

ORSTED HORNSEA PROJECT THREE (UK) LIMITED

STATEMENT OF REASONS

Accompanying the making of:
ORSTED HORNSEA PROJECT THREE (UK) LIMITED (FERRY
ROAD, HARTLEPOOL)
COMPULSORY PURCHASE ORDER 2023

 Orsted

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Table of Contents

1	INTRODUCTION.....	5
2	THE ENABLING POWERS.....	6
3	DESCRIPTION OF HORNSEA THREE AND THE ANS WORKS.....	7
4	DESCRIPTION OF THE ORDER LAND.....	9
5	DESCRIPTION OF THE NEW RIGHTS TO BE COMPULSORILY ACQUIRED.....	10
6	REASONS FOR MAKING THE ORDER AND JUSTIFICATION FOR THE USE OF POWERS OF COMPULSORY ACQUISITION.....	12
7	NEGOTIATIONS WITH LANDOWNERS.....	14
8	THE PLANNING POSITION FOR THE ANS WORKS.....	17
9	FUNDING FOR THE SCHEME.....	17
10	OTHER CONSENTS AND RELATED APPLICATIONS.....	18
11	HUMAN RIGHTS.....	18
12	CONCLUSION.....	19
13	LIST OF DOCUMENTS IN CASE OF PUBLIC INQUIRY.....	20

Glossary

Term	Definition
Acquiring Authority	means Orsted Hornsea Project Three (UK) Limited (incorporated in England and Wales with company number 08584210 whose registered office is at 5 Howick Place, London, England, SW1P 1WG)
Convention	means the European Convention on Human Rights
CPO Guidance	means the Department for Communities and Local Government’s “Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion” dated October 2015 and last updated July 2019
DCO	means The Hornsea Three Offshore Wind Farm Order 2020 (as amended)
Hornsea Three	means a new offshore wind farm project in the North Sea, located approximately 121 kilometres northeast of the north Norfolk coast, and 160 kilometres east of the Yorkshire coast
Order	means Orsted Hornsea Project Three (UK) Limited (Ferry Road, Hartlepool) Compulsory Purchase Order 2023
PD Ports	means PD Teesport Limited (incorporated in England and Wales with company number 02636007 whose registered office is at 17-27 Queen's Square, Middlesbrough, TS2 1AH)
Site	means the land lying to the east of Coastwatch Office, Ferry Road, Hartlepool, TS24 0YE (as registered at HM Land Registry under title number CE147445)
Statement	means this Statement of Reasons

Acronyms

Acronym	Definition
ANS	Artificial Nest Structures
CfD	contract for difference
EIA	Environmental Impact Assessment
FFC SPC	Flamborough and Filey Coast Special Protection Area
HBC	Hartlepool Borough Council
HVAC	High Voltage Alternating Current
HVDC	High Voltage Direct Current
KIMP	Kittiwake implementation and monitoring plan
MW	Megawatts
OOEG	Offshore Ornithology Engagement Group
RNLI	Royal National Lifeboat Institution
SNCBs	Statutory Nature Conservation Bodies

1 INTRODUCTION

- 1.1 On 28 June 2023, the Acquiring Authority resolved to make the Order. The Order was made on 28 June 2023.
- 1.2 The Acquiring Authority is the holder of an electricity generation licence pursuant to the Electricity Act 1989 and proposes to develop Hornsea Three, a new offshore wind farm project in the North Sea, located approximately 121 kilometres northeast of the north Norfolk coast, and 160 kilometres east of the Yorkshire coast. Hornsea Three will be a 2.8 GW wind farm off the east of England coast which will produce enough green energy to power around 3.2 million homes. As such, Hornsea Three is a vital component in helping the UK achieve its energy security and carbon reduction objectives.
- 1.3 On 31 December 2020, the Acquiring Authority was granted development consent for Hornsea Three through the the Hornsea Three Offshore Wind Farm Order 2020 (as amended by The Hornsea Three Offshore Wind Farm (Correction) Order 2021 and The Hornsea Three Offshore Wind Farm (Amendment) Order 2023) pursuant to the Planning Act 2008. On 7 July 2022, Hornsea Three was awarded a contract for difference for 2,852MW by the UK Government. The construction of Hornsea Three formerly commenced on 3 May 2023. Hornsea Three is due to be commissioned in 2027.
- 1.4 Under Part 1 of Schedule 14 to the DCO, the Acquiring Authority is obliged to submit a KIMP to the Secretary of State for approval. As introduced by The Hornsea Three Offshore Wind Farm (Amendment) Order 2023, paragraph 4 of Part 1 of Schedule 14 to the DCO states that the Acquiring Authority must implement the measures set out in the KIMP and no operation of any turbine forming part of Hornsea Three may commence until three full breeding seasons have elapsed following the implementation of two of the ANS, and two full breeding seasons have elapsed following the implementation of two of the ANS as set out in the KIMP. Paragraph 8 of Part 1 of Schedule 14 to the DCO requires the KIMP to be in accordance with the principles set out in the kittiwake compensation plan (as defined in the DCO).
- 1.5 The KIMP must include provision for the construction and maintenance of four ANS on the English east coast onshore or coastal locations to benefit the eastern Atlantic kittiwake population.
- 1.6 To facilitate the construction and maintenance of the ANS, the Acquiring Authority purchased the Site as shown coloured edged red and coloured yellow on the map referred to in the Order.
- 1.7 Prior to the Acquiring Authority's acquisition of the Site, the Site was accessed via Ferry Road. However, the owner of Ferry Road, PD Ports, has refused access to the Acquiring Authority.
- 1.8 The Order, if confirmed, would authorise the Acquiring Authority to compulsorily purchase new rights over the Order Land to enable it to access the Site and to lay, use and maintain a new utilities required to provide power and other services to the mechanical and electrical equipment on the Site such as CCTV and lighting.
- 1.9 The following terms are used in this statement of reasons:-
 - 1.9.1 **the ANS Works:** meaning the works as described at paragraph 3;
 - 1.9.2 **the Order Land:** meaning those parcels of land described at paragraph 4 and shown edged red and coloured blue on the map referred to in the Order;
- 1.10 This Statement accompanies the making of the Order and has been prepared in accordance with the CPO Guidance. This Statement includes the following sections:

- 1.10.1 **Section 2** sets out an explanation of the use of the enabling powers;
- 1.10.2 **Section 3** provides a brief description of the works that constitute the ANS Works which are required in order for Hornsea Three to generate electricity;
- 1.10.3 **Section 4** provides a brief description of the Order Land and its location, topographical features and present use and sets out the special considerations affecting the Order Land;
- 1.10.4 **Section 5** sets out the new rights to be compulsorily acquired;
- 1.10.5 **Section 6** provides an outline of the Acquiring Authority's purpose in seeking to acquire the new rights and justification for compulsory purchase;
- 1.10.6 **Section 7** sets out the steps the Acquiring Authority has taken to negotiate for the acquisition of the new rights over land by agreement;
- 1.10.7 **Section 8** contains a statement about the planning position of the Order Land;
- 1.10.8 **Section 9** details how Hornsea Three will be funded;
- 1.10.9 **Section 10** details the consents that are required before Hornsea Three and the ANS Works can be implemented and related applications;
- 1.10.10 **Section 11** includes a statement of the Acquiring Authority's justification for compulsory purchase, with regard to Article 1 of the First Protocol, Article 6 and Article 8 of the European Convention on Human Rights; and
- 1.10.11 **Section 12** sets out the Acquiring Authority's conclusion.

2 THE ENABLING POWERS

- 2.1 The Order is made pursuant to section 10 of and paragraph 1 of Schedule 3 to the Electricity Act 1989.
- 2.2 Paragraph 1 of Schedule 3 to the Electricity Act 1989 provides that:
 - (1) *Subject to paragraph 2 below, the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.*
 - (2) *In this paragraph... "land" includes any right over land... and the power of the Secretary of State under this paragraph includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.*
- 2.3 On 24 January 2017 the Acquiring Authority was granted an electricity generation licence pursuant to section 6(1)(a) of the Electricity Act 1989.
- 2.4 The activity which the Acquiring Authority is authorised by the electricity generation licence to carry out is to generate electricity in Great Britain, the territorial sea adjacent to Great Britain or in a Renewable Energy Zone (as defined in s.84(4) of the Energy Act 2004) for the purpose of giving a supply to any premises or enabling a supply to be so given.
- 2.5 The electricity generation licence granted to the Acquiring Authority incorporates a standard condition which relates to compulsory purchase:

Condition 14. Compulsory acquisition of land etc

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.

- 2.6 In Condition 14 the references to "generating station" are to an electricity generating station which:
 - 2.6.1 has, or will have when its construction or extension is completed, a capacity of not less than 50 megawatts or such other capacity as may be specified in relation thereto by order of the Secretary of State under section 36(3) of the Act;
 - 2.6.2 is, or will be when its extension or construction is completed, operated by or for the licensee.
- 2.7 The Acquiring Authority may therefore be authorised to purchase compulsorily land or rights over land to enable the Acquiring Authority to carry on the activities authorised by its licence.
- 2.8 Schedule 9 to the Electricity Act 1989 requires the Acquiring Authority to "*have 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*" and "*do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*"
- 2.9 The new rights set out in the Order are required to facilitate the implementation and maintenance of the ANS Works. The ANS Works form part of the KIMP and must be implemented in order for the Acquiring Authority to operate the Hornsea Three generating station.
- 2.10 The Acquiring Authority therefore considers that the new rights set out in the Order are required to enable the Acquiring Authority, as an Electricity Act 1989 licensee, to carry on the activities authorised by its licence and which relate to the operation of a generating station.

3 DESCRIPTION OF HORNSEA THREE AND THE ANS WORKS

- 3.1 The DCO grants the Acquiring Authority development consent for Hornsea Three, a nationally significant infrastructure project. Once complete, Hornsea Three will have up to 231 wind turbines; up to three offshore accommodation platforms; up to twelve offshore transformer substations; up to four offshore HVDC converter substations; up to six subsea offshore HVAC booster stations; up to four surface offshore HVAC booster stations; subsea inter-array electrical circuits; a marine connection to shore; a foreshore connection and an onshore connection to an onshore substation (which could also include an onshore HVAC booster station sited along the route); and the connection from there to National Grid's existing Norwich Main substation. Hornsea Three will have a total installed capacity in excess of 100MW.

- 3.2 Under Part 1 of Schedule 14 to the DCO, the Acquiring Authority is obliged to submit a KIMP to the Secretary of State for approval. As introduced by The Hornsea Three Offshore Wind Farm (Amendment) Order 2023, paragraph 4 of Part 1 of Schedule 14 to the DCO states that the Acquiring Authority must implement the measures set out in the KIMP and no operation of any turbine forming part of Hornsea Three may commence until three full breeding seasons have elapsed following the implementation of two of the ANS, and two full breeding seasons have elapsed following the implementation of two of the ANS, as set out in the KIMP. Paragraph 8 of Part 1 of Schedule 14 to the DCO requires the KIMP to be in accordance with the principles set out in the kittiwake compensation plan (as defined in the DCO).
- 3.3 Prior to commencing Hornsea Three, and in accordance with paragraph 2 of Part 1 of Schedule 14 to the DCO, the Acquiring Authority had to set up an OOEG in order to prepare the KIMP. The OOEG's core membership includes Natural England, the Marine Management Organisation and the RSPB. Through consultation with the OOEG the Site was identified as being suitable for the ANS, primarily due to its proximity to the coast and the existing kittiwake colony on the Hartlepool RNLI Lifeboat Station.
- 3.4 The ANS Works consist of the demolition of the existing yacht club building and the construction of two types of ANS for kittiwakes. Both ANS typologies are ecologically driven designs, agreed with the OOEG, which are also responsive to the particular characteristics of the Site and its wider context:
- 3.4.1 The first of the ANS types is designed to appear similar to fishermen's huts that can often be found in coastal communities, and arranged along the northeast edge of the Site facing towards the existing kittiwake colony. These structures have capacity for 534 nesting spaces on sea-facing nesting shelves. Nesting space will be incorporated along the seaward facing elevations of the huts and will have typical dimensions of 0.4m width, 0.4m height and 0.2m depth.
- 3.4.2 The second ANS type is of a ten-sided tower design, where multiple external faces provide a variety of nesting aspects with an internal space allowing for a sheltered working conditions for ecologists monitoring the site. The tower is to be located west of the proposed huts in order to provide sea views from six of the ten sides. The tower would have 510 nesting spaces with sea views and 340 without. Nesting space is incorporated on all 10 faces of the tower. Typical dimensions 0.4m width x 0.4m height x 0.2m depth.
- 3.5 Avian predator mitigation is provided for both ANS types through nesting ledge dimensions and overhangs provided by hut and tower roofs respectively. It is not anticipated that the ANS design and location will be susceptible to avian predation issues, but should any issues arise in operation appropriate action can be taken as required.
- 3.6 Temporary portable welfare facilities are also proposed to be located with a car park area which would be for an estimated 6 to 12 months from the start of construction for those visiting the site. The indicative building would measure approximately 8.638m in length by approximately 3.4m in width, with a flat roof height of approximately 2m.
- 3.7 Pursuant to paragraph 3(f) of Part 1 of Schedule 14 of the DCO, whereby the Secretary of State requires certain information once the ANS are in place, but before a colony is established, a period of colonisation monitoring will take place each breeding season. This will include two survey visits made annually where any apparently occupied nests, trace nests, or prospecting birds will be counted. Following discussion with the OOEG, colonisation monitoring may also involve additional systematic monitoring of the ANS to assess the prevalence of prospecting kittiwake and any early nesting attempts.
- 3.8 External lighting is required to support occasional use of the ANS that may occur after dark, directing light only where and when it is required, supporting site security, helping to avoid

adverse impacts on site ecology, ensuring low energy usage and supporting site identity. Only the arrival car park area and paths to the ANS will be lit with lighting triggered using low level motion sensors so lights are only turned on when required. Each luminaire selected will have a warm colour temperature (2200K) and is "dark-skies" and British Standard compliant providing additional measures to control light and provide a high-quality lighting approach for the Site. The lighting furniture will comprise simple cylindrical columns, providing an appropriate fit with the landscape context. Perch mitigation devices will be installed on the top of all columns. The lighting columns will also provide the mounting element for the site CCTV system that comprises two camera types. Cameras for general Site security will be mounted within the columns themselves; cameras for ecological monitoring of nesting space on the huts and tower ANS will be mounted on short arms integrated with the column design. All lighting furniture will have the same silver-grey colour finish as the perimeter fence to provide a recessive and complementary fit with the weathered timber of the ANS and landscape context.

- 3.9 Works are therefore required to install, use and maintain services in connection with the ANS. The services include an electrical supply to power the mechanical and electrical equipment on the Site such as CCTV and lighting. The works will include the installation of a new 300WNE 3c electrical cable in the verge of Ferry Road, together with double ducting at all road crossing points. A new electrical cable is required as the Site does not currently have an electrical connection. The Acquiring Authority understands that electricity was previously supplied to the Site by PD Ports who are no longer doing so. Any new utility installation will be undertaken in accordance with the requirements set out in the New Roads and Street Works Act 1991 ensuring that access along the route is maintained at all times. The majority of the works will be in the verge or edge of the carriageway and will not affect the day-to-day use of the road. Where any existing access points are crossed, temporary works will be introduced to maintain access. Installation of a new electrical connection is expected to take approximately 8 weeks.
- 3.10 Overall construction of the ANS Works would take approximately 9 months to be completed.

4 DESCRIPTION OF THE ORDER LAND

- 4.1 This section contains a brief description of the Order Land. A more detailed description of each plot is set out in Table 1 and Table 2 of the Order. The land over which new rights are to be compulsorily acquired is shown edged red and coloured blue on the Map referred to in the Order.
- 4.2 The Order Land is an existing private road which adjoins the Site and continues for approximately 175 metres along Ferry Road until it meets the existing publicly adopted highway. In addition to providing access to the Site, Ferry Road provides access to the RNL Hartlepool Lifeboat Station, industrial land, six fisher cabins and to Middleton Jetty. The Order Land surface varies from a hard surface with tarmacadam to unmade with a loose gravel surface, with utility chambers, surface drainage, streetlights and other street furniture throughout. There are narrow verges of naturally occurring vegetation and fences on both sides of Ferry Road.

4.3 SPECIAL KINDS OF LAND

Local authority and statutory undertaker land

- 4.3.1 Sections 16 and 17 of and Schedule 3 to the Acquisition of Land Act 1981 apply to the compulsory acquisition of land and rights over certain specified types of land.
- 4.3.2 The Acquiring Authority understands that the Order Land includes land which has been acquired by a statutory undertaker, PD Ports, for the purposes of their undertaking. PD Ports is a harbour authority pursuant to the Tees and Hartlepool Port Authority Act 1969.

- 4.3.3 The Acquiring Authority notes that if PD Ports submits a representation objecting to the Order, the Order cannot be confirmed by the Secretary of State for Energy Security and Net Zero unless the appropriate Minister, in this case the Secretary of State for Transport, is satisfied that the new rights can be acquired without serious detriment to the carrying on of PD Ports' undertaking and certifies accordingly.
- 4.3.4 The Acquiring Authority considers that the new rights, being rights of access along an existing access track and rights for utilities, can be acquired without serious detriment to PD Ports' undertaking.
- 4.3.5 Section 17(3) of and paragraph 4(3) of Schedule 3 to the Acquisition of Land Act 1981 provides that a compulsory purchase order shall not be subject to special parliamentary procedure where the person acquiring the interest is a statutory undertaker. As the Acquiring Authority holds a generation licence under the Electricity Act 1989, it is a statutory undertaker for the purposes of the Acquisition of Land Act 1981. Accordingly, special parliamentary procedure does not apply to the Order.
- 4.3.6 A number of statutory undertakers are noted in Part 2 of Table 2 as being other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981 in respect of rights for existing water, gas and telecommunications apparatus. The Acquiring Authority is not proposing to interfere with or acquire any rights from those statutory undertakers.

Open space land

- 4.3.7 The Order Land does not include any land that is common land, laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground.

Crown land

- 4.3.8 The Acquiring Authority is aware that the Crown Estate historically had an interest in the Site and surrounding land. The Acquiring Authority understands that mines and minerals in the Order Land are not owned by PD Ports. Ownership of the mines and minerals cannot be confirmed based on the evidence available, however, it is possible that the mines and minerals may still be owned by the Crown Estate. The Acquiring Authority has therefore taken a conservative approach and stated in the Order that the Acquiring Authority is not seeking to interfere with or acquire any interests belonging to the Crown.

Protected Assets

- 4.3.9 There are no listed buildings, buildings subject to a building preservation notice, buildings which may qualify for inclusion in the statutory list, registered parks or gardens, buildings within a conservation area or scheduled monuments within the Order Land.

5 DESCRIPTION OF THE NEW RIGHTS TO BE COMPULSORILY ACQUIRED

- 5.1 New rights are sought in the Order to facilitate the Acquiring Authority and all persons authorised on its behalf to access the Site for the purposes of carrying out the ANS Works; using, monitoring and maintaining the ANS; and all other purposes connection with the Site.
- 5.2 The rights required to access the Site referred to as the "**Access Rights**" in the Order. The land over which the acquisition of the Access Rights is being sought is shown edged red and coloured blue on the Map referred to in the Order (referred to as the "**Accessway**" in the Order).
- 5.3 The Access Rights are defined in the Order as:

"Access Rights"	<p>means the rights for the acquiring authority and its successors in title and their respective tenants, licensees and assignees and those authorised by any of them:</p> <ol style="list-style-type: none"> 1. to pass with or without vehicles, plant, machinery and equipment over the Accessway at all times to gain access to and egress from the Site for all purposes connected with the Site, but not for any other purpose;
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	<ol style="list-style-type: none"> 2. to lay, construct, use, maintain, renew, replace, repair, widen, improve and upgrade an access road on the Accessway, including any works required by any planning, highways or other authority, or otherwise required in order to provide sufficient access to and egress from the Site; 3. of support for the Accessway; 4. to lay, construct, inspect, use, maintain, protect, renew, replace, upgrade and remove electric cables and all associated ancillary equipment (including but not limited to access chambers, manholes and marker posts) and associated works, connections to other electric cables and all ducts, conduits, gutters or pipes for containing them to be laid; 5. to the flow of foul and surface water, gas and electricity through any existing pipes, drains and cables in, under or through the Accessway for all purposes connected with the use of the Site, together with all necessary rights to maintain, protect, renew, replace and remove any such pipes, drains and cables; 6. to enter upon the Accessway as may be reasonably required with or without vehicles, plant, machinery and equipment for the purpose of exercising all or any of the Access Rights; and 7. to remove anything placed, installed or deposited on the Accessway from time to time, which obstructs, or may obstruct, the exercise of the Access Rights and to prevent any works on or uses of the Accessway which may interfere with or damage any pipes, drains and cables. <p>The Access Rights shall be exercised subject to the Diversion Provisions.</p> <p>These rights are for the benefit of the Site.</p>
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5.4 The Access Rights are subject to the Diversion Provisions. The Diversion Provisions are defined in the Order as:

"Diversion Provisions"	<p>The Landowner may divert and alter the position of the Accessway over which the Access Rights are exercised where necessary for the development of the Landowner's Property, providing always that:</p> <ol style="list-style-type: none"> 1. the exercise of the Access Rights shall not be materially and unreasonably prejudiced by such diversion and/or alteration of the Accessway and the Accessway when diverted and/or altered shall be no less commodious and no less convenient for the use and enjoyment of the Site and the exercise of the Access Rights; 2. the Landowner has consulted with the acquiring authority in relation to any proposed diversion or alteration of the Accessway as soon as practical, and in any event prior to making any planning application for a development which necessitates the diversion or alteration of the Accessway, and has taken into account any reasonable solutions proposed by the acquiring authority to avoid such diversion and/or alteration; 3. the Landowner has obtained planning permission for the proposed development of the Landowner's Property which necessitates the diversion and/or alteration of the Accessway and has obtained all necessary consents and permissions for the proposed diversion and/or alteration of the Accessway;
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	<p>4. the Landowner has given the acquiring authority written notice not less than 6 months prior to commencement of any works to divert and/or alter the Accessway, which notice shall be accompanied by a plan showing the proposed route of the diverted and/or altered Accessway;</p> <p>5. the Landowner has entered into a variation of the Access Rights with the owner of the Site to reflect the diverted and/or altered route of the Accessway; and</p> <p>6. the Landowner being solely responsible for all costs associated with implementing any such diversion and/or alteration of the Accessway including, if required, all costs associated with relocating any pipes, drains and cables in, under or through the Accessway and connected with the use of the Site.</p>
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5.5 It is anticipated that the Accessway will initially be utilised by the Acquiring Authority for approximately 9 months during construction of the ANS Works. Permanent rights of access along the Accessway will then be required for the monitoring and maintenance of the ANS Works.

Mining Code

5.6 The mining code, also known as the minerals code, is set out in Schedule 2 of the Acquisition of Land Act 1981.

5.7 The CPO Guidance states that the mining code should not be incorporated automatically or indiscriminately, as this may lead to the sterilisation of minerals, including coal reserves.

5.8 The Acquiring Authority has considered carefully whether to include the mining code in the Order and has had regard to whether the existence of statutory rights of compensation or repair of damage might provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.

5.9 As the Order includes rights for the construction of below ground services, the Acquiring Authority considers it is appropriate to include the mining code within the Order.

6 REASONS FOR MAKING THE ORDER AND JUSTIFICATION FOR THE USE OF POWERS OF COMPULSORY ACQUISITION

6.1 The Acquiring Authority has carried out a detailed site selection process (as recognised in the appeal decision letter dated 13 March 2023 (appeal ref: APP/H0724/W/22/3309272). In summary:

6.1.1 Two broad search zones were identified along the coasts of East Anglia and North East England. These initial search zones were chosen based on their ecological suitability and in accordance with the Kittiwake

Compensation Plan (certified plan pursuant to Article 36 of the DCO) and their likelihood for interchange of birds with the FFC SPA.

- 6.1.2 Sections of coast within the search zones were selected which were likely to provide favourable conditions for new colonies of kittiwake.
- 6.1.3 At the request of SNCBs to diversify/spread risk over a number of ecologically distinct sites, areas beyond 100 km from FFC SPA, namely East Suffolk, were considered even though the likelihood of interchange with the FFC SPA population may be lower.
- 6.1.4 Initial search zones were refined by focusing on sections of coast which were deemed the most ecologically favourable. Within these coastal areas, sites were then identified where an ANS could potentially be located. The proposed locations were presented to the OOEG and appropriate sites to progress were agreed upon.
- 6.2 The site selection process set out in paragraph 6.1 led to the Site being identified as being an ecologically suitable location for accommodation of the ANS, primarily due to its proximity to the coast and existing kittiwake colony.
- 6.3 The delivery of the ANS Works is essential to ensure the delivery and operation of the nationally significant Hornsea Three Offshore Wind Farm, which will provide green energy to 3.2 million UK homes and support thousands of jobs in the northeast during the construction phase. Any delay to the project as a result of any impediment to the delivery of the ANS Works would have a material impact on the generation of much needed renewable energy, energy security and adversely impact the two-way CfD awarded for Hornsea Three by the Government. Commissioning of Hornsea Three is planned for 2027.
- 6.4 The ANS Works will provide purpose-built nesting spaces for kittiwake, a globally threatened species identified as vulnerable and at risk of extinction on the UK's Red List for Birds of Conservation Concern. The provision of purpose-built ANS at the Site will help to encourage new breeding pairs to nest on the ANS as opposed to new port buildings and facilities. Although the kittiwake colony in Hartlepool is growing and will continue to do so, the distribution of kittiwake pairs will change as current pairs gradually die off and new nesting pairs favour the purpose-built ANS.
- 6.5 In its appeal decision letter dated 13 March 2023, the Inspector supported Hornsea Three and the ANS works by stating: *"The wider implications for the Hornsea Three project, and its associated benefits, cannot be detached from my considerations. Without the compensation in accordance with the requirements of Part 1 of Schedule 14 of the DCO, the wind farm could not be commissioned and a significant amount of renewable energy could be removed from the UK Government's targets for 50GW of offshore wind capacity by 2030"*.
- 6.6 As set out above, there is a national need for Hornsea Three and the ANS and the Acquiring Authority considers that there would be a significant public benefit arising from Hornsea Three.
- 6.7 As set out in section 7 of this Statement, the Acquiring Authority has sought, and continues to seek, acquisition of the rights over the Order Land, by negotiation and agreement wherever possible. However, as at the date of the Order, the Acquiring Authority has not been able to reach agreement with PD Ports. It is therefore necessary to proceed with the Order in order to obtain the necessary rights.
- 6.8 The new rights to be created over the Order Land are the minimum necessary to deliver the ANS Works.
- 6.9 The Order is also required to ensure that there are no impediments to accessing the Site. For example, there may be unknown rights or restrictions affecting the Accessway which need to

be overridden, removed and/or extinguished in order to facilitate the implementation and maintenance of the ANS Works without hindrance.

- 6.10 For the reasons set out in section 11 of this Statement, the Acquiring Authority has concluded on balance that the significant public benefits of Hornsea Three outweigh the effects upon persons with an interest in the Order Land.

7 NEGOTIATIONS WITH LANDOWNERS

- 7.1 The Acquiring Authority has sought, and continues to seek, acquisition of the rights over the Order Land, by negotiation and agreement wherever possible, and the making of the Order does not prejudice the rights of PD Ports to settle such negotiations by agreement.
- 7.2 The Acquiring Authority has been in discussions with PD Ports since 1 October 2021. A summary of correspondence is set out in the table below:

Date	Correspondence
01 October 2021	Introductory video call between the Acquiring Authority and PD Ports, where the Acquiring Authority provided an overview of the proposals for the Site and tried to address any concerns PD Ports might have.
20 October 2021	Email from PD Ports to the Acquiring Authority raising concerns regarding the planned use for the Site and potential impacts on adjacent land owned by PD Ports. PD Ports confirmed that they would not permit any access along Ferry Road to the Site.
04 November 2021	Email from the Acquiring Authority to PD Ports setting out the view of the Acquiring Authority's consultant ecologist that the planned use of the Site will not have a determinantal impact on PD Ports' land. In an effort to give additional comfort, the Acquiring Authority also offered some potential mitigation measures. No response was received from PD Ports.
07 December 2021	Email from the Acquiring Authority to PD Ports confirming that its purchase of the Site was complete and that it wanted to have further discussions with PD Ports in respect of historic access to the Site. The Acquiring Authority offered to discuss how it could make the operational teams at PD Ports more comfortable with the plans and possible opportunities for PD Ports and the Acquiring Authority to develop a wider relationship. No response was received from PD Ports.
13 December 2021	Email from the Acquiring Authority to PD Ports, following up from a phone conversation on the 10/12/2021 stating that the Acquiring Authority wanted to discuss a commercial settlement on the access issue and requesting a dialogue with the appropriate people within their organisation. No response was received from PD Ports.
10 January 2022	Offer letter sent by the Acquiring Authority to PD Ports, along with a report from the Acquiring Authority's Ornithological Consultants outlining their expert view that the proposed use of the Site would not have any adverse impact on PD Ports' land.
12 January 2022	Response from PD Ports to the Acquiring Authority's letter of the 10/01/2021 confirming that PD Ports are not willing to discuss a resolution to the access issue.
23 March 2022 and 29 March 2022	Emails from the Acquiring Authority's EPC Director to PD Ports Property offering an increased commercial settlement and further offers to discuss this matter with them.
30 March 2022	Response from PD Ports again confirming that they are not willing to discuss the access issues.

Date	Correspondence
01 April 2022	Second email from the Acquiring Authority's EPC Director to PD Ports Property team (following a phone conversation earlier that week), offering a further commercial settlement, along with confirmation that if agreement couldn't be reached, the Acquiring Authority would be taking further legal steps to resolve this issue. No response received from PD Ports.
April and May 2022	High level meetings held between Head of Region UK from Orsted & CEO of PD Ports. No resolution to the issues was reached at these meetings.
28 June 2022	The Acquiring Authority sent a Request for Information pursuant to s5A of the Acquisition of Land Act 1981 to PD Ports.
13 July 2022	Letter from PD Ports to the Acquiring Authority responding to the Request for Information. The letter referred the Acquiring Authority to information held by the Land Registry, confirmed the status of Site as operational land of PD Ports in its role as a statutory undertaker and queried the availability of powers under the Electricity Act 1989.
24 April 2023	Email from the Acquiring Authority to PD Ports asking for a call to restart discussions for a voluntary agreement following the grant of planning permission on appeal.
28 April 2023	Email from the Acquiring Authority to PD Ports following up email earlier in the week and advising that a formal offer (on basis of previous offers) will follow ¹ .
04 May 2023	Response from PD Ports confirming that a face-to-face meeting would be useful and requesting availability from the Acquiring Authority. (PD Ports representative also confirmed they would be on annual leave from 05 May 2023).
04 May 2023	Email (x2) from Acquiring Authority to PD Ports agreeing to face to face meeting at PD Ports office in Middlesbrough and suggesting dates w/c 22 May 2023 or w/c 29 May 2023.
22 May 2023	Email from Acquiring Authority to PD Ports chasing up dates for a meeting.
25 May 2023	Email from Acquiring Authority to PD Ports chasing up dates for a meeting w/c 29 May 2023.
26 May 2023	Email from Acquiring Authority to PD Ports confirming change to annual leave dates meaning w/c 29 May 2023 no longer suitable but offering further dates for a meeting from 14 June 2023 onwards.
19 June 2023	No response received by the Acquiring Authority from PD Ports since the email received from them on 04 May 2023. Multiple phone calls have also been made by the Acquiring Authority since that date but there has been no answer from PD Ports as each call went straight to voicemail. Letter sent by post and email from Acquiring Authority to PD Ports offering a commercial settlement and deadline of 30 days for acceptance, with the offer subject to agreement of acceptable terms and conditions within set timescales. Letter also confirmed the Acquiring Authority's intention to restart CPO proceedings but reiterated the Acquiring Authority's hope and commitment to reaching a voluntary agreement with PD Ports.
30 June 2023	Email received from PD Ports confirming availability for a meeting on 26 July 2023.

¹ For the avoidance of doubt, the formal offer was not sent at that time as the response received from PD Ports indicated a preference for a face to face meeting.

Date	Correspondence
	As of 4 July 2023 PD Ports had not accepted the offer sent on 19 June 2023.

7.3 A table summarising the current status of negotiations for each plot is set out below.

Landowner	Plot Numbers	Status of Negotiations
PD Teesport Limited (CRN: 02636007)	1	<p>The Acquiring Authority’s initial engagement with PD Ports property team was positive. However, having subsequently shared the plans for the Site, it was made clear that the local port operations team had concerns about the proposals and that they weren’t willing to discuss this matter any further. The Acquiring Authority subsequently emailed and wrote to PD Ports offering meetings with senior Orsted representatives to discuss the ways in which they might mitigate their concerns. This approach was rejected by PD Ports.</p> <p>In order to try to resolve the matter, the Head of Region UK from Orsted reached out to the Chief Executive of PD Ports. However, whilst this prompted two additional senior level meetings, no meaningful progress was made. At these meetings Orsted’s Head of Region UK:-</p> <ol style="list-style-type: none"> 1. offered to provide further details on how any perceived impacts on port operations by the appeal proposals could be mitigated; and 2. confirmed that the Acquiring Authority would be willing to enter into a development agreement that would give PD Ports assurances that the Acquiring Authority would cover any potential costs/losses if it could be clearly demonstrated that the ANS directly impacted PD Ports’ operations. <p>Following the grant of planning permission on appeal, the Acquiring Authority has contacted PD Ports on a number of occasions to try to discuss the terms of a voluntary agreement. As no progress had been made with PD Ports, and to ensure the deliverability of the ANS Works, the Applicant has made the Order. The Applicant remains willing to discuss and enter into a voluntary agreement with PD Ports.</p>
PD Teesport Limited	2	As above
Unknown		
PD Teesport Limited (in respect of the subsoil)	3	As above
Hartlepool Borough Council (as highway authority)		

8 THE PLANNING POSITION FOR THE ANS WORKS

- 8.1 Planning permission is required for the ANS Works. An EIA Screening Request was submitted to HBC (application reference H/2021/0405) on 23rd August 2021. HBC confirmed on 24th September 2021 that the Proposed Development does not constitute a Schedule 1 development or Schedule 2 development, as defined by the EIA Regulations, and therefore the development does not need to be screened in line with the 'Regulations', and an EIA is not required.
- 8.2 In January 2022, the Acquiring Authority submitted a planning application under the Town and Country Planning Act 1990 (application reference H/2022/0009) to HBC on for the demolition of existing structures and construction of ANS for kittiwakes and associated infrastructure.
- 8.3 In a report to committee, HBC's planning officer recommended approval and stated:
- "It is considered by Officers that the proposal in the context of relevant planning policies and material planning considerations is acceptable as set out in the Officer's Report."*
- 8.4 However, the planning application was refused at an HBC Committee Meeting held on 22 June 2022 for the following reasons:
- 8.4.1 the proposed development would have the potential to result in a constraining impact on the activities of the adjacent port and the economies of the area, contrary to policies LS1 and EMP4 of the Hartlepool Local Plan (2018);
- 8.4.2 the applicant has failed to demonstrate that the proposal would not result in an adverse impact on the amenity of neighbouring land users in terms of noise, contrary to policy QP4 of the Hartlepool Local Plan (2018); and
- 8.4.3 the proposed development would result in an adverse impact on the visual amenities of the area, contrary to policy QP4 of the Hartlepool Local Plan (2018).
- 8.5 The Acquiring Authority appealed this refusal to grant planning permission under section 78 of the Town and Country Planning Act 1990. The planning permission was granted on appeal in an appeal decision letter dated 13 March 2023.

9 FUNDING FOR THE SCHEME

- 9.1 The Acquiring Authority was awarded a CfD on 29 July 2022. The CfD is the Government's main mechanism for supporting low-carbon electricity generation. CfDs incentivise investment in renewable energy by providing developers of projects with high upfront costs and long lifetimes with direct protection from volatile wholesale prices, and they protect consumers from paying increased support costs when electricity prices are high.
- 9.2 Hornsea 1 Offshore Wind Farm and Hornsea 2 Offshore Wind Farm are operational windfarms in the south north sea and were awarded CfDs. This incentivised investment due to the offer of a stable revenue. The divestment of Hornsea 1 and Hornsea 2 took place after construction. It is likely that the same model will be applied to Hornsea Three.
- 9.3 In order to fund construction, the funding organisation for all investments made in relation to Hornsea Three is Ørsted A/S. Ørsted A/S is the parent company of the Ørsted Group and is 100% indirect owner of each Ørsted Project Partner, including the Acquiring Authority. Ørsted A/S achieves the highest credit rating, as assessed by Dun & Bradstreet, which can be relied upon to prove Ørsted A/S's financial robustness for the purposes of this application. Ørsted A/S is a publicly traded company listed at NASDAQ Copenhagen with a market capitalisation as at 5th May 2023 of approximately DKK 270 billion (GBP 32 billion). The Danish state holds a majority

interest of 50.1% in Ørsted A/S. Funding into the Acquiring Authority will be provided via a combination of equity and loans.

- 9.4 For the reasons set out above, the Acquiring Authority will have the necessary funds to meet the capital expenditure for the cost of Hornsea Three, including the ANS Works, and the cost of acquiring the necessary rights over land (whether compulsorily or by agreement) and any compensation otherwise payable as a result of the exercise of the powers in the Order.
- 9.5 The ANS Works need to be completed prior to commissioning of Hornsea Three (anticipated to be in 2027), which will be prior to the expiry of the statutory period to exercise the compulsory acquisition powers in the Order. The necessary funds will be available prior to the commencement of construction of the respective works.
- 9.6 It is not anticipated that any statutory blight claims will arise as a consequence of the Order, although should any claims arise, the costs of meeting claims that are upheld will be met by the Acquiring Authority from the sources of funding described above.
- 9.7 All of Hornsea Three (including the ANS Works) is to be disregarded for the purposes of the assessment of compensation in the “no scheme” world.

10 OTHER CONSENTS AND RELATED APPLICATIONS

- 10.1 The Acquiring Authority has already been granted development consent for Hornsea Three through the DCO and, as discussed at paragraph 8 above, planning permission for the ANS Works.
- 10.2 Where any consents or licences are required other than those already mentioned in this Statement, the necessary applications will be made to the appropriate consenting authority. The Acquiring Authority is not aware of any reasons why such consents or licences would not be granted.

11 HUMAN RIGHTS

- 11.1 The Human Rights Act 1998 incorporated into UK law the Convention. The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.
- 11.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether to confirm the Order:
 - 11.2.1 Article 1 of the First Protocol: this protects the right of everyone to peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.
 - 11.2.2 Article 6: this entitles those affected by the powers sought in the Order to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision-making process.
 - 11.2.3 Article 8: this protects private and family life, home and correspondence. No public authority can interfere with these rights except such as in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the country.
- 11.3 The Secretary of State, as the decision maker, is under a duty to consider to what extent the Acquiring Authority's exercise of powers of compulsory purchase would be affected by the rights protected by the Convention.

- 11.4 The Order has the potential to infringe the rights of persons who hold interests in land under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:
- 11.4.1 the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the powers of compulsory purchase in the Order; and
- 11.4.2 the interference with the convention right is proportionate.
- 11.5 The Acquiring Authority has considered the potential infringement of the Convention rights in consequence of the compulsory purchase powers within the Order. The Acquiring Authority considers that there would be a significant public benefit arising from Hornsea Three. Hornsea Three can only be delivered if the compulsory purchase powers within the Order are granted to facilitate the ANS Works.
- 11.6 The Acquiring Authority has concluded on balance that the significant public benefits of Hornsea Three outweigh the effects upon persons with interests in the Order Land.
- 11.7 Consultation has been carried out as part of the planning process for the ANS Works. Further opportunities for consultation have been allowed within the planning appeal process. The Acquiring Authority will follow the existing legislative provisions relating to compulsory purchase and this allows for objections to be made and compensation is payable to those affected by the Order in accordance with the statutory Compensation Code.
- 11.8 Should the Order be confirmed, any person aggrieved may challenge the Order in the High Court.
- 11.9 In relation to matters of compensation for land, or rights over land, to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), which is an independent judicial body to determine the compensation payable.
- 11.10 For the above reasons, any infringement of the Convention rights of those whose interests are affected by the Order, is proportionate and legitimate and is in accordance with national and European law.
- 11.11 For the reasons set out in this Statement, the Acquiring Authority considers that there is a compelling case in the public interest for the exercise of such powers of compulsory purchase. The Acquiring Authority considers that it would, therefore, be appropriate and proportionate for the Secretary of State to confirm the Order.

12 CONCLUSION

- 12.1 The new rights set out in the Order are required to facilitate the implementation, use, monitoring and maintenance of the ANS. The ANS Works form part of the KIMP and must be implemented in order for the Acquiring Authority to operate the Hornsea Three generating station.
- 12.2 The Acquiring Authority therefore considers that the new rights set out in the Order are required to enable the Acquiring Authority, as an Electricity Act 1989 licensee, to carry on the activities authorised by its licence and which relate to the operation of a generating station.
- 12.3 The new rights are no more than are reasonably necessary and will not result in any serious detriment to the carrying on of PD Ports' undertaking. Furthermore, there is a compelling case in the public interest for the rights over land to be acquired given the positive benefits that Hornsea Three will generate particularly in view of current UK policy in relation to renewable energy.

12.4 In addition:

12.4.1 Reasonable alternatives to compulsory purchase have been explored;

12.4.2 It has been demonstrated that the interference with rights is for a legitimate purpose, is necessary and is proportionate;

12.4.3 A description of the intended use of the land or rights to be acquired compulsorily has been provided;

12.4.4 Commercial negotiations have been attempted;

12.4.5 An explanation has been provided as to how it is expected that Hornsea Three, including the ANS Works, and the acquisition of the rights over the Order Land will be funded, as well as compensation in respect of the exercise of powers of compulsory purchase, which demonstrates that there is a reasonable prospect of the requisite funds being available; and

12.4.6 Article 1 of the First Protocol to the ECHR and Article 8 of the ECHR have been considered.

12.5 It is therefore submitted that the Order be confirmed.

13 LIST OF DOCUMENTS IN CASE OF PUBLIC INQUIRY

13.1 In the event of a public inquiry, the Acquiring Authority would intend to refer to or put into evidence the following documents, maps and plans:

13.1.1 Board Resolution of the Acquiring Authority made on 28 June 2023;

13.1.2 Order and map referred to in the Order;

13.1.3 Statement of Reasons for the Order;

13.1.4 Generation Licence dated 24 January 2017;

13.1.5 The Hornsea Three Offshore Wind Farm Order 2020;

13.1.6 The Hornsea Three Offshore Wind Farm (Correction) Order 2021;

13.1.7 The Hornsea Three Offshore Wind Farm (Amendment) Order 2023;

13.1.8 Kittiwake Compensation Plan referred to in the DCO;

13.1.9 Planning application H/2022/0009 dated 26 January 2022 for the ANS Works (the "Planning Application");

13.1.10 Officer's report to committee for the Planning Application;

13.1.11 Refusal of the Planning Application by notice dated 28 June 2022;

13.1.12 Appeal decision dated 13 March 2023 with appeal reference APP/H0724/W/22/3309272.

13.2 The Acquiring Authority reserves the right to supplement the above list in the event of a public inquiry into the Order.

13.3 The Order and map referred to in the Order can be viewed, free of charge, on the Acquiring Authority's website at <https://hornseaproject3.co.uk/documents-library>.

Dated 4 July 2023