carbon neutral county as well as enabling the county to deliver its part of wider national and international commitments.”

- 7.14 While that is climate policy, it is a material consideration in planning terms in favour of the scheme that the council’s policy on climate change is to work towards delivering national and international commitments on climate change, including net zero targets to which the scheme/Project will make a significant contribution.

*NPF4 – National Development and national planning policy considerations*

- 7.15 The revised draft of Scotland’s fourth national planning framework (NPF4) was laid before the Scottish Parliament on 8 November 2022, and following parliamentary approval was adopted on 13 February 2023. NPF4 designates certain development that contributes to ‘*Strategic Renewable Electricity Generation and Transmission Infrastructure*’ as national development no.3. The introduction to national development no.3 includes the following text:

“A large and rapid increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets. Certain types of renewable electricity generation will also be required, which will include energy storage technology and capacity, to provide the vital services, including flexible response, that a zero carbon network will require. Generation is for domestic consumption as well as for export to the UK and beyond, with new capacity helping to decarbonise heat, transport and industrial energy demand. This has the potential to support jobs and business investment, with wider economic benefits.

The electricity transmission grid will need substantial reinforcement including the addition of new infrastructure to connect and transmit the output from new on and offshore capacity to consumers in Scotland, the rest of the UK and beyond. Delivery of this national development will be informed by market, policy and regulatory developments and decisions.”

- 7.16 The need for the development is identified as follows:

“Additional electricity generation from renewables and electricity transmission capacity of scale is fundamental to achieving a net zero economy and supports improved network resilience in rural and island areas. Island transmission connections in particular can facilitate capturing the

significant renewable energy potential in those areas as well as delivering significant social and economic benefits.”

- 7.17 Having confirmed that the designation applies to all Scotland, the type of development to be designated national development is then defined as follows:

**“Designation and classes of development**

A development contributing to ‘Strategic Renewable Electricity Generation and Transmission’ in the location described, within one or more of the Classes of Development described below and that is of a scale or type that would otherwise have been classified as ‘major’ by ‘The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009’, is designated a national development:

- a) On and off shore electricity generation, including electricity storage, from renewables exceeding 50 megawatts capacity;
- b) New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more; and
- c) New and/or upgraded infrastructure directly supporting high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.”

- 7.18 While the precise technology is not yet confirmed, the OnTW will fall within b) and c) above, in support of an offshore electricity generating station that falls within a) above. But for the designation, the scheme as applied for would have been classed as major development. NPF4 therefore designates the scheme as national development.

- 7.19 National Planning Policy<sup>15</sup> as set out in NPF4 is also supportive of the scheme, in particular Policy 1 “Tackling the climate and nature crises”, which states that “*When considering all development proposals significant weight will be given to the global climate and nature crises.*” The scheme will enable a renewable energy development that will significantly aid meeting legally binding carbon targets that are critical to avoiding the crises. Policy 1 supports the scheme.

- 7.20 NPF4 Policy 11 “Energy” states that “*Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported. These include: i. wind farms ... ii enabling works, such as grid transmission and distribution infrastructure ...*” [underline added]. The policy goes on to say “*Grid capacity should not constrain renewable energy development. It is for developers to agree connections to the grid with the relevant network operator. In the*

---

<sup>15</sup> The successor to Scottish Planning Policy.

*case of proposals for grid infrastructure, consideration should be given to underground connections where possible.”* The OnTW are enabling works for an offshore windfarm, and the connections will be underground. Policy 11 therefore strongly supports the scheme.

- 7.21 Other NPF4 policies also support the scheme, and are summarised in Table 3.1 of Volume 2, Chapter 3 of the EIA Report which accompanies the OnTW’s planning application.

### **Energy and Climate Policy**

- 7.22 The permission sought for the onshore works is an application under the 1997 Act, so energy policy is not the primary consideration, but it is nevertheless a material consideration. The weight to be given to such material considerations is a matter of planning judgment for the decision maker. However, because the OnTW enable offshore works where energy policy is a primary consideration, it is considered reasonable that such policies be given considerable weight.

- 7.23 Energy and climate policy is set in an international context, so international policy is considered first.

#### *The Paris Agreement*

- 7.24 The 2015 Paris Agreement, which was committed to by the UK Government and 195 other parties and came into force on 4 November 2016, is a legally binding international treaty on climate change. It sets out an international plan for climate neutrality by the mid-century to halt the increase in global average temperature to well below 2°C above pre-industrial levels, and preferably to 1.5°C.

#### *Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report (AR6)*

- 7.25 The IPCC’s AR6 is being produced in four parts – three working group reports and a synthesis report. The three working group reports have now been published. The Technical Summary to the first report, published on 9 August 2021, noted among its conclusions that “It is virtually certain that global surface temperature rise and associated changes can be limited through rapid and substantial reductions in global GHG emissions. Continued GHG emissions greatly increase the likelihood of potentially irreversible changes in the global climate system.”<sup>16</sup> And “The near-linear relationship between cumulative CO2 emissions and maximum global surface temperature increase caused by CO2 implies that stabilizing human-induced global

---

<sup>16</sup> TS.2.1, p.63.

temperature increase at any level requires net anthropogenic CO2 emissions to become zero.”<sup>17</sup>

- 7.26 The Secretary-General of the United Nations, António Guterres, called the first working group report “...a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse-gas emissions from fossil-fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible. The internationally agreed threshold of 1.5°C is perilously close. We are at imminent risk of hitting 1.5°C in the near term. The only way to prevent exceeding this threshold is by urgently stepping up our efforts and pursuing the most ambitious path.”<sup>18</sup>

#### *UK Policy*

- 7.27 Under the Climate Change Act 2008 (the “2008 Act”) the UK committed to a net reduction in greenhouse gas (“GHG”) emissions by 2050 of 80% against the 1990 baseline, which target reduction was extended in 2019 to at least 100% against the 1990 baseline by 2050.
- 7.28 The 2008 Act also established the Committee on Climate Change (CCC) which provides independent advice to Government, and issues reports to the UK Parliament. As part of its role the CCC advises on carbon budgets as interim targets towards net zero in 2050. There are six carbon budgets, which have been adopted in law by the UK parliament. The UK is currently in the third of its six carbon budget periods, which covers the period 2018-2022. However, the CCC currently considers that the UK is not on track to meet the target of a 51% reduction from baseline by 2025, as part of the fourth carbon budget (2023 – 2027), nor any of the subsequent budgets.
- 7.29 As part of its report Sixth Carbon Budget – The path to Net Zero the CCC noted that in their balanced pathway “New demands from transport, buildings and industry (moderated by improving energy efficiency) mean electricity demand rises 50% to 2035, doubling or even trebling by 2050. The largest contribution is from offshore wind, reaching the Government’s goal of 40 GW in 2030, on a path to 65-125 GW by 2050.”<sup>19</sup>

---

<sup>17</sup> TS.3.3.1.

<sup>18</sup> Press release, 9 August 2021: <https://press.un.org/en/2021/sgsm20847.doc.htm>.

<sup>19</sup> Sixth Carbon Budget, p.25.

- 7.30 Since then, in April 2022's *British energy security strategy* the UK Government has increased its target for offshore wind to 50GW by 2030.<sup>20</sup> The scheme and wider Project would be a significant contributor to that target.

#### *Scottish Policy*

- 7.31 In April 2019 the First Minister declared a Climate Emergency. Also in 2019 the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 amended the Climate Change (Scotland) Act 2009 to create a legally binding target of net zero GHG by 2045, including an interim target of 70% reduction from baseline by 2030.
- 7.32 The Scottish Government's official statistics on GHG reductions have shown for 2018 and 2019 the interim target reductions were not met. While the interim target for 2020 was met, the Cabinet Secretary for Net Zero, Energy and Transport stated to the Scottish Parliament on 7 June 2022 that it was "...clear that the largest changes in emissions during 2020 were significantly influenced by the public health measures taken in response to the COVID-19 pandemic. In particular, transport activity was limited as people were asked to stay at home to save lives. There can be no satisfaction taken in emissions reductions resulting from such economic and social harm. We must also be prepared for emissions from the transport sector to substantially rebound in 2021."<sup>21</sup>
- 7.33 The Scottish Government's Offshore Wind Policy Statement (October 2020) set out a policy target of 8 – 11GW of offshore wind by 2030. The Project would be a significant contributor to that target.
- 7.34 Overall, while recognising that energy policy is a material consideration rather than determinative, it is a material consideration that current UK and Scottish Government energy policy strongly favours the principle of the scheme/Project.

#### **Planning and Energy Policy – Conclusion**

- 7.35 From the above the Acquiring Authority considers it a reasonable conclusion that planning permission<sup>22</sup> is likely to be granted. This is based on the scheme being in accordance with the development plan, and other material considerations in its favour. In particular:
- 7.35.1 The scheme being a national development as designated by NPF4;
  - 7.35.2 Strong planning policy support for the scheme in NPF4's national planning policies;
  - 7.35.3 The scheme is supported by the LDP; and

---

<sup>20</sup> *British energy security strategy*, p.16.

<sup>21</sup> Ministerial Statement: <https://www.gov.scot/publications/greenhouse-gas-emissions-statistics-2020-ministerial-statement/>.

<sup>22</sup> Both PPP and, in due course, applications for approval of matters specified in conditions.

7.35.4 There is strong support in energy policy terms, being a material consideration in the planning application.

#### **The Views of Government Departments and Related Applications/Appeal/Orders**

- 7.36 Applications to MS-LOT for a section 36 consent and marine licences for the Berwick Bank Wind Farm and OnTW (in the intertidal area only) have been submitted.
- 7.37 A PPP application has been submitted to East Lothian Council for the OnTW; this includes an EIA Report.
- 7.38 Works to the public roads network will be required. The Acquiring Authority is in discussions with East Lothian Council as local roads authority and Transport Scotland as trunk roads authority regarding relevant consents/approvals. The Acquiring Authority has no reason to believe that these consents/approvals will not be forthcoming.
- 7.39 Discussions with Network Rail and other statutory undertakers are ongoing as detailed below.
- 7.40 Other than at a policy level (e.g. it being a national development by virtue of NPF4), the Government has not expressed a view on this particular scheme.

#### **Overall Conclusion to Chapter 7**

- 7.41 The Acquiring Authority considers there is a strong policy imperative for the scheme in order to deliver the benefits of the wider Project. Based on its discussions to date, while acknowledging that pre-application discussions cannot and do not fetter the discretion of the planning or other statutory authorities, the Acquiring Authority has no reason to believe that the necessary consents will not be forthcoming. The Acquiring Authority considers it likely that the relevant consents and permissions will be granted in due course.

## **8. Special Category and Crown Land**

#### **Protected Assets**

- 8.1 The cable corridor includes one scheduled monument comprised in the Order Land as described above (paragraph 4.35). This is the monument known as Castledene, enclosure SW. According to its entry in the Schedule of Monuments it appears to belong to a class of rectilinear and square defended domestic settlements widely believe to represent native

settlements dating to the period around the time of the Roman invasions of Scotland, and is subrectangular with maximum dimensions of 80 m N-S by 70 m. Safeguarding of this monument is to be achieved by use of trenchless technology. The Acquiring Authority is engaging with HES to ensure that the proposed trenchless technology solution is sufficient to avoid disturbance to the site.

### **Special Category Land**

- 8.2 By virtue of section 1(2)(a) of the 1947 Act, special provision is made under Part III of the First Schedule to the 1947 Act for a compulsory purchase order which authorises the acquisition of land, or rights in land, which is the property of a local authority or has been acquired by a statutory undertaker for the purposes of their undertaking where the local authority/authorities or statutory undertaker(s) object to the compulsory purchase order and such objection(s) are not withdrawn. Part III also applies to land forming part of a common or open space or held inalienably by the National Trust for Scotland. In both cases the land is referred to as “special category land”. However, in the case of acquisition of rights the operation of Part III is modified as set out in paragraphs 17 – 21 of Schedule 3 to the 1989 Act.
- 8.3 The following plots are owned and were acquired by the following statutory undertakers for the purposes of their undertakings:
- Network Rail Infrastructure Limited (plot 12a); and
  - EDF (plots 3a, 3b and 4a).
- 8.4 These plots constitute special category land within the meaning of section 1(2)(a) of the 1947 Act. The rights sought are necessary to deliver the scheme and every effort will be made not to interfere with the statutory undertaker’s use of the land.
- 8.5 Plots 3a, 3b and 4a are owned by EDF but fall outwith the nuclear licensed site boundary of the nearby Torness Power Station.
- 8.6 Plot 12a is the East Coast Main Line railway. It is intended to use trenchless technology techniques to install the cables without interfering with the use of the rail line. It is considered that the Scottish Ministers can be satisfied, and it is request that they certify accordingly under paragraph 10 of Part III, that the rights sought can be acquired without serious detriment to the undertakings.
- 8.7 Under section 7 of the 1947 Act “open space” includes any land laid out as a public garden, or

- used for the purposes of public recreation. Plots 3a and 3b are comprised of part of a core path and therefore also come within the definition of open space. At these locations, the rights to be acquired over plot 3b are time limited (Drainage Rights). At plot 3a, the rights are permanent (Cable Rights), but following the conclusion of the works, other than the presence of the underground cables (and any associated below/above surface plant), the main right use is anticipated to be access for inspection and maintenance, which is expected to be infrequent. The Acquiring Authority is committed to minimise so far as it reasonably can any disruption due to construction and has been in contact with East Lothian Council to discuss this. A diversion to the core path for the duration of works at those locations will be taken forward with East Lothian Council.
- 8.8 It is submitted that Scottish Ministers can be satisfied, and requested that they certify accordingly under paragraph 11 of Part III, that the land, when burdened with the rights sought, 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 the rights are granted.
- 8.9 No land held inalienably by the National Trust for Scotland is affected by the Order.
- 8.10 The Order does not seek to acquire ownership of any special category land. In every case where special category land has been included only rights over that land are sought. Accordingly, in relation to special category land within the Order the provisions of the 1947 Act should be read subject to the applicable modifications in the 1989 Act.
- 8.11 There are three plots (16a, 22i, 22j, 25a and 25b) where the Acquiring Authority proposes to acquire land where statutory undertakers (one or more of Neart Na Gaoithe Offshore Wind Limited, Network Rail Infrastructure Limited and SPT) have interests short of ownership. The Order does not, however, seek to extinguish their rights (see paragraph 5.9 above) and so it is considered that Scottish Ministers may be satisfied that their rights are adequately protected and the acquisitions will not cause serious detriment to their undertakings.
- 8.12 There are several plots (1a, 2a, 3a, 3b, 4a, 5a, 5b, 5c, 14a, 14b, 14c, 15b, 18a, 18b, 18c, 22a, 22g, 23b, 25c, 25d, 27a) where the Acquiring Authority proposes to create rights, where either East Lothian Council or a statutory undertaker have an interest short of ownership. As rights short of ownership are not to be extinguished in these plots, Scottish Ministers may be satisfied that the rights holders interests are adequately protected.



### **Gas and Electricity Markets Authority Consent**

- 8.13 By virtue of paragraph 2 of Schedule 3 to the 1989 Act, no order may be made authorising the compulsory acquisition of land or rights over land belonging to another electricity licence holder without the consent of the Gas and Electricity Markets Authority (“GEMA”). This consent may not be given if the land in question is being used for the purposes of an installation necessary for the carrying on of the activities which the licence holder is authorised by his licence to carry on or, it appears to GEMA that the land will be so used, and that the use will commence, or any necessary planning permission or section 36/37 consent will be applied for, within the period of five years beginning with the date of the application for GEMA’s consent.
- 8.14 Some of the land required for cable installation, access and drainage (Plots 3a, 3b, 4a) is in EDF’s ownership. EDF are a 1989 Act licence holder. The Acquiring Authority are in the process of negotiating a private agreement with EDF for voluntary acquisition. However, to ensure deliverability of the scheme the EDF land has been included with the Order. Before Ministers can confirm the Order, in the event private agreement cannot be reached, the consent of GEMA will be necessary in relation to these plots.
- 8.15 Plot 16a which is land to be acquired, and plots 14a, 14b and 14c over which rights are created are subject to a lease granted to Neart Na Gaoithe Offshore Wind Limited (NnG). NnG are a 1989 Act licence holder. The Acquiring Authority are in the process of negotiating a private agreement with NnG, and NnG’s lease/rights are not to be extinguished. However, to ensure deliverability of the scheme the land subject to NnG’s lease has been included with the Order. Before Ministers can confirm the Order, in the event private agreement cannot be reached, the consent of GEMA may be necessary in relation to these plots.
- 8.16 Plots 16a, 22i, 22j, 25a, and 25b which are to be acquired as well as plots 3a, 3b, 4a, 21a, 21g, 24d and 26a over which new rights are to be created are subject to servitudes granted to SPT. Plots 18a, 18b, 18c and 22b over which new rights are to be created are subject to servitudes in favour of SP Distribution plc (“SPD”). SPT and SPD are 1989 Act licence holders. The Acquiring Authority are in the process of negotiating a private agreement with SPT and SPD. To ensure deliverability of the scheme, the land subject to their rights has been included with the Order. However, SPT and SPD’s rights are not to be extinguished and therefore Scottish Ministers may be satisfied that their rights are adequately protected, and the acquisitions will not cause serious detriment to their undertakings

### **Crown land**

- 8.17 Plots 8a, 8b, 8c and 8d are owned by the Scottish Ministers and form the U223 road. Cable Rights and Access Rights are to be created over those plots.
- 8.18 Plots 13a, 13b, 13c, 13d, 13e, 13f are owned by the Scottish Ministers and are minor roads and verges neighbouring the A1. Access Rights and Construction Compound and Access Rights are to be created over those plots. Junction improvements and haul roads may be created over these plots, which may also be oversailed by construction traffic.
- 8.19 Plots 25a, 25b, 25c and 27a are plots in which the Scottish Ministers hold interests as mineral owners. The Mining Code is being incorporated into the Order and so these minerals interests are not to be acquired.
- 8.20 The Acquiring Authority is engaging with Transport Scotland to ensure that where appropriate all necessary works are carried out with the minimum interference to normal operations. The A1 and other roads have not been included in the Order as the only works to be carried out there will be the laying of electric lines and plant and ancillary works in the nature of road works that the Acquiring Authority will use more specific powers for. The plots above are included because it may be necessary either to carry out more extensive works or ensure access rights are retained in the event minor roads were stopped up.
- 8.21 Under section 63(1) of the 1989 Act, the Acquiring Authority may acquire land or rights in land belonging to the Crown with the consent of the appropriate authority. In the case of land held by the Scottish Ministers, the Scottish Ministers are the appropriate authority.
- 8.22 It is considered that the rights sought will not cause serious detriment to the Scottish Ministers' use of the land, or their interests in the land, and the consent of the Scottish Ministers to purchase of the plots in which they have an interest is accordingly requested.

## **9. Engagement with affected parties to date and specific issues considered**

### **Engagement with affected parties**

- 9.1 Paragraphs 4 to 6 and 43 to 57 of Circular 6/2011 deal with the desirability of engaging with people affected by the Order as early as possible as well as with key agencies and community councils where appropriate. This section addresses both consultation

generally and engagement with landowners affected by the Order.

### **Stakeholder and Public Consultation**

9.2 Consultation and stakeholder engagement has formed an integral part of the development of the scheme. Engagement with landowners and third parties had commenced at the outset of the Project with site meetings, public exhibitions and correspondence with stakeholders, landowners and their agents.

9.3 Meetings were held with various individuals and organisations to discuss the onshore cable route, including various departments at East Lothian Council, Historic Scotland, Transport Scotland, BEAR Scotland (transport), NatureScot, Network Rail and the relevant landowners.

9.4 The table below provides details of the key consultations carried out in support of the Project, including the onshore planning application:

<b>Date</b>	<b>Consultation Event</b>
16 Nov 2020 – 7 Dec 2020	First round of Berwick Bank public information sessions –held virtually due to COVID-19 guidance
25 Oct 2021 – 29 Oct 2021	‘Community Roadshow’ held across 15 locations within East Lothian.
6 Dec 2021 – 30 Dec 2021	Second round of Berwick Bank public information sessions – in person event held on 9 <sup>th</sup> December, virtual platform live for the remainder of date range.
8 March 2022 – 18 March 2022	Third round of Berwick Bank public information sessions – in person event held on 8 <sup>th</sup> March at Innerwick Village Hall, virtual platform live for remainder of date range.
29 March 2022	‘Community Event’ held on evening of 29 <sup>th</sup> March in Innerwick Hall.

9.5 Three rounds of public consultation events have been held in the vicinity of the proposed cable route. Initial public information events were held in November 2020 and done virtually in-line with COVID-19 guidance in place at the time. In December 2021 an in-person event was held at Innerwick Village Hall, this was supplemented by a virtual exhibition which included two direct live chat sessions whereby members of the public

could ask members of the Acquiring Authority project team questions in real time. A third event at the same location was held in March 2022.

- 9.6 In person exhibitions were held between 13:00 and 19:00 to encourage as many people as possible to attend. In addition to these events, a Community Roadshow was held in October 2021 which involved the Acquiring Authority project team taking information on the Project to a variety of communities across East Lothian. Across the week, the team visited a total of 17 different locations across 5 days. All events were promoted through newspaper adverts, press releases, email invitations, posters and on the Acquiring Authority's website.

#### **Direct Engagement with the Affected Parties**

- 9.7 In addition to the consultation process outlined above, which also included landowners, the Acquiring Authority has separately engaged in private discussions with the landowners and occupiers affected by the scheme.
- 9.8 The Acquiring Authority is seeking to negotiate acquisition of the required land interests by agreement. The methodology behind Berwick Bank Wind Farm's attempts to reach agreement is set out below:
- (a) The Acquiring Authority and their agents initially carried out a desk-based study to reference the land within the boundary of the scheme;
  - (b) The Acquiring Authority and their agents then attended the site locally in early 2018 at the preliminary site selection and route planning stages to enquire as to the identity of the affected landowners and occupiers and to introduce the Project to those owners and occupiers;
  - (c) Searches were then conducted in the Land Register of Scotland/Register of Sasines to verify the information found and the identity of landowners and extent of the respective titles;
  - (d) All landowners and occupiers identified within the boundary of the scheme were contacted by the Acquiring Authority and their agents between 2019 and 2022;
  - (e) Face-to-face and online meetings were held throughout 2020 with those landowners and occupiers identified by this stage to discuss the Project and in particular how the scheme may affect their land;
  - (f) Following a number of face to face and online meetings with the land owners, the first set of Heads of Terms ("HoTs") were drafted and issued to the landowners and their respective agents from July 2021 with most issued by March 2022;
  - (g) In early December 2022, a letter was sent to affected landowners with an update on

timescales for submission of the planning application and use of CPO powers;

- (h) Throughout the remaining part of 2022 and moving into 2023, the Acquiring Authority's Land Managers and/or land agents visited and conducted phone calls and online meetings with the affected landowners on a regular basis to discuss the Project design, the commercial offers contained in the HoTs and the terms and conditions of the draft legal documentation.

#### **Direct Engagement with the Affected Parties – Detailed Approach**

- 9.9 The Acquiring Authority undertook a cost forecasting exercise to provide a basis for commercial negotiations with market based justification for the price proposed for rights sought in the HoTs. The Acquiring Authority project team acknowledges that land within the cable route includes high quality agricultural land in Scotland and the valuation approach adopted seeks to acknowledge this in commercial offers made on individual holdings.
- 9.10 The Scottish Ministers' guidance *Compulsory Purchase in Scotland: guide for property owners and occupiers* was sent to landowners together with a letter providing an update on the compulsory purchase programme in August and September 2022. Following site meetings with landowners and their agents where possible HoTs continued to be updated and issued to affected Landowners.
- 9.11 HoTs for landowners to enter into an Option Agreement incorporate a document detailing terms for a land purchase or Servitude agreement for the cable route, commercial offer and explanation of how the commercial offer was formed in addition to Terms detailing licences for temporary working areas across the route.
- 9.12 Key elements of the HoTs and legal documentation include: an option fee, option extension fee, consideration for the grant of the rights, compensation arising from the grant of the rights and payment of the affected parties reasonable legal and professional costs. The nature of the rights sought is comparable to those sought under the compulsory purchase order although in some cases rights are sought by way of lease.
- 9.13 Since issuing the HoTs, the Acquiring Authority have been in regular contact with landowners' professional representatives with the aim of progressing voluntary agreements. Affected parties and their professional representatives have engaged positively and feedback provided to the Acquiring Authority's project team that has enabled landowner concerns on matters such as infrastructure location, biosecurity and drainage protocols and procedures to be addressed and communicated back via the Project's engineering, consenting and land disciplines directly

to the landowner's professional representatives. Other messages and questions are also dealt with through the land agents and solicitors or now in many cases directly with landowners, thereby enabling the Project to build a relationship with those directly affected by the scheme. Meetings with professional representatives continue at regular intervals with a view to concluding voluntary agreements where possible.

- 9.14 The Acquiring Authority has also entered into negotiations with the landowners and tenants on land required for the location of the substation near Skateraw. Following a meeting between the parties to discuss the parameters of the deals, negotiations have been continued through their land agents and all dialogue has been constructive and positive whilst recognising the challenges of the proposal.
- 9.15 In the interests of confidentiality of negotiations, their status will be reported only at a high level in this Statement of Reasons. Currently, 19 parties have been approached of whom 18 have entered into negotiations. 3 parties have agreed HoTs. No option agreements are yet agreed.
- 9.16 As agreement has not been reached, although it remains the Acquiring Authority's wish where possible to reach agreement privately, in light of the Project timescales and the state of negotiations, the Acquiring Authority has commenced the compulsory acquisition process to ensure the Project can be delivered.

#### **Specific Issues Considered**

- 9.17 Following engagement with affected parties the Acquiring Authority has given consideration to a number of specific issues that are described below.

#### **Scale of Cable Trenches and Residual Effects**

- 9.18 Subject to the ongoing detailed design and assessment process and material specifications, the expected scale of cable trenches and arrangement of cables is to be up to an 8 circuit HVAC/HVDC solution. As described at paragraph 3.16 above, for typical installation conditions, this would require approximately 8 no. 1 m wide trenches separated by distance of 2 m (from the midpoint of the trench) which allows for the cable electrical properties and for each cable circuit to be worked on separately at a future date. There will also be an estimated 11 m corridor in the middle of the sets of cables for a haul road for installation purposes. The boundary of the working corridor for installation of the cables will be refined to a typical maximum width of between 50 - 70 m (except for trenchless technology locations and other known constraints e.g. utility crossings) between the landfall and the substation near

Skateraw and will limit the area of temporary disturbance to existing land uses.

- 9.19 Following installation of the cables, the final corridor within which the cables will be installed is estimated to be a maximum of 24 m in width, meaning the residual Cable Rights (which extend a further 8 m) corridor will typically be 40 m. Wider areas will have residual Access Rights but use of these is expected to be infrequent. The specific location of the working corridor and the final position of the cables will be determined following further survey and assessment and is likely to be subject to a planning condition by East Lothian Council.

#### **Future Restrictions to Farming Activities**

- 9.20 There will not be any permanent acquisition of agricultural land other than at the proposed substation site and the Braidwood Burn crossing. The land affected by the cable installation will be reinstated and returned to as close as possible its previous condition following installation. The design of the cable will ensure that there is no impact on normal agricultural operations, except in limited areas such as link boxes. This is explained further below under the headings “reinstatement of land” and “depth of soil replacement”.

#### **Reinstatement of Land**

- 9.21 The majority of the cable route will be installed in ducts. For the ducted method (except infrastructure/environmental crossings), ducts will be placed and jointed. For the open trench section of the route (outwith road crossings) the topsoil and sub-soil will be removed and stored separately for use in the reinstatement on completion of the work to allow the land to be returned to a condition as close as possible to the original. Not all of the material which is excavated for the cable trenches will be used for backfill as imported sand will be used for cable protection below the reinstated topsoil and subsoil. Following backfilling the ducted installation will then require the cable to be pulled through the duct at a suitable time. The Acquiring Authority have taken into consideration agricultural practices in the design of the underground cables. Cables will be installed at a minimum cover depth of 1.2 m, however, the Acquiring Authority will use reasonable endeavours to minimise any adverse impact to existing land uses, including agricultural activities, as part of the detailed design of the cable route. Any topsoil will be reinstated to at least its existing depth.

#### **Drainage Impacts**

- 9.22 A drainage scheme will be provided as part of the Construction Environmental Management Plan that is likely to be required by planning condition, which will cover

proposed methods for identification of drainage systems (including field drains, culverts, septic tank and soakaways) and private water supplies, and measures for their protection during development and/or mitigation of impacts associated with the development. The Acquiring Authority has appointed a specialist land drainage consultant and they have commenced on early engagement with landowners across the route to enable the preparation of the land drainage design for the scheme. This will allow identification of existing key drainage features to ensure no impact to land drainage during and after construction. A separate design for the temporary and permanent drainage will be progressed out with this, which will confirm the drainage requirements associated with the other elements of the scheme, for example, site compounds, laydown areas and the substation itself. A hydrological assessment was also completed as part of the ongoing programme for the EIA which confirmed that the proposed cable installation methodology would not result in significant impacts on surface water drainage patterns.

#### **Location and Layout of Jointing Bays**

- 9.23 Concern has been raised over the number, location and demarcation of cable joint bays which are needed across the length of the cable route to join sections of cable together. The Acquiring Authority recognises concerns over joint bay locations and potential damage to equipment from unsuitable demarcation of covers. Landowners are also concerned that if joint bays are located away from field boundaries, it will make the field more difficult to farm. Where possible, the joint bays will be located near field boundaries to reduce the impact on agricultural operations. The precise locations are not known at this stage and will be dependent on the transmission technology selected. Wherever possible the Acquiring Authority will consider the practicalities of access, land use and technical requirements in defining the location of joint bays. To minimise disturbance, the Acquiring Authority is committed to making reasonable endeavours to locate joint bays in corners or next to field boundaries where possible.

#### **Timing of the works**

- 9.24 Landowners have raised a concern that all of the land within the wider boundary will be affected for entire duration of the construction programme. Construction works will not take place across the whole route for the entire duration of the construction programme but will typically occur sequentially. This is reflected in the application for PPP dividing the route into different zones. However, there are expected to be periods where certain construction activities occur concurrently. In particular, it is expected that construction activities at the landfall (trenchless technology installation) will occur at the same time as construction of the onshore substation. The onshore substation will also be constructed to align with the



connection dates included in the grid connection agreements (2026 and 2027).

### **EMF Impacts**

- 9.25 Electromagnetic field (“EMF”) emissions limits are set following guidance from the International Conference on Nuclear and Particle Physics. The Acquiring Authority has confirmed that EMF emissions will be significantly less than those limits. A typical set of direct buried cables, such as those proposed by the Acquiring Authority, will be within the accepted regulatory limits.

### **Biosecurity**

- 9.26 The Acquiring Authority are aware of concerns in relation to potential impacts on soil quality and biosecurity during construction and installation of the cables. To address these concerns a Soil Management Plan will be prepared by the Acquiring Authority and submitted for approval as part of the Construction Environmental Management Plan. The Soil Management Plan will include a map showing the locations of stockpiles of excavated materials, details of use and/or disposal of unsuitable subsoil and details of the management and mitigation of soil resources all in accordance with bio-security best practice. The implementation of works in accordance with the soil management plan will ensure that the potential for introduction or spread of any disease causing organisms onto and between farms is managed in accordance with bio-security best practice. The Acquiring Authority will undertake screening and sampling of soils prior to commencement of construction in order to confirm the current soil condition and presence of any disease causing organisms within the soil. During construction any materials, removed from the site, including surplus subsoils, will be transferred in accordance with the requirements of the waste duty of care, all relevant biosecurity requirements and in accordance with the Soil Management Plan.
- 9.27 The Acquiring Authority intends to discuss and where possible agree a Construction Code of Conduct with affected landowners and occupiers.

### **Network Rail**

- 9.28 A meeting was held on 16th September 2021 with Network Rail’s in-house team. Network Rail’s pro-formas stating project specification in order for a lease to be agreed were completed and submitted to Network Rail on 17th March 2022. A Basic Asset Protection Agreement was entered into on 11th August 2022. At 9th September 2022, pro-formas were being reviewed by Network Rail. There is regular communication with Network Rail’s surveyor and the established process of moving towards agreeing HoTs with Network Rail is in process.

### **Unknown Interests**

- 9.29 The Acquiring Authority, through the measures outlined above including through title searches by solicitors, has made reasonable inquiry of interests in the Order Land and sought, where possible, to identify the owners and/or beneficiaries of those interests. All persons appearing to the Acquiring Authority to have an interest in the Land are identified within the Schedule to the Order except plot 10a.
- 9.30 The owner of plot 10a cannot be identified, despite searches and enquiries carried out by the Acquiring Authority. Plot 10a is comprised of part of a road, and a tunnel that passes underneath the East Coast Main Line. In addition to searches of land registers, enquiries included asking Network Rail if they owned the plot or knew who the owner was. A notice was affixed by Sheriff Officers on 12th October 2022, at, or as near as may be, that plot seeking information on the Occupier. No contact was made with the Acquiring Authority. Sheriff Officers will be instructed to affix a further notice, which draws the attention of the making of the Order to the Occupier.

### **Statutory Undertakers**

- 9.31 As noted in Chapter 8 above, at several locations across the Acquiring Authority's cable route it is necessary to cross assets owned by statutory undertakers. The statutory undertakers include the following:
- NnG offshore and onshore cables;
  - SPT;
  - SPD;
  - Network Rail;
  - Transport Scotland;
  - East Lothian Council (as roads authority);
  - Scottish Water; and
  - British Telecommunications plc.
- 9.32 Statutory undertakers will be contacted with a letter providing detail of where the point(s) at which the scheme interacts with their asset(s) and asking if there are any special protective measures that should be adhered to when working in close proximity to their asset(s). Crossing agreements will be entered into where necessary. Although rights are sought where necessary to divert etc. apparatus, the existing rights short of ownership of the statutory undertakers are not to be extinguished, and Scottish Ministers can be satisfied that their rights are adequately protected.

## 10. Barriers to implementation

### Development Consents

- 10.1 Applications were submitted to Scottish Ministers in December 2022 for consent to construct and operate a generating station – ‘the Berwick Bank Wind Farm’ - under section 36 of the 1989 Act (section 36 consent) and marine licences for the offshore elements of the scheme seaward of MHWS (the “marine licences”). An application has also been submitted to East Lothian Council for PPP for the OnTW (landward of MLWS). None of these consents have yet been granted. Assuming that PPP is granted, applications would be brought forward in due course to approve the matters specified in conditions under the PPP. These would collectively form the “development consents”.
- 10.2 The reason for bringing forward the Order prior to the grant of the development consents is principally to ensure that delivery of the scheme can take place within a reasonable timeframe. Waiting until after the development consents process is completed could mean a substantial delay to the scheme, especially if a public inquiry is necessary in relation to the Order.
- 10.3 A possible impediment to the scheme is therefore the risk that one or more of the development consents is not obtained. However, it is considered that for the reasons outlined in Chapter 7 above, and despite the need for derogation discussed below, the Acquiring Authority considers it likely that the development consents will be granted.
- 10.4 Further, by the early engagement with the affected parties detailed in Chapter 9 above, and beginning the compulsory acquisition process now, the Acquiring Authority wishes to set out its position so that all affected parties are clear on the implications of the scheme for their property and rights.

### *Habitats Regulations*

- 10.5 The Acquiring Authority recognises that a “derogation” may have to be granted under the Habitats Regulations in relation to the section 36 consent/marine licences. A derogation is required when it cannot be ascertained following an appropriate assessment of the Project’s effects on a European site that there will be no adverse effects on the site integrity. In such cases, but for a derogation, a project must be refused consent. A derogation may be granted if, in summary, there is no feasible alternative solution, and the Project must proceed for imperative reasons of overriding public interest. Compensatory measures to

ensure the coherence of the national site network must be taken.

- 10.6 In the case of the Project, the Acquiring Authority considers it likely that a derogation, if necessary, will be granted because there is no alternative solution capable of delivering the same project without adverse effects, there are imperative reasons of overriding public interest that justify the Project, and compensatory measures can be secured.
- 10.7 Accordingly, the Acquiring Authority does not consider that the potential need for a derogation is likely to be an impediment to the scheme.

*Other consents*

- 10.8 Works to the public roads network will be required. The Acquiring Authority is in discussions with East Lothian Council as local roads authority and Transport Scotland as trunk roads authority regarding relevant consents/approvals. The Acquiring Authority has no reason to believe that these consents/approvals will not be forthcoming.
- 10.9 The need for scheduled monument consent is being discussed with HES. The Acquiring Authority has no reason to believe that, if required, that consent will not be forthcoming.
- 10.10 Various other permissions and consents may be required, e.g. CAR licences. These form a normal part of a large infrastructure project, and the Acquiring Authority has no reason to believe the necessary permissions will not be forthcoming.

*Design changes and potential future applications*

- 10.11 As with any project of this scale, it is likely that its design will evolve as additional surveys are completed, and engineering and design efficiencies identified.
- 10.12 Indeed, since the Pre Application Consultation for the onshore works, limited additional areas that are outwith the consultation red line boundary have been identified. In those areas, Drainage Rights have been identified as necessary for a temporary need to connect drainage infrastructure during the construction process. Those areas are therefore included within the Order Land. However, those areas are not included in the initial applications for development consent while further design and engineering consideration is undertaken. This is not considered an impediment to the scheme because those works are of a relatively minor nature, and may be carried out under permitted development rights, or brought forward under separate applications for planning permission as appropriate.

- 10.13 None of the identified additional areas results in a significant alteration of the cable route from the existing red line boundary, and the Order land has been included in a way that make it unlikely that any significant alteration to the cable route itself will be required.
- 10.14 The final details of the OnTW scheme will be determined through applications for approval of matters specified in conditions. Assuming that permission has been granted for the principle of the scheme, it is not anticipated that such applications would be a barrier to implementation.
- 10.15 Accordingly, although included for completeness, neither the inclusion of areas outwith the existing planning boundary nor potential future planning applications are considered to be a barrier to implementation.

## **11. The funding and financial implications of the Scheme**

- 11.1 SSE Renewables Limited are promoting the Berwick Bank Wind Farm Project. SSE Renewables Limited are a subsidiary of SSE plc. The Project, described more fully above, is comprised of an offshore wind farm with associated onshore infrastructure to connect the offshore elements to the grid. SSE Renewables Limited has a proven track record in the delivery of offshore wind farms and associated onshore infrastructure. Their projects have included: Beatrice Offshore Wind Farm (“Beatrice”); Seagreen Offshore Wind Farm in Scottish waters (“Seagreen”); and Dogger Bank Wind Farm in English waters (“Dogger Bank”). Seagreen has been delivered as a joint venture with Equinor, and Dogger Bank has been delivered as a joint venture with Equinor and Eni Plenitude. While at this stage Berwick Bank Wind Farm is not being taken forward as a joint venture, in order to maintain flexibility in future funding and delivery options ownership of the scheme, or parts of the scheme, may be held in one or more subsidiary companies.
- 11.2 The Project has entered into grid connection agreements at Branxton and Cambois, Northumberland. The delivery of the scheme will also in due course involve a transfer of the onshore infrastructure to a third party (the OFTO). In general, the 1989 Act does not permit the same party to operate generating stations (which requires a generation licence under the 1989 Act), and transmission infrastructure (which requires a transmission licence). An exception to that general principle is that a party holding a generation licence may construct the transmission infrastructure for connection of a generating station to the

grid provided that the infrastructure is transferred to a transmission licence holder - i.e. the OFTO - within a prescribed period.

- 11.3 Berwick Bank Wind Farm Limited are a subsidiary company of SSE Renewables Limited.<sup>23</sup> Berwick Bank Wind Farm Limited holds a Generation Licence issued by Ofgem under the 1989 Act and are the Acquiring Authority.
- 11.4 While the Acquiring Authority is a subsidiary of SSE Renewables Limited, funding for the acquisition of the onshore assets will be provided by parent company funding, external finance, or a combination of both.
- 11.5 As noted above, the Acquiring Authority's parent company is SSE Renewables Limited. Estimated compensation, plus contingency, has been taken account of by the parent company as part of the overall project development costs.
- 11.6 SSE Renewables Limited is subject to a strong commercial imperative as it is a high-profile developer of renewable energy projects. The reputational risk of not discharging obligations with respect to compulsory acquisition compensation would be considerable and put the company's ability to secure compulsory purchase on future projects at risk.
- 11.7 As a wholly owned subsidiary of SSE plc, SSE Renewables Limited has a strong financial position to pay compensation for the acquisition of the rights and land necessary for the scheme. SSE Renewables Limited operates with a parental letter of support from SSE plc that confirms it will provide support for a period of 12 months from SSE Renewables Limited's accounting year end, should such support be required. SSE plc's most recent group accounts disclosed that SSE Renewables Limited had an adjusted operating profit of £568.1m to 30 March 2022, and SSE plc itself held, among other assets, a cash balance of £1.049bn.
- 11.8 Scottish Ministers can therefore be satisfied that were the Order confirmed, the Acquiring Authority would have access to sufficient funds to pay compensation to the affected parties.

---

<sup>23</sup> There are other companies in the corporate structure of SSE Renewables Limited that sit between them and Berwick Bank Wind Farm Limited. Although SSE plc is the ultimate parent company (SSE Renewables Limited being a wholly owned subsidiary) for regulatory reasons its projects are delivered through separate entities and in this case SSE Renewables Limited is the lead entity.

## 12. Documents and contact details

12.1 The Acquiring Authority refers to, relies upon and produces its Generation Licence as an Appendix to this Statement of Reasons.

12.2 To avoid unnecessary duplication the Acquiring Authority has not produced with the Statement of Reasons but refers to and relies upon (and may lodge in the event a public inquiry is necessary) the following documents:

12.2.1 The scoping report and opinion, and the documents in the onshore and offshore development consents applications (including the onshore EIA Report). These documents are available online (including on the Acquiring Authority's website <https://www.berwickbank.com/>).

12.2.2 Documents from the public consultation events referred to at 9.4 above. Copies of the exhibition boards from those events are available on the Acquiring Authority's website <https://www.berwickbank.com/>.

12.2.3 The Electricity Act 1989, the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and the Ofgem Offshore Transmission Coordination Project Conclusions Report (March 2012).

12.3 The Acquiring Authority may also refer to or put in evidence further documents a list of which will be supplied in due course.

### *Copies of the Order and documents*

12.4 A copy of the Order, Order Maps and Statement of Reasons and the document referred to in the appendix hereto may be inspected free of charge during normal office hours at SSE Renewables, 1 Waterloo Street, Glasgow G2 6AY.

12.5 Copies may also be inspected free of charge (opening times may vary – please check in advance of travelling) at:

12.5.1 East Lothian Council Headquarters, John Muir House, Brewery Park, Haddington, East Lothian, EH41 3HA; and

12.5.2 Dunbar Library, Bleachingfield Community Centre, Dunbar EH42 1DX.

- 12.6 Copies may also be downloaded from the website <https://www.berwickbank.com/> at which further information about the scheme and relevant updates may be obtained.

#### *Contact Details*

- 12.7 Any person with an interest in the Order who wishes to ask questions may do so by contacting the Acquiring Authority's solicitors Gillespie Macandrew LLP:

- 12.7.1 By email (preferred) to [BBCPO@gillespiemacandrew.co.uk](mailto:BBCPO@gillespiemacandrew.co.uk); or
- 12.7.2 By post marked for the attention of the Berwick Bank Team, Gillespie Macandrew LLP, 5 Atholl Crescent, Edinburgh EH3 8EJ; or
- 12.7.3 By telephone 0131 225 1677 asking for the Berwick Bank Team.

- 12.8 Questions about the Order should in the first instance be directed to the Acquiring Authority's solicitors, but persons with an interest may also the Acquiring Authority direct:

- 12.8.1 By email to [BerwickBank@sse.com](mailto:BerwickBank@sse.com)
- 12.8.2 By post marked for the attention of Gary Donlin, Berwick Bank Wind Farm Limited, 1 Waterloo Street, Glasgow, G2 6AY.
- 12.8.3 By telephone to 0141 224 7248 asking for Gary Donlin.

- 12.9 Any person who has an interest in the Order and wishes a copy of it or the Statement of Reasons in Braille, audio, large print or Easy Read format should contact the Acquiring Authority's solicitors.

## **13. Conclusion**

### **Statement on Developers/Promoters and further evidence**

- 13.1 As described in the Statement of Reasons above, Berwick Bank Wind Farm Limited are the developers of the scheme and the acquiring authority for the purpose of the 1947 Act, the 1989 Act and all other relevant legislation.

### **Conclusion**

- 13.2 The Acquiring Authority has given careful consideration as to why it is necessary to acquire the rights in respect of the Order Land and considers that there is a compelling case in the



public interest for confirmation of the Order which would strike an appropriate balance between public and private interests. As explained above, all owners, lessees and occupiers affected by the proposed Order have been invited to enter into discussions with the Acquiring Authority with a view to agreeing appropriate terms to secure the necessary rights for the Scheme. However, in order to secure delivery of the scheme and wider Project, it is necessary to exercise the Acquiring Authority's compulsory powers.

- 13.3 While on a major works project such as described above some element of disturbance to the occupiers of affected land is inevitable the Acquiring Authority is part of one of the UK's largest renewable energy companies that has a proven track record in the successful delivery of large scale infrastructure. The disturbance to occupiers once construction has taken place will be modest. The minimum reasonable amount of land to successfully deliver the works is to be acquired.
- 13.4 Delivery of the scheme will bring significant benefits both to the local region, Scotland and Great Britain in terms of decarbonisation of the grid and energy security which are supported by Scottish Government's planning policy and the Scottish and UK Governments' energy policy. For these reasons, and the other reasons discussed above, it is considered that the public interest in the making of the Order outweighs the affected interests. The Acquiring Authority has considered it necessary to make the Order, and will ask the Scottish Ministers to confirm the Order.
- 13.5 Should it be necessary to hold a public inquiry into the Order the Acquiring Authority may refer to or put in evidence further documents a list of which will be supplied in due course.

Appendix to Statement of Reasons – Documents referred to

Document	Paragraph disclosed by	Document Number
Berwick Bank Wind Farm Generation Licence	1.1, 3.5, 6.2	BB1