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Ref: EN010117

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4 April 2025

Dear Mr Patterson,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE RAMPION 2 OFFSHORE WIND FARM EXTENSION PROJECT

1. Introduction

1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 6 November 2024. The ExA consisted of 5 examining inspectors, Richard Allen, Claire Beloe, Richard Morgan, Joe O'Sullivan, and Steven Rennie. The ExA conducted an Examination into the application submitted on 10 August 2023 ("the Application") by Rampion Extension Development Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Rampion 2 Offshore Wind Farm Extension Project and associated development ("the Proposed Development"). The Application was accepted for Examination on 7 September 2023. The Examination began on 6 February 2024 and closed on 6 August 2024. The Secretary of State received the ExA's Report on 6 November 2024.

1.2. On 25 November 2024 the Secretary of State issued a letter seeking information ("the first information request") from the Applicant, Natural England ("NE"), the Marine Management Organisation ("MMO"), the South Downs National Park Authority ("SDNPA"), The Crown Estate ("TCE"), Forestry Commission ("FC"), the Secretary of State for Transport ("SoSfT"), National Trust ("NT"), National Highways ("NH"), Network Rail ("NR"), National Grid Electricity Transmission ("NGET") and Sussex Inshore Fisheries and Conservation Authority ("SIFCA"). On 16 December 2024, Interested Parties ("IPs") were invited to comment on the responses received. On 6 February 2025, the Secretary of State issued a letter seeking information from the Applicant ("the second information request").

1.3. The Order, as applied for, would grant development consent for the construction of an offshore generating station with a capacity of 1200 megawatts ("MW"), comprising [ER 1.3.2]:

- The construction of up to 90 Wind Turbine Generators ("WTGs"), with up to three offshore substations;

- The construction of inter-array cabling to connect the WTGs to the offshore; substations, and up to four undersea export cabling to connect the turbines to the offshore substation(s) and from there to the landfall area at Climping Beach;
- The construction of onshore cabling from Climping Beach to Oakendene to include two temporary storage compounds;
- The construction of an onshore substation on land at Oakendene;
- The construction of further onshore cabling from the onshore substation to the National Grid ("NGET") substation at Bolney; and
- The alterations and extensions of the NGET substation at Bolney.

1.4. The Applicant also seeks compulsory acquisition ("CA") and temporary possession ("TP") powers, set out in the draft Order submitted with Application [ER 6.1.1 et seq].

1.5. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 3-7 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

2. Summary of the ExA's Report and Recommendation

2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- The need for the proposed development;
- Alternatives;
- Offshore and intertidal ornithology;
- Marine mammals;
- Fish and shellfish;
- Coastal processes and benthic subtidal and intertidal ecology;
- Commercial fisheries;
- Shipping and navigation;
- Aviation;
- Marine archaeology;
- Terrestrial ecology and nature conservation;
- Seascape, landscape and visual effects;
- Historic environment;
- Traffic and access;
- Air quality;
- Soils and agriculture;
- Minerals safeguarding and ground conditions;
- Water environment;
- Population and human health;
- Noise and vibration;

[1] https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010117

- Socio-economics;
- Waste management;
- Good design;
- Greenhouse gas emissions;
- Major Accidents and disasters; and,
- Inter-related and cumulative effects (including the South Downs National Park ("SDNP")).

2.2. The ExA recommended that, subject to the matters set out in Appendix A of its Report, the Secretary of State should grant consent for the Proposed Development and make the Rampion 2 OWF Order in the form recommended at Appendix C of the ExA's Report [ER 8.3.1].

2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

3. Summary of the Secretary of State's Decision

3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.

3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.

3.3. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").

3.4. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to the consultation letters. 425 Relevant Representations ("RRs") were made in respect of the Application [ER 1.10.2]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the Local Impact Report ("LIR") submitted by Arun District Council ("ADC"), Brighton & Hove City Council ("BHCC"), Horsham District Council ("HDC"), Mid Sussex District Council ("MSDC"), SDNPA and West Sussex County Council ("WSCC"), environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary

of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the NPSs.

4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as NPS EN-1 2011, NPS EN-3 2011 and NPS EN-5 2011 and this letter refers to them in the same way. The ExA notes that all three NPSs above have since been replaced by NPS EN-1, EN-3 and EN-5 dated November 2023 (the NPSs 2024), and are referred to herein as the "NPS EN-1/EN-3/EN-5 2024" [ER 2.3.2] and this letter refers to them in the same way.

4.3. As noted by the ExA, paragraphs 1.6.2 and 1.6.3 of NPS EN-1 2024 state that the Secretary of State has decided that for any application accepted for examination before designation of the NPSs 2024, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS, and that the NPSs 2024 will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments [ER 2.32].

4.4. As this application was submitted before the designation of the NPSs 2024, it therefore falls under the transitional arrangements and the 2011 NPSs hold primacy upon which the ExA has assessed the Proposed Development against [ER 2.3.3]. The ExA notes NPS EN-1 2024, at paragraph 1.6.3, goes on to state the 2024 NPS are potentially capable of being important and relevant considerations in the decision. The ExA places considerable weight on the importance and relevance of the 2024 NPSs in reaching their decision. The Secretary of State considers EN-1 2024 is an important and relevant consideration but the 2011 NPSs continue to have effect in relation to this application. The Secretary of State does not consider that there is anything contained within the designated 2024 NPSs that would lead the Secretary of State to reach a different decision on the Application than has been reached by relying on the 2011 NPSs.

4.5. The ExA has had regard to the National Planning Policy Framework ("NPPF") adopted in December 2023 and the accompanying Planning Practice Guidance ("PPG"). The ExA notes the NPPF does not contain specific policies for Nationally Significant Infrastructure Project ("NSIPs") however are an important and relevant consideration on decision making. At the end of July 2024, a Written Ministerial Statement ("WMS") was made by the Secretary of State for Housing, Communities and Local Government, referring to boosting the delivery of renewables to meet the Government's commitment to zero carbon electricity generation by 2030[2] and a consultation published on reforms to the NPPF and other changes to the planning system[3]. Following the consultation on reforms to the 2023 NPPF, a new NPPF was published 12 December 2024 ("2024 NPPF") Clean Power 2030 Action Plan ("CP2030") was published 13 December 2024 and sets out a pathway to a clean power system. The Secretary of State had regard to these and finds that there is nothing which would lead the Secretary of State to reach a different decision on the Application.

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[2] Written statements - Written questions, answers and statements - UK Parliament

[3] Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK (www.gov.uk)

4.6. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- The need for the proposed development (very great positive weight) [ER 5.3.10];
- Alternatives (the Applicant has considered all reasonable alternatives and the scheme represents the most appropriate location) [ER 3.3.65];
- Commercial fisheries (little negative weight) [ER 3.8.62];
- Shipping and navigation (little negative weight) [ER 3.9.48];
- Aviation (little negative weight) [ER 3.10.54];
- Seascape, landscape and visual effects (moderate negative weight) [ER 3.13.96];
- Traffic and access (little negative weight) [ER 3.15.152];
- Air quality (little negative weight) [ER 3.16.54];
- Soils and agriculture (little negative weight) [ER 3.17.45];
- Minerals safeguarding and ground conditions (little negative weight) [ER 3.18.63];
- Water environment (no residual effects) [ER 3.19.147];
- Population and human health (little negative weight) [ER 3.20.64];
- Noise and vibration (little negative weight) [ER 3.21.109];
- Socio-economics (no residual effects) [ER 3.22.44];
- Waste management (no residual effects) [ER 3.23.19];
- Good design (no residual effects) [ER 3.24.39];
- Major Accidents and disasters (no residual effects) [ER 3.26.18];
- Inter-related and cumulative effects (little negative weight) [ER 3.27.39]; and
- Inter-related and cumulative effects for the SDNP (moderate negative weight) [ER 3.27.42].

4.7. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report, including those matters on which further information has been sought.

<u>The need for the Proposed Development</u>

4.8. Subject to the mitigation hierarchy being applied and controlled within the Order, the ExA is satisfied that the need for the Proposed Development has been emphatically established through the NPS EN-1 2011 and NPS EN-3 2011 and that the need case has been met [ER 3.2.16]. The ExA notes that NPS EN-1 2024 and NPS EN-3 2024 are important and relevant considerations for the Proposed Development, and place a greater emphasis of urgency for the need based upon meeting energy security requirements. The ExA notes that the main difference between the EN-1 2011 and EN-1 2024 is the identification of offshore wind energy as a Critical National Priority [ER 3.2.17]. In conclusion the ExA ascribes the need for the Proposed Development great positive weight in the planning balance.

4.9. The Secretary of State agrees with the ExA's view and considers that the need for the Proposed Development is established and notes the contribution the Proposed Development would make to the established need and targets for renewable energy generation. The Secretary of State ascribes the need for the Proposed Development substantial positive weight in favour of making the Order.

Offshore and intertidal ornithology

4.10. The ExA does not concur with the Environmental Statement ("ES") Chapter 12 that the significance of effect from the Proposed Development on offshore and intertidal ornithology would be Negligible (Not Significant) from an EIA perspective [ER 3.4.57]. The ExA concludes that there could be a significant effect caused by the Proposed Development on offshore and intertidal ornithology in respect of Great Black-Backed Gull ("GBBG"), when considered cumulatively with other offshore windfarms [ER 3.4.57]. The ExA recognises that for the time-being there are no proposals which adequately mitigate this possible effect [ER 3.4.57]. At Deadline 6, the Applicant provided an updated cumulative assessment but as this was submitted late in the Examination, NE did not have the opportunity to comment [ER 3.4.49]. As NE was unable to provide a response to the Applicant's Deadline 6 submissions in relation to GBBG [REP6-193], the ExA took a precautionary approach to the position that the impact of the Proposed Development on GBBG could potentially be significant in EIA terms when considered cumulatively with other offshore windfarms [ER 3.4.49]. The ExA is content that Commitment C-298 in the Commitments Register [REP6-227] and the In-Principle Monitoring Plan [REP6-220] commits the Applicant to undertaking post-consent offshore ornithological monitoring. However, it concerns the ExA that potentially significant effects remain for GBBG for which no adequate mitigation or compensation has been proposed [ER 3.4.51]. The ExA is satisfied that Condition 18(5) of Schedules 11 and 12 to the Order regarding adaptive management is adequate such that in the event monitoring identifies impacts which are unanticipated or beyond those predicted in the ES, an adaptive management plan to reduce effects to within what was predicted within the ES must be submitted to the MMO and agreed by the MMO in consultation with the relevant Statutory Nature Conservation Bodies ("SNCB") [ER 3.4.55, ER 3.4.58].

4.11. The ExA also recognises that there is concern as to whether proposed compensation measures could have negative impacts on other bird species and could increase conflicts with humans [ER 3.4.58].

4.12. The ExA notes that the Secretary of State may wish to invite views from NE on the Applicant's submission at Deadline 6 on the updated cumulative assessment for GBBG [ER 3.4.49], and from the Applicant, NE and the MMO on the wording of Condition 18(5) [ER 8.4.3].

4.13. On 25 November 2024, the Secretary of State invited NE to respond to the Applicant's updated GBBG cumulative effects assessment ("CEA"). NE responded on 6 December 2024, confirming that it welcomes the updated cumulative assessment, but has concerns due to the use of the historical project impact estimates produced by White Cross offshore wind farm and the inclusion of offshore wind farm projects within Irish waters for the CEA. NE consider that the total cumulative impact is very likely to be significantly higher than was predicted in the original ES. NE do not have great confidence in the final figures provided and continue to advise that moderate adverse effects on the GBBG South-west and Channel biologically defined minimum population scale population cannot be ruled out. NE state that since Deadline 6 an addendum to Birds of Conservation Concern 5 has also been published, in which GBBG has been moved to the red list due to population declines and is therefore a species of significant conservation concern.

4.14. NE agrees with the Applicant that there is significant uncertainty in collision risk modelling and in the understanding of the behaviour of seabirds in and around offshore wind farms. However, NE considers that such uncertainty can only be addressed through monitoring of

actual collisions, how the number of birds using a site changes pre- and post-construction, and how birds use the site during post-construction and operation. NE, therefore, considers that it would be of significant benefit to carry out post-construction monitoring, both to inform whether the adverse effects on GBBG are as significant as predicted and to help address a significant knowledge gap. NE also state that compensation measures that would benefit GBBG would likely involve interventions at breeding colonies to increase the number of breeding pairs and/or their productivity. NE suggests such interventions could involve vegetation management to increase the area of suitable breeding habitat or installation of predator fencing to exclude mammalian predators. However, NE notes that identifying suitable colonies for such interventions would take some time and would fall beyond the determination timetable for the Proposed Development. NE notes that were the Secretary of State minded to seek offsetting measures for the predicted impacts on GBBG, NE would be content for a collaborative or strategic approach to be taken in regards to compensation measures.

4.15. Other offshore and intertidal ornithological issues regarding Habitats Regulations Assessment ("HRA") matters have been discussed in section 5 below.

The Secretary of State's Conclusion

4.16. Noting the Applicant's updated GBBG CEA [REP6-193] submitted at Deadline 6 and the response by NE to the Secretary of State's consultation request, the Secretary of State agrees with NE that the cumulative impact on GBBG is likely to be significantly higher than was predicted by the Applicant in the Environmental Statement. The Secretary of State also agrees with NE that a moderate adverse effect on the GBBG South-West and Channel biologically defined minimum population scale (BDMPS) population cannot be ruled out.

4.17. The Secretary of State also agrees with the Applicant and NE that there remains significant uncertainty in current collision risk modelling, and that there is a significant knowledge gap in the understanding of seabird behaviour in and around operational wind farms. The Secretary of State considers that, in line with advice from NE, to address such a knowledge gap and disagreement over the significance of effects, monitoring of actual collisions and seabird behaviour is needed.

4.18. However, on assessing the Commitments Register [REP6-227] and the Offshore In-Principle Monitoring Plan [REP6-220] cited by the ExA, the Secretary of State could find no commitment by the Applicant to undertake post-consent ornithological monitoring of GBBG. Rather, the Secretary of State notes that the Offshore In-Principle Monitoring Plan states, "as neither any significant effects nor any AEoIs are expected, no further monitoring is required or proposed for offshore or intertidal ornithology." [REP6-220, Para 4.4.2].

4.19. Furthermore, it is noted that Condition 18(5) cited by the ExA as requiring adaptive management measures relates in this matter to the discharge of Condition 11(1)(j) which secures a monitoring plan that accords with the Offshore In-Principle Monitoring Plan [REP6-220]. As the Offshore In-Principle Monitoring Plan does not provide for the monitoring of GBBG, the Secretary of State considers that neither monitoring, nor a trigger to implement adaptive management measures, is adequately secured in the Recommended Order.

4.20. The Secretary of State has therefore amended the conditions in Schedules 11 and 12 to the Order, in accordance with NPS EN-3 2011 Paragraph 2.6.51, which states that the Secretary of State should consider requiring the Applicant to undertake monitoring prior to and during

construction and during the operation of an offshore wind farm development to enable an assessment of the accuracy of the original predictions of an Environmental Statement. The Secretary of State has amended the conditions in the DML to include requirements that a great black-backed gull monitoring plan be approved by the MMO in consultation with NE. The Secretary of State is content that the new amendments secures the monitoring necessary to determine whether the effects on GBBG are as predicted by the Applicant in the ES. The Secretary of State is also content that should effects be identified that are beyond those predicted by the Applicant, the new amendments also secures adaptive management requiring mitigation and compensation measures necessary to bring the effects to within that predicted in the ES. This is consistent with the general requirement for pre- and post-construction monitoring and adaptive management under Condition 18(5) of Schedules 11 and 12.

4.21. The Secretary of State is satisfied that with the insertion of these amendments, this issue has been adequately addressed and ascribes this matter little negative weight in the planning balance.

Marine mammals

4.22. The ExA concurs with ES Chapter 11 that the significance of effect from the Proposed Development on marine mammals would be minor adverse and therefore not significant, caused by the temporary construction activities [ER 3.5.114]. The ExA is satisfied that the Applicant has demonstrated that such risks associated with the Proposed Development can be satisfactorily mitigated and managed and that appropriate mitigation would be secured via relevant Conditions in the Deemed Marine Licence ("DML") within the Order [ER 3.5.113]. The ExA concluded that the Proposed Development was in accordance with all relevant policy and legislation, and ascribes this matter little negative weight in the planning balance [ER 3.5.115-116].

4.23. The ExA considers that whilst the majority of issues have been resolved and the Applicant had committed to double big bubble curtains ("DBBC") as an embedded mitigation measure throughout construction activities, the Applicant has not fully followed advice from MMO and NE regarding: the allocation of sensitivity to cetaceans in the ES, particularly given the inherent uncertainties in the evidence presented and steer in NPS EN-3 2011, Paragraph 2.6.95, to consider the views of the relevant statutory advisors; and, construction piling monitoring to only monitor the first four piles despite NE's and the MMO's requests to monitor a greater number during construction [ER 3.5.112].

Sensitivity of cetaceans to risk of auditory injury

4.24. The ExA acknowledged the unresolved disagreement at the close of the Examination between the MMO/NE and the Applicant in relation to the sensitivity scoring for marine mammals throughout the ES and disagreement over the risk of auditory injury to marine mammals [ER 3.5.95]. NE [REP6-266] and the MMO [REP6-302] maintained that the sensitivity score for cetaceans to permanent threshold shift (PTS) should be high, and that more empirical evidence is required to conclude a different sensitivity score. However, the MMO [REP6-302] stated that it does not believe this outstanding issue significantly alters the conclusions of the ES and that it is content that this issue is a non-material disagreement. However, the MMO wanted this disagreement noted if the information and ES is referred to where the Secretary of State is minded to grant development consent. The ExA noted that

NPS EN-3 2011, Paragraph 2.6.95 steers the Secretary of State to consider the view of the relevant statutory advisors [ER 3.5.95].

4.25. Having considered the advice of the MMO/NE and the information presented by the Applicant, the Secretary of State agrees with the MMO/NE that there is insufficient empirical evidence to assess cetaceans as having a low sensitivity to PTS. Therefore, on 25 November 2024, the Secretary of State requested that the Applicant provide an amended ES Chapter 11 which assesses cetaceans as having a high sensitivity to PTS. The Applicant, whilst noting that it considers a high sensitivity score to be unsupported, provided a revised ES Chapter 11 Marine Mammals, which included an assessment of cetacean PTS from pile driving using a high sensitivity score. The Applicant noted that the amendment to the sensitivity score does not change the overall Minor (not significant) effect concluded for all cetaceans in relation to PTS. The Secretary of State welcomes the amendments made to ES Chapter 11 and considers that this sufficiently addresses the concerns of NE and the MMO. The Secretary of State has inserted the revised ES Chapter 11 into Schedule 16 of the Order as a document to be certified, and considers this matter to be resolved.

Enhanced monitoring of piled foundations

4.26. The ExA acknowledged the unresolved disagreement at the close of the Examination between the MMO/NE and the Applicant in relation to underwater noise monitoring from piling, including the Applicant's construction piling monitoring to only monitor the first four piles despite NE's and MMO's requests to monitor a great number during construction [ER 3.5.11]. The ExA agreed with the MMO that enhanced monitoring of piled foundations is required in order to address the uncertainty around the efficacy of DBBC as a noise abatement system, particularly in depths of over 40m [ER 3.5.107 and ER 3.6.189]. The ExA noted that NPS EN-3 2024 Paragraphs 2.8.295 and 2.8.296 state that owing to the complex nature of offshore wind development, and the difficulty in establishing the evidence base for marine environmental recovery, the Secretary of State should, where appropriate, request the applicant undertake environmental monitoring prior to and during construction and operation, and that the Secretary of State may consider that monitoring of any impact is appropriate [ER 3.5.107]. Whilst the ExA noted that the Offshore In-Principle Monitoring Plan [REP6-220] does not include the required enhanced monitoring, the ExA considered that under Condition 11(j) of Schedules 11 and 12 of the Recommended Order that the MMO would have sufficient control over the final monitoring plan to ensure the enhanced monitoring would occur [ER 3.5.108].

4.27. Having considered the advice of the MMO/NE and the information presented by the Applicant, the Secretary of State agrees with the MMO that there remains uncertainty in the efficacy of DBBC as a noise abatement system, particularly in depths over 40m which have the potential to decrease its effectiveness. The Secretary of State agrees with the MMO/NE and the ExA that an enhanced monitoring programme of piled foundations is therefore required, and considers it appropriate considering the provisions of NPS EN-3 2024 Paragraphs 2.8.295 and 2.8.296.

4.28. Whilst the Secretary of State notes the conclusion of the ExA in relation to Condition 11(j) of Schedules 11 and 12, to avoid any post-consent confusion, on 24 November 2024 the Secretary of State requested that the Applicant provide an amended Offshore In-Principle Monitoring Plan and In-Principle Sensitive Features Mitigation Plan to require that measurements must be obtained from the first eight piles (or eight of the first 12 piles) of each foundation type to be installed. The Applicant subsequently provided revised plans,

which included the enhanced monitoring of piled foundations. The Secretary of State welcomes the amendments made to the plans and considers that this sufficiently addresses the concerns of the MMO and NE. The MMO responded on 13 January 2025 to the Secretary of State's consultation stating that it was content with the revised plans but deferred to NE on the updates made. NE responded stating that some inconsistency in terminology and commitments remained but that these would be expected to be resolved in the final monitoring plan. The Secretary of State is supportive of these requests and notes that these can be resolved by the MMO and NE through the approval of the final monitoring plan. The Secretary of State has inserted the revised Offshore In-Principle Monitoring Plan and In-Principle Sensitive Features Mitigation Plan into Schedule 16 of the Order as documents to be certified, and considers this matter to be resolved.

Worst-case piling scenario

4.29. The ExA acknowledged that NE did not have the opportunity to consider the Applicant's Response to ExA's Request for Further Information at Deadline 6 [REP6-275] (Question MM3.1), regarding the worst-case scenario for marine mammals [ER 3.5.50 and ER 3.5.51]. On 24 November 2024, therefore, the Secretary of State invited comments from NE on the Applicant's response. NE, in response, noted that the worst-case scenario for simultaneous/sequential piling is up to four monopiles per 24h (two locations, two monopiles each) and eight pin piles per 24h (two locations, one multi-leg foundation each), as stated in the Applicant's response to Question MM3.1 [REP6-275]. NE advised that within Point C24 of the Risk and Issues Log [REP6-296] that this aspect of the concern is resolved. However, NE considered that the second part of Point C24 remained unresolved. NE noted that this relates to the modelling locations rather than the piling scenario itself, specifically whether the east and west locations are the worst-case in terms of the spatial extent of underwater noise impact when considering marine mammal receptors. NE advised that the Applicant's response to Question MM3.1 does not appear to provide any further clarity to enable NE to close out this matter.

4.30. Whilst the Secretary of State considers that the Applicant's response to Question MM3.1 did not provide further clarity for NE on the worst-case scenario modelling locations, the Secretary of State notes that in ES Appendix 11.3: Underwater Noise Assessment Technical Report [REP5-046], the Applicant considered that the east and west modelling locations did represent the worst-case scenario in terms of the spatial extent of underwater noise impacts. The Applicant chose the east and west locations as they considered this provided the greatest geographical spread of impact range contours. The Applicant considered that where two piles are installed in adjacent locations, there would be an expansion of the impact range contour in all directions, but less than the spatial extent of the contours using the east-west modelling locations. The Secretary of State also notes that the Applicant considered that for operational and safety reasons the course and route of piling rigs would not be positioned near to each other at any time during piling, so the immediately adjacent scenario would not occur.

4.31. The Secretary of State also notes that the Statement of Common Ground ("SoCG") [REP6-241] between the MMO and the Applicant shows that the general approach and methodology used for underwater noise modelling is agreed to be appropriate and that the basis for noise assessment on marine receptors has drawn upon the most contemporary and authoritative criteria for marine mammals.

4.32. Having considered the advice of the MMO and NE, and the information presented by the Applicant, the Secretary of State is satisfied that the approach to modelling the worst-case spatial extent of underwater noise impact from piling on marine mammals is appropriate. However, the Secretary of State is content that if NE is minded to require further clarification or evidence on this matter, then this information can be obtained through the discharge of Condition 11(l)(ii) of Schedules 11 and 12 of the Order. The Secretary of State considers this matter to be resolved.

Soft start and ramp-up period for piling

4.33. The ExA acknowledged that at the close of the Examination, NE's Risk and Issue Log [REP6-296] Point C33 stated that the Applicant's updates to the Draft Marine Mammal Mitigation Protocol (MMMP) at Deadline 4 [REP4-051] partially addressed its concerns but that the soft start duration was still stated as 7.5 minutes [ER 3.5.56]. The ExA noted that in the Draft MMMP submitted at Deadline 6 [REP6-218], Tables 2-1 and 2-3 were amended by the Applicant to state a soft start and ramp-up duration of 30 minutes, and Tables 2-2 and 2-4 state a worst-case ramp-up scenario of four consecutive sets of 7.5 minutes at increasing energies totalling 30 minutes. In light of the updates made to the Draft MMMP at Deadline 6 [REP6-218], the ExA considered this matter to be resolved [ER 3.5.97].

4.34. However, the Secretary of State notes that NE did not have the opportunity to comment on the Draft MMMP submitted at Deadline 6 [REP6-218] and therefore, on 25 November 2024, invited NE to comment as to whether the updates provided by the Applicant resolved their outstanding concerns. In response, NE advised that the updates provided to the duration of the soft start and ramp-up procedure are sufficient. However, NE advised that the starting hammer energy should be no greater than 10% of the maximum hammer energy.

4.35. Having considered the advice of NE, the information presented by the Applicant, and noting that the updates comply with the minimum soft start period of 20 minutes required by the Joint Nature Conservation Committee 2010 guidelines, the Secretary of State agrees with NE and the ExA that the updates provided in the Draft MMMP submitted at Deadline 6 [REP6-218] sufficiently address the concerns of NE. In relation to the maximum starting hammer energy advised by NE, the Secretary of State is content that this can be controlled by the MMO, in consultation with NE, through the approval of the final MMMP under Condition 11(l)(ii) of Schedules 11 and 12 of the Order. The Secretary of State considers this matter to be resolved.

Assessment of cumulative effects on harbour porpoises

4.36. The ExA acknowledged that NE's initial Risk and Issue Log [REP1-059a] Point C10 stated that not all relevant projects had been included in the Applicant's cumulative effects assessment for harbour porpoise disturbance. The ExA noted that this was corrected by the Applicant in an updated version of the ES at Deadline 1 [REP1-004]. At Deadline 2, NE [REP2-041, Point C10] considered that the revised list appeared complete and that the impact from the updated list had been revised. However, NE advised that the revised impact was higher than the number the Applicant had used as evidence of a low likelihood of population level effects and advised that further evidence should be provided that the higher number of animals impacted would not affect the overall harbour porpoise trajectory. The ExA did not consider it necessary to question the matter further in the Examination as the ExA was satisfied that it had sufficient evidence to make an informed judgement [ER 3.5.72].

4.37. However, noting the advice of NE, on 25 November 2024 the Secretary of State requested the Applicant provide an updated assessment evidencing how the higher number of harbour porpoises predicted to be impacted in ES Chapter 11 Marine Mammals Tables 11-37 and 11-38 would affect the overall harbour porpoise population trajectory. In response, the Applicant reviewed the methodology used for the marine mammal CEA and provided an updated ES Chapter 11 Marine Mammals. In light of further evidence, the Applicant considered that the maximum number of individuals disturbed from Tier 1-6 projects would be 28,493 in 2027, 27,514 in 2028, and 24,339 in 2029. The Applicant noted that these are all below the value presented in Booth et al. (2017), which considered that with interim Population Consequences of Disturbance modelling that there would be low level population impacts when up to 34,396 individuals were disturbed. The Applicant therefore maintained the conclusion that there would be no significant effect with respect to cumulative effects on harbour porpoises.

4.38. The Secretary of State notes the revised assessment and is content that the updated figures sufficiently address the concerns of NE. The Secretary of State has inserted the revised ES Chapter 11 Marine Mammals into Schedule 16 of the Order as a document to be certified, and considers this matter to be resolved.

Construction piling noise monitoring and CWC bottlenose dolphin

4.39. The ExA acknowledged that NE's advice on marine mammals [REP6-289] stated that due to the Applicant's commitment to deploy DBBC as a minimum single offshore piling noise mitigation technology for all foundation installations, NE consider that the Coastal West Channel ("CWC") bottlenose dolphin population would not be significantly impacted by piling activities from the Proposed Development [ER 3.5.69]. However, NE [REP6-289] emphasised that monitoring should be undertaken to validate the effectiveness of noise abatement in reducing the impact of disturbance to bottlenose dolphins. NE also highlighted that new evidence may be published which updates the baseline and population parameters used in the assessment of the CWC bottlenose dolphin population. NE advised that should this information be published before the start of piling, and updated pre-construction assessment based on the latest available evidence should be undertaken [ER 3.5.70].

4.40. The ExA was satisfied that the advice from NE would be secured through Condition 11(1)(c)(i) in Schedule 12 of the Recommended Order, which requires a construction method statement to include details of piling methods [ER 3.5.105]. The ExA also put forward wording for Condition 11(1)(j) which would require a monitoring plan, that accords with the Offshore In-Principle Monitoring Plan, to detail proposals for pre-construction monitoring surveys, construction monitoring, post-construction monitoring, and related reporting [ER 3.5.105]. As the discharge of both conditions would require approval in writing prior to the commencement of development, the ExA considered that the MMO, in consultation with NE, would have sufficient control over the final construction method statement and monitoring plan [ER 3.5.105].

4.41. The Secretary of State invited the Applicant, NE, and the MMO to provide their views on the wording for Condition 11(1)(j) recommended by the ExA. NE and MMO were specifically asked whether the drafting would be sufficient to secure the monitoring of the effectiveness of noise abatement on bottlenose dolphin, and to secure an updated pre-construction assessment should new information on the CWC bottlenose dolphin population be published before piling commences.

4.42. In response, the Applicant stated that it is content with the wording of Condition 11(1)(j) and notes that it reflects that which has been included in the Order submitted to the Examination.

4.43. NE considered that the condition as worded is not sufficiently specific to secure the monitoring of noise or noise abatement measures in relation to any species for which monitoring is relevant. NE considered that the monitoring of piling and noise abatement should be secured within a specific condition in the DML and advises that this is standard across offshore wind farm DMLs. In relation to bottlenose dolphin, NE stated that it would expect further details of bottlenose dolphin to be included within the final Offshore Monitoring Plan, as noted in their advice at Deadline 6 [REP6-289].

4.44. The MMO acknowledged the concerns of NE and also noted that for many offshore wind farm DMLs, a standalone condition related to the monitoring of piling is standard. The MMO provided wording for a proposed condition, tailored to the Proposed Development, to be included within the DML.

4.45. Having considered the advice of NE and the MMO, the Secretary of State agrees that a standalone condition to secure the monitoring of piling noise and noise abatement measures is required and considers the condition appropriate under NPS EN-3 2024 Paragraph 2.8.221. The Secretary of State notes that a similar standalone condition has been included within the DMLs of previous offshore wind farms such as Sheringham and Dudgeon Extension Project. Therefore, the Secretary of State has inserted the wording proposed by the MMO as Condition 19 in Schedules 11 and 12 of the Order. The Secretary of State is satisfied that with the insertion of Condition 19, the efficacy of the proposed noise abatement measures can be validated, and further information on the CWC bottlenose dolphin population can be required. The Secretary of State considers this matter to be resolved.

The Secretary of State's Conclusion

4.46. Noting the response received, the Secretary of State agrees with the ExA that the significance of effect from the Proposed Development on marine mammals would be minor adverse and therefore not significant. The Secretary of State is content that the risks associated with the Proposed Development can be satisfactorily mitigated and managed, and that appropriate mitigation is secured via relevant conditions in the DML within the Order. The Secretary of State ascribes this matter little negative weight in the planning balance.

<u>Fish and shellfish</u>

4.47. The ExA concurs with the Applicant's conclusions on the significance of residual effect on fish and shellfish being no greater than Negligible to Minor Adverse (not significant) from any phase of the development [ER 3.6.201]. The ExA considers the Proposed Development's impacts can be satisfactorily mitigated and managed through the Order and DMLs, being Schedules 11 and 12 of the Order [ER 3.6.202], subject to the additional mitigation within Condition 26, which the Applicant does not consider is necessary, as set out below.

4.48. In the Applicant's closing statement [REP6-233], the Secretary of State notes that an assessment of the potential impacts of the Proposed Development on black seabream as a feature of the Kingmere Marine Conservation Zone ("MCZ") was undertaken in Chapter 8: Fish and Shellfish Ecology, Volume 2 [REP5-027] (updated at Deadline 6) and subsequently the Marine Conservation Zone Assessment [APP-040]. The assessment concluded that there would be no significant effects on black seabream because of the application of

mitigation during the black seabream nesting season, as set out in the In Principle Sensitive Features Mitigation Plan [REP5-082]. The Applicant noted that the Plan facilitates spatial and temporal zoning for piling activities, the use of noise abatement systems, and a sequencing approach to piling starting in locations furthest from the Kingmere MCZ. Further, the Applicant's closing statement notes that:

- underwater noise mitigation measures for black seabream include the application of a piling restriction across the western part of the array area from March through to June, meaning that there would still be piling within the eastern part of the array area which would be subject to mitigation using the combination of DBBC and other noise abatement measures;
- during July, if piling is undertaken in the western part of the array area, it will be mitigated through the definition of exclusions zones (established by use of the 141-decibel behavioural threshold Sound Exposure Level ("SEL")). Any piling operations outside of the exclusion zones will again be subject to mitigation using the combination of DBBC and another noise abatement measures to ensure the threshold level is not exceeded within the Kingmere MCZ during the black seabream spawning season; and,
- that March to June is the key sensitive period based on data available from surveys and in the literature.

4.49. The Applicant considers that the risk of disturbance to black seabream during the relevant spawning period will be below the level at which either significant effects could arise on the regional population or that at which the feature's Conservation Objectives could be hindered at the Kingmere MCZ.

4.50. However, during the Examination, the Applicant also submitted several without prejudice options for Measures of Equivalent Environment Benefit ("MEEB") in relation to the Kingmere MCZ and its black seabream spawning grounds, should harm be found and the Applicant's proposed mitigation be considered insufficient by the Secretary of State [REP6-264, ER 3.6.78 et seq.]. The Applicant proposed Option A as the preferred MEEB, which is the removal of marine litter, including awareness and engagement campaigns. Options B and C are presented as alternative MEEBs if the Secretary of State is not satisfied with Option A as MEEB. Option B is the reduction in disturbance from watercraft (such as engine noise and anchoring) which would be on a voluntary basis during the black seabream breeding season. Option C would be for research on black seabream through either enhancement of previous projects or through the provision of a PhD level academic study based on known evidence gaps of movements of black seabream in the area [REP6-264, ER 3.6.79].

4.51. The Applicant detailed its position that, if mitigation could not be agreed, there were no other means of proceeding and clear public benefits of the Proposed Development which would mean MEEB would be required and appropriate [REP6-233, REP6-264, ER 3.6.75 et seq.]. NE maintained that mitigation was still available to the Applicant above any derogation case through the restriction of piling during the black seabream breeding season, March to July inclusive, and both NE and SIFCA stated they did not support any of the Applicant's MEEB options [ER 3.6.80 et seq]. At the close of Examination, there was no agreement on the form any MEEB should take from NE, the MMO, or the SIFCA [ER 3.6.165], though the Applicant maintained each MEEB would be sufficient enough to provide equivalent value to the maximum extent of the Proposed Development's effect on the black seabream spawning grounds [ER 3.6.85].

4.52. Regarding the Applicant's MCZ Assessment and conclusion that there would be no significant effects on black seabream because of the application of mitigation during the black seabream nesting season, the ExA agrees with NE that the Applicant's use of seabass

noise thresholds as evidence to promote a zoning approach to piling were not satisfactory or robust for determining a suitable species-specific noise threshold for black seabream, including during the breeding season [ER 3.6.149 et seq.]. The ExA considers that a much lower noise impact threshold than 141 decibels SEL (the threshold for seabass) for behavioural effects on black seabream cannot be discounted, which would mean that the noise contours would reach Kingmere MCZ if there was any piling at any part of the Proposed Development's array area during the March to July breeding season [ER 3.6.151].

4.53. On that basis, the ExA cannot rule out the possibility that any piling in the eastern part of the Proposed Development's array area in the months of March to June inclusive could have a harmful noise impact to black seabream, as the piling noise could be at a higher decibel level than average background levels and for longer periods, which could trigger behavioural responses such as nest abandonment [ER 3.6.152, ER 3.6.155]. The ExA considers there is insufficient evidence that even in the furthest parts of the Proposed Development's array areas from Kingmere MCZ that there would be enough of a separation distance to avoid these noise impacts to black seabream [ER 3.6.152]. Similarly, the ExA considers there are insufficient reasons for July to be considered as less important than March to June inclusive for black seabream nesting [ER 3.6.153]. It therefore considers that the black seabream breeding season runs from March to July and that mitigation should therefore be the same from 1 March to 31 July, as required by both the MMO and NE [ER 3.6.154, ER 3.6.170]. The ExA considers that piling noise during the black seabream breeding season could hinder the conservation objectives of Kingmere MCZ being met [ER 3.6.171].

4.54. As such, the ExA recommends the inclusion of Condition 26 to the draft DML, to ensure residual effects on the black seabream population of the Kingmere MCZ are not greater than Minor Adverse [ER 3.6.154, ER 3.6.172, ER 3.6.201]. This condition would restrict piling activity during construction of the Proposed Development throughout the black seabream nesting season, 1 March to 31 July inclusive, unless otherwise agreed by the MMO and the statutory nature conservation body [ER 3.6.170 et seq.]. The ExA considers the wording allows for discussion between the three parties in the future when there could be more information or evidence relating to black seabream or regarding the noise reduction capabilities of noise abatement technologies, which could possibly convince both MMO and NE that a full season restriction is not necessary and for there to be some form of lesser restriction [ER 3.6.176].

4.55. The ExA notes that the Secretary of State may disagree with the ExA and NE and consider that the Applicant has rightly and fairly based its assessment for black seabream on seabass, in which case no piling restrictions would be required, however this is not the ExA's recommendation [ER 3.6.174]. Similarly, the ExA does not recommend adopting a MEEB instead of mitigation including Condition 26. However, it stated the Secretary of State may consider that modelling of harm to black seabream based on seabass is unsound but accept the Applicant's assertion that harm cannot be avoided in the form of a piling condition, because to do so would considerably undermine the Proposed Development's construction period. Should this circumstance occur, the ExA advises the Secretary of State to include within the Order proposed mitigation in the form of a MEEB [REP6-264], which should be inserted as Schedule 18 into the Order [ER 3.6.175].

4.56. The ExA also notes the Applicant's concerns in its Closing Statement [REP6-233] that a full seasonal piling restriction would have potential implications for the construction of the Proposed Development, namely preventing offshore construction in the months of the year with the most accommodating weather conditions, and likely leading to an additional year or

more of offshore installation being required [para 5.8.13, ER 3.6.177]. However, the ExA concludes that, considering the importance of the black seabream as a feature of the Kingmere MCZ, on balance, the adverse effects from piling noise to this fish species would outweigh such implications from a full seasonal piling restriction on the Proposed Development's construction phase [ER 3.6.177].

4.57. Overall, with the inclusion of Condition 26 [ER 3.6.172] in the draft DML, the ExA concludes that the Proposed Development is in accordance with all relevant policy and legislation, and it ascribes a little negative weight to fish and shellfish in the planning balance [ER 3.6.203 et seq.].

4.58. On 25 November 2024 the Secretary of State asked the Applicant, the MMO, NE, and SIFCA for views on the ExA's recommended Condition 26.

4.59. On 6 December 2024, the Applicant responded[4] stating that the proposed wording for Condition 26 would be inconsistent with its previous Examination submissions regarding the proportionality of such a restriction across the whole of the Proposed Development's array area for March to July inclusive, and it referred the Secretary of State to paragraphs 5.8.13 to 5.8.18 of its Closing Statement [REP6-233]. In addition to the Applicant's concerns regarding the construction timeline for the Proposed Development outlined in paragraph 4.56 above, the Applicant's Closing Statement also reiterates that underwater noise mitigation measures could still allow piling within the eastern part of the Proposed Development's array. The Applicant considers this could occur whilst there is a restriction on the western array area for the months of March to June inclusive and that, during July, these measures and further exclusion zones would be extended to the western array area to allow piling across both of the Proposed Development's array areas without exceeding the threshold level for black seabream within the Kingmere MCZ [PEPD-023, REP6-233, para 5.8.14].

4.60. The Applicant notes Rampion 1 Offshore Wind Farm ("Rampion 1") was subject to a piling restriction between 15 April and 30 June and no apparent adverse impacts on black seabream were identified following unmitigated piling in both March and July. Further, although the hammer energies for piling for the Proposed Development are greater than Rampion 1, and at a closer distance to Kingmere MCZ, the Applicant maintains the levels of noise received at Kingmere MCZ from piling are comparable between the two developments [PEPD-023, REP6-233, para 5.8.14]. The Applicant maintains that using seabass as a proxy for black seabream is representative as they are similar species in the same hearing category, but notes that agreement on the suitability of the proposed mitigation strategy, which is necessarily based on setting a threshold, is not possible, because no threshold has been agreed with NE and the MMO [REP6-233, para 5.8.15]. Instead, the Applicant maintains that the threshold level of 141 decibels SELs disturbance is appropriate and sufficient to avoid the risk of behavioural response in black seabream during its spawning and nesting phase, and that adherence to this threshold level will ensure the Kingmere MCZ Conservation Objectives are not hindered [REP6-233, para 5.8.16].

4.61. The Applicant concludes that the threshold is appropriately precautionary, that its approach represents the best available data, is in line with common practice, and is precedented by consent decisions previously made, and that the mitigation strategy of zoning the piling will

[4] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002309-C1-028%20Applicant's%20Response%20to%20the%20Secretary%20of%20State's%20Request%20for%20Additional%20Information.pdf

be subject to monitoring and adaptive management. The Applicant concludes this amounts to the risk of disturbance to black seabream during the relevant spawning period being below the level at which either significant effects could arise on the regional population or that at which Conservation Objectives could be hindered at the Kingmere MCZ [REP6-233, para 5.8.18].

4.62. On 6 December 2024, the MMO responded to the first information request[5]. Firstly, it commented on the Applicant's Deadline 6 comments on noise disturbance from piling and the Kingmere MCZ. The MMO considers that the Applicant's proposed zoning plan had not changed in light of previous MMO comments, and it reiterated that the Applicant's modelling still showed an overlap of noise disturbance with the Kingmere MCZ from piling in both the western and eastern array areas of the Proposed Development. The MMO also noted significant inconsistencies in the predicted worst case and mitigated behavioural response impact ranges presented by the Applicant. The MMO concluded that the Applicant's zoning plan is not viable and that no piling should be permitted during the black seabream breeding season. Secondly, the MMO proposed minor amendments to the wording of Condition 26 to ensure it is the decision maker in discharging the Condition, as shown below:

> "(26) ~~There shall be no piling associated with the authorised development between the dates of~~ *No piling associated with the authorised development may be undertaken between* 01 March to 31 July inclusive, unless otherwise agreed ~~to~~ *in writing* by the MMO ~~and~~ *in consultation* with the statutory nature conservation body."

4.63. NE responded to the first information request on 6 December 2024[6] also stating that the only measure to ensure the conservation objectives of Kingmere MCZ are not hindered is a full seasonal piling restriction. NE suggested the same amendments to Condition 26 as the MMO. NE also welcomed that Condition 26 would cover approximately half of the key breeding time for short-snouted seahorses in the Beach Head West MCZ. Outside of 1 March to 31 July inclusive, NE advises that the Applicant would need to evidence that a reduction in the region of 15 decibels is deliverable within the 'worst-case' environmental conditions at the Proposed development, in order for NE to advise that the conservation objectives of Beachy Head MCZ would not be hindered due to underwater noise impacts on short-snouted seahorses from piling activities.

4.64. SIFCA also responded to the first information request on 3 December 2024[7] and stated that the proposed wording for Condition 26 would provide protection for black seabream spawning populations, an important commercial species and conservation feature of the Kingmere MCZ. SIFCA noted that black seabream are sensitive to underwater noise and that the Sussex IFCA's current fisheries management within the Kingmere MCZ will be reviewed in line with NE's recent conservation advice that the black seabream spawning seasonality is from March to July inclusive.

4.65. Under Section 6(b) of the Kingmere Marine Conservation Zone Designation Order (2013)[8], one of the conservation objectives of the Kingmere MCZ is for the population of black

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[5] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002316-Marine%20Management%20Organisation.pdf

[6] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002303-C1-021%20Natural%20England.pdf

[7] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002293-C1-007%20Sussex%20Inshore%20Fisheries%20and%20Conservation%20Authority.pdf

[8] https://www.legislation.gov.uk/ukmo/2013/11/created

seabream (whether temporary or otherwise) occurring in the Zone, "to be free of disturbance of a kind likely significantly to affect the survival of its members or their ability to aggregate, nest, or lay, or fertilise, or guard eggs during breeding".

4.66. The Secretary of State notes his obligations under Section 125(2) of the Marine and Coastal Access Act ("MCAA 2009")[9] to carry out his functions in a manner that best furthers the conservation objectives of an MCZ. Under guidance from the Department for the Environment, Farming, and Rural Affairs (2013[10]), the Secretary of State notes that 'best furthers' means that he must proceed in a manner which is most conducive to achieving the conservation objectives of the MCZ.

4.67. The Secretary of State also notes that if he considers the Proposed Development would likely hinder the conservation objectives of the Kingmere MCZ then, in accordance with Section 126(7) of the MCAA 2009[11], he must not grant authorisation for the Proposed Development unless, sequentially:

(a) There is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives;

(b) The benefit to the public proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it; and

(c) The Applicant will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

4.68. NPS EN-1 2011 paragraph 5.3.12, and NPS EN-1 2024 paragraphs 4.2.18 and 5.4.51, all emphasise that the Secretary of State is bound by the duties on public authorities in relation to MCZs imposed by sections 125 and 126 of the MCAA 2009.

4.69. The Secretary of State asked the Applicant for further details in the second information request on how it considers the tests within section 126(7), particularly 126(7)(a), would be met, were the Secretary of State not satisfied with the Applicant's proposed mitigation. The Secretary of State also sought detail on how the ExA's proposed Condition 26, a full seasonal piling restriction, would affect the construction programming for the Proposed Development, and whether any delay would lead to an effect on the Proposed Development's viability.

4.70. The Applicant responded on 20 February 2025[12]. The Applicant maintained its argument from the Without Prejudice Stage 2 MCZ Assessment [REP6-261] and MEEB options document [REP6-264] that, although it considers its mitigation is sufficient to prevent adverse underwater noise impacts from piling on black seabream, in a scenario where the Secretary of State considered this mitigation to be insufficient, it considers there is a clear need for the Proposed Development with benefits to the public of proceeding which outweigh the damage to the environment which, in any case, will be compensated by the MEEB it has provided. However, the Applicant also provided an update to its End of Examination position which is to have a full seasonal piling restriction in relation to black seabream, March to July, in the

[9] https://www.legislation.gov.uk/ukpga/2009/23/section/125
[10] https://www.gov.uk/government/publications/marine-conservation-zones-explanatory-note
[11] https://www.legislation.gov.uk/ukpga/2009/23/section/126
[12] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002436-C3-005%20Rampion%202%20letter%20-%20Second%20Request%20for%20Information%2020Feb2025.pdf

western part of the turbine array, with a piling ban in the eastern part of the array, November to January, for parts closest to herring spawning grounds. In respect of any delay caused by the imposition of Condition 26, the Applicant provided a Piling Restriction Memo[13] with its response to demonstrate the difference in construction timings for the Proposed Development in various scenarios, including the new alternative it provided (see pages 8-11). The Applicant showed that the imposition of Condition 26 with a full seasonal piling restriction for black seabream taking place March to July annually would delay the Proposed Development by eight months. In comparison, the Applicant's updated position would delay the Proposed Development by one month. The Applicant also explained that it had previously highlighted concerns over the Proposed Development's viability in its Closing Statement [REP6-233] in relation to the Proposed Development being subject to additional piling restrictions in winter due to potential impacts on herring spawning, but it noted that this concern has since been resolved with the MMO[14].

4.71. The Secretary of State agrees with NE, the MMO, the SIFCA, and the ExA that the black seabream breeding season runs from 1 March to 31 July inclusive each year. The Secretary of State also agrees, in line with advice from NE, the MMO, the SIFCA, and the ExA that the disturbance from the proposed piling would likely significantly affect the ability of the black seabream population occurring in the Kingmere MCZ to aggregate, nest, or lay, fertilise, or guard eggs during the breeding season.

4.72. Having considered the information presented during the Examination and in response to both information requests, the Secretary of State does not consider there is no other means of proceeding. The Secretary of State considers that a full seasonal piling restriction is a means by which the Proposed Development can still proceed but which would create a substantially lower risk of hindering the achievement of the conservation objectives of the Kingmere MCZ. The Secretary of State notes that this is in line with DEFRA (2021[15]) guidance which states that 'other means of proceeding' are approaches that would deliver the same overall outcome for the activity, whilst creating a substantially lower risk of impact to the MCZ. The Secretary of State agrees with NE, the MMO, the SIFCA, and the ExA that the restriction is necessary during construction to prevent adverse effects on the black seabream population of the Kingmere MCZ and prevent the MCZ's conservation objectives being hindered.

4.73. Whilst the Secretary of State notes that the Applicant has set out the likely delay a full seasonal piling restriction would create, including in response to the second information request, the Secretary of State also notes that the Applicant has not stated that this restriction would make the Proposed Development unviable. The Applicant concludes in its response to the second information request that the imposition of Condition 26 "would prevent the project from achieving its objectives", but the Secretary of State has not been provided with evidence to suggest that a delay of eight months would cause this or affect the Proposed Development's viability. The Secretary of State notes that an eight-month delay is a shorter

[13] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002437-C3-006%20Rampion%202%20Piling%20Restriction%20Memo%20for%20Secretary%20of%20State.pdf
[14] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002323-C1-037%20Applicant%20Responses%20to%20Secretary%20of%20State%20Request%20for%20Information%20-%20Part%202.pdf
15 https://consult.defra.gov.uk/marine-planning-licensing-team/mpacompensation-guidanceconsultation/supporting_documents/mpacompensatorymeasuresbestpracticeguidance.pdf

delay than the additional year or more the Applicant previously indicated in its Closing Statement [REP6-233]. The Secretary of State considers proceeding with a full seasonal piling restriction will ensure that the conservation objectives of the Kingmere MCZ are upheld. Even if he were to be of the view that the test in section 126(7)(a) was met, he considers that the MEEB option provided by the Applicant would be insufficient to provide equivalent environmental benefit to the harm caused by adverse levels of noise on black seabream during piling for the Proposed Development. The Secretary of State agrees with the ExA, NE, and the MMO, that the removal of marine litter within the water column will have a negligible effect on the nests of breeding black seabream and will not compensate for above-threshold adverse noise caused by piling. His view, therefore, is that neither of the tests in section 126(7)(a) and section 126(7)(c) are met.

4.74. The Applicant considers proceeding with the Proposed Development and the full seasonal piling restriction would take the Proposed Development's effects from piling considered in the ES "beyond the worst-case duration parameter set out in the EIA". The Secretary of State considers the worst-case effect to be the hinderance of the Kingmere MCZ's conservation objective to prevent disturbance of black seabream during the breeding season. Whilst the full seasonal piling ban would prolong the duration of construction, the Secretary of State considers the worst-case effects would be avoided as there would be no piling during the black seabream breeding period.

4.75. The Secretary of State has had due regard to the advice and guidance given by the relevant statutory nature conservation bodies, as required under Section 125(12) of the MCAA 2009.

4.76. The Secretary of State has therefore included Condition 26 (after drafting and amendments this is now included as Condition 28) in the Order in the form supplied by the MMO, as above at paragraph 4.62. Should new research relating to the noise sensitivity of black seabream, or monitoring of proposed noise abatement measures, show that adverse effects would be less significant, the Secretary of State is content that the wording of Condition 28 allows for the MMO, in consultation with NE, to approve piling within the spawning period.

4.77. In relation to the short-snouted seahorse feature of the Beachy Head East MCZ, the Beachy Head West MCZ, Bembridge MCZ, and the Selsey Bill and the Hounds MCZ, the ExA acknowledged that, as demonstrated by the Applicant in Figures 5.5 and 5.6 of [REP4-061], the mitigated temporary threshold shift and behavioural disturbance ranges with a 15dB ("Decibels") noise reduction under a 135dB threshold do not overlap with any of the MCZs [ER 3.6.178]. The ExA also noted that NE [REP5-141], considering the Applicant's modelling using a 135dB threshold and 15dB noise reduction from DBBC and other noise abatement measures, was content that the conservation objectives related to seahorses in the four MCZs would not be hindered by piling noise. However, this was on the basis that the 15dB reduction is achievable.

4.78. Noting the concerns of NE, the ExA acknowledged the uncertainty relating to the efficacy of DBBC, especially in depths of over 40m, but agreed that on-site testing would be very difficult, time-consuming, and expensive for the Applicant to undertake prior to construction [ER 3.6.179]. The ExA agreed with NE and the MMO that enhanced monitoring of piled foundations is required in order to address the uncertainty around the efficacy of DBBC as a noise abatement system [ER 3.6.181]. Whilst the ExA noted that the Offshore In-Principle Monitoring Plan [REP6-220] does not include the required enhanced monitoring, the ExA considered that under Condition 11(j) of Schedules 11 and 12 of the Recommended Order

that the MMO would have sufficient control over the final monitoring plan to ensure the enhanced monitoring would occur [ER 3.6.181].

4.79. Having considered the advice of the MMO, NE, and the information presented by the Applicant, the Secretary of State agrees that, subject to the achievement of the 15dB reduction, the mitigated impact ranges would not overlap with any of the four MCZs when using a 135dB threshold. The Secretary of State also agrees with the MMO/NE that there remains uncertainty in the efficacy of DBBC as a noise abatement system and agrees that an enhanced monitoring programme of piled foundations is required. As concluded in paragraph 4.28, the Secretary of State requested that the Applicant provide an amended Offshore In-Principle Monitoring Plan and In-Principle Sensitive Features Mitigation Plan to require that measurements must be obtained from the first eight piles (or eight of the first 12 piles) of each foundation type to be installed. The Applicant subsequently provided revised plans, that included the enhanced monitoring of piled foundations, which the Secretary of State has inserted into Schedule 16 of the Order as plans to be certified. The MMO responded on 13 January 2025 to the Secretary of States all IPs consultation stating that it was content with the revised plans but deferred to NE on the updates made. NE responded to the consultation stating that some inconsistency in terminology and commitments remained but that these would be expected to be resolved in the final monitoring plan. The Secretary of State is supportive of these requests and notes that these can be resolved by the MMO and NE through the approval of the final monitoring plan. The Secretary of State is content that the enhanced monitoring would test the predictions made by the Applicant in the ES in the real setting and environmental conditions of the Order Limits of the Proposed Development.

4.80. The Secretary of State also sought the views of the MMO on the Applicant's latest herring and sandeel habitat suitability assessments ("HSA") [ER 3.6.186 et seq.]. The Secretary of State agrees with the ExA that the latest HSAs supplied by the Applicant are sufficiently accurate [ER 3.6.188]. Noting the responses received on wider herring issues from the Applicant on 11 November 2024 [PID-001 to PID-004] and 12 December 2024[16], and from both the MMO and the Applicant on 6 December 2024, the Secretary of State is satisfied that agreement has been reached between the MMO and the Applicant on a Spawning Herring Piling Restriction Plan for the eastern array area of the Proposed Development and he has included the new Condition 26 in Schedules 11 and 12 in the Order, based on the wording taken from the MMO's response. The Secretary of State notes that the Applicant maintained this position in its response to the second information request. The Secretary of State notes that both parties consider a piling restriction may not be necessary and he considers that this Condition 26 is sufficiently flexible and comprehensive to ensure piling noise above the threshold will not adversely affect herring spawning grounds or herring larvae, whilst also preventing further impacts to the Proposed Development's offshore construction.

The Secretary of State's Conclusion

4.81. The Secretary of State concludes that a full seasonal piling restricting is necessary to adequately mitigate possible harms to the Kingmere MCZ's population of black seabream.

[16] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002323-C1-037%20Applicant%20Responses%20to%20Secretary%20of%20State%20Request%20for%20Information%20-%20Part%202.pdf

The Secretary of State has weighed these impacts against the likely delay to the Proposed Development and agrees with the ExA's conclusions on fish and shellfish so that, with the inclusion of Condition 28, he ascribes this matter little negative weight in the planning balance.

Coastal processes and benthic subtidal and intertidal ecology

4.82. The ExA concurs with ES Chapters 6 and 9 that the significance of residual effect of the Proposed Development on these matters would be no greater than Negligible to Minor Adverse (not significant) from any phase [ER 3.7.161]. The ExA concludes that the DML, with the inclusion of sub-paragraph (5) to Conditions 18 of Schedules 11 and 12 requiring adaptive management, if necessary, ensures there will be no greater impacts to from the Proposed Development than assessed in the ES [ER 3.7.161]. The ExA considers the Proposed Development's impacts can be satisfactorily mitigated and managed through the DML [ER 3.7.162]. The ExA concludes that the Proposed Development is in accordance with all relevant policy and legislation, and it attaches a little negative weight to this matter in the planning balance [ER 3.7.163 et seq.].

4.83. During the first information request, the Secretary of State asked the Applicant to respond to the points raised by NE at Deadline 6 regarding the Outline Cable Burial Risk Assessment ("OCBRA") and Outline Cable Specification and Installation Plan ("OCSIP"). The Applicant responded on 6 December 2024 stating that NE's comments on the OCBRA and OCSIP relate to aspects such as geophysical data collection and specific installation methods which would not be expected to be resolved until the post-consent period. The Applicant notes that the MMO will consult with NE on the final CSIP and CBRA and, as such, its position is that NE's outstanding concerns will be addressed following the receipt of the final documents and the standard post-consent consultation process.

The Secretary of State's Conclusion

4.84. Noting the response received, the Secretary of State agrees with the ExA that the mitigation as proposed by the Applicant to prevent harm to coastal processes and benthic subtidal and intertidal ecology along the cable route, such as through cable burial and the micrositing of the cable route, are achievable. The Secretary of State notes that this would be controlled by the MMO, in consultation with NE, through the requirements of the Order to approve the final versions of the relevant documents, including the CBRA and CSIP [ER 3.7.134]. The Secretary of State agrees with the ExA's conclusions on coastal processes and benthic subtidal and intertidal ecology and ascribes this matter little negative weight in the planning balance.

Aviation

4.85. National Air Traffic Services wrote to the Secretary of State 3 December 2024 stating that it has entered into an agreement with the Applicant and that it is therefore prepared to withdraw its objection to the application subject to the imposition of agreed requirements set out therein. The agreed requirements are reflected at Requirement 38. The Secretary of State also agrees with the ExA that Requirement 38 should be retained in full to allow control and secure a mitigation scheme prior to development of the WTGs.

Marine archaeology

4.86. The ExA concurs with ES Chapter 16 [REP6-133] that the significance of effect from the Proposed Development would be Negligible (Not Significant) [ER 3.11.24]. The ExA considers that the DML will sufficiently mitigate and manage the risks of the Proposed Development, and that no significant effects are likely to arise [ER 3.11.25]. The ExA is satisfied that the Proposed Development has been designed sensitively and concluded that the mitigation and Proposed Development are in accordance with all relevant policy and legislation [ER 3.11.26 et seq.]. The ExA considers there are no residual effects or issues on marine archaeology which affect the planning balance [ER 3.11.28].

4.87. The ExA notes that Historic England ("HE") raised concerns that an inaccurate assessment of the magnitude of impact and significance of effect had been undertaken. HE considers that this is because the assessment includes embedded environmental measures ("EEM"), such as recording archaeology before any loss, which cannot reduce harm or magnitude of impact [RR-146]. Therefore, the downgraded assessment of impact and the resultant effects being classified as not significant is, in HE's view, misguided and misleading [ER 3.11.11]. The Applicant responded to HE's concerns at Deadline 1, noting that mitigation through recording is partial mitigation and that the assessments of residual effects take account of this mitigation in determining the magnitude of change [ER 3.11.12]. This matter was not agreed in the SoCG [ER 3.11.13], however HE confirmed agreement with the Outline Marine Written Scheme of Investigation ("WSI") [REP6-216] in its closing statement [REP6-314, ER 3.11.15].

The Secretary of State's Conclusion

4.88. The Secretary of State agrees with the ExA on all its conclusions. As per his conclusions on the historic environment (below), the Secretary of State considers that the investigation, recording, and dissemination of the removal of archaeological remains does not constitute mitigation of harm to archaeological features. Such steps are required but do not amount to mitigation of harm. However, in the case of marine archaeology, the Secretary of State notes that archaeological recording is being used as a best practice measure and is part of a wider package of mitigation measures including archaeological exclusions zones which are not as frequently proposed for onshore works and archaeology. The Secretary of State also notes that HE is in agreement with the Outline Marine WSI. The Secretary of State is satisfied that the other mitigation measures committed to by the Applicant are secured via relevant conditions in the DML and adequately mitigate the risks associated with the Proposed Development. Noting these considerations, the Secretary of State agrees with the ExA's conclusions that no weight should be ascribed to this matter in the planning balance [ER 5.2.46].

Terrestrial ecology and nature conservation

4.89. The ExA concurs with ES Chapter 22 that there would not be any significant adverse effects from the Proposed Development in the longer-term and concludes that with the mitigation and compensation measures set out in the Order, including the delivery of BNG secured through Requirement 14, that overall there would be a minor adverse effect which is not significant [ER 3.12.337]. The ExA concluded that the Proposed Development was in accordance with all relevant policy and legislation, and it ascribes this matter little negative weight in the planning balance [ER 3.12.339].

4.90. The ExA notes NE's and SDNPA's unresolved positions on Horizontal Direct Drilling ("HDD") underneath Climping Beach Site of Special Scientific Interest ("SSSI"), Ancient Woodland, and other sensitive ecological locations at the close of the Examination [ER 3.12.320]. The ExA considered that the crossing schedule, secured via a new Requirement 46 in the Recommended Order, commits the Applicant to trenchless crossings at the locations specified including these sensitive locations and Requirement 37 prevents changes to the application at the post-consent stage that would result in materially worse environmental effects than reported in the ES, and concluded that this matter was resolved [ER 3.12.320].

4.91. On 25 November 2024, the Secretary of State invited the Applicant, NE, and SDNPA to provide views on the drafting of Requirement 46. NE responded that its critical concern remains that the proposed mitigation measure of trenchless crossing may not be viable, and that there is a major risk with the feasibility of the proposed trenchless drilling technique without detailed ground investigation at the sensitive sites identified. NE considered that Requirement 46 should include reference to providing detailed feasibility assessments (supported with local ground investigation data) for trenchless crossings through sensitive sites/features. NE also considered that should the Secretary of State be minded to proceed with Requirement 46, then approval by the relevant planning authority should be in consultation with the relevant SNCB. NE provided an amended Requirement 46 which included reference to consultation with the relevant SNCB.

4.92. SDNPA responded stating that it welcomed the insertion of the requirement, and that it would help overcome their concerns. However, SDNPA preferred the wording of the Requirement in the draft Order published 18 June 2024 [PD-013] compared to the wording currently proposed, as the wording of the former required details to be submitted before any stage of the authorised development, rather than for each trenchless crossing in the respective stages.

4.93. The Applicant responded that Requirement 46 is unnecessary as Requirement 22 requires a stage specific code of construction practice, which the Applicant considers includes provision for a crossing schedule, and liaison with landowners for the location and extent of trenchless crossings. The Applicant also stated Requirement 23 requires the submission and approval for a construction method statement prior to commencement of the authorised development in each stage which must include confirmation of the cable construction corridor, identify the trenchless crossing compound locations, securing that the compounds for horizontal directional drilling do not exceed 50 metres x 75 metres; and the planned methods and processes for all crossings be installed by trenchless technology. The Applicant noted in the event the Secretary of State is minded to implement a new requirement, the Applicant has considered the wording further and requests its own amendments for clarity of drafting for example the additional wording "for that stage", to make clear that in each case, the scope of the plan approval only relates to the trenchless crossings in that stage, not all trenchless crossings across the route. The changes proposed by the Applicant can be read in full in its response, which has been published on the Planning Inspectorate's website.

4.94. The Secretary of State notes that the Applicant [APP-181] undertook Phase 1 Habitat Surveys of the land at Crateman's Farm and classified the habitat as 'poor semi-improved grassland' which several IPs disputed during the Examination and the Secretary of State's consultation, such as Horsham District Council's response dated 13 January 2025. The Secretary of State notes that following an independent habitat survey being undertaken by Arborweald [REP4-112], NE will map the fields as Lowland Meadow in the Priority Habitat

Inventory in March 2025 [C2-032], rendering the Applicant's original classification incorrect. Whilst the Secretary of State does not support the Applicant's incorrect findings in this instance, he agrees with the ExA that there are sufficient control measures within the Order and through Commitment C-294 in the Commitments Register for the appropriate mitigation to be applied, with provisions to ensure that the value of any lost habitat is reinstated equivalently [ER 3.12.302]. The Secretary of State agrees with the ExA that the effects from the Proposed Development on the Crateman's Farm meadows would be able to be adequately mitigated [ER 3.12.302].

The Secretary of State's Conclusion

4.95. Noting the responses received, the Secretary of State considers that a requirement is necessary and has included it as Requirement 44 of the Order, to commit the Applicant to trenchless crossings at Climping Beach SSSI, Ancient Woodland, and other sensitive ecological locations, in order to protect these locations. The Secretary of State agrees with NE's amendment to include reference to consultation with the relevant SNCB. The Secretary of State also agrees with NE's concerns regarding the feasibility of the proposed trenchless drilling technique. Despite the Applicant's assertion that trenchless crossings are viable in these locations [REP4-072] [ER 3.12.223], the Secretary of State notes that no detailed assessments have been provided to substantiate this claim. The Secretary of State anticipates that NE will likely maintain these concerns when the Applicant submits the final trenchless crossing plans for approval by the relevant planning authority. Therefore, the Secretary of State has inserted a sub-paragraph into Requirement 44 requiring the Applicant to submit detailed feasibility assessments (supported by local ground investigation data) alongside the trenchless crossings plan to ensure that the feasibility of the trenchless crossings proposed through Climping Beach SSSI, Ancient Woodland, and sensitive landscape features of the SDNP are well-evidenced and secured.

4.96. The Secretary of State notes the position of SDNPA and agrees that the original wording of the requirement in the draft Order discussed during Examination [PD-013] was more robust in parts than the Requirement 46 inserted within the Recommended Order. Having considered the original wording of the requirement, the Secretary of State has reinstated West Sussex County Council, the Environment Agency, and Southern Water to be consulted where relevant to ensure that the risks associated with trenchless crossings such as to ground and surface hydrology, are sufficiently assessed and cleared by the relevant bodies before approval of the final crossing plans.

4.97. The Secretary of State notes the position of the Applicant that details should be submitted for each trenchless crossing in the respective stages as distinguished from the differing position of SDNPA that the trenchless crossing plans should be submitted before any stage of the authorised development. The Secretary of State disagrees with the Applicant, and instead partly agrees with SDNPA as this will reduce the risk on the part of the Applicant in needing to submit and seek approval for a change application during the construction phase of the authorised development, should a trenchless crossing be found to be unfeasible. However, the Secretary of State disagrees with SDNPA that plans should be submitted before any stage of the authorised development, as this would pertain to offshore as well as onshore elements. For clarity and consistency with other requirements, the Secretary of State has therefore amended Requirement 44 to ensure that no stage of the onshore works landward of mean low water springs (excluding any onshore site preparation works) can commence prior to submission and approval of trenchless crossing plans, thereby allowing

for offshore elements not closely linked to onshore trenchless crossings to commence construction.

4.98. With the inclusion of Requirement 44 in the Order as proposed above, the Secretary of State ascribes this matter little negative weight in the planning balance.

Historic environment

4.99. The ExA considers that of the heritage assets identified by the Applicant that would receive a potentially significant adverse effect following mitigation, the design and mitigation measures proposed by the Applicant [ER 3.14.69, ER 3.14.73] would moderate the overall effects as far as practicable [ER 3.14.71]. The ExA was therefore satisfied that the identified assets would be subject to less than substantial harm at the lower end of the spectrum [ER 3.14.67, ER 3.14.71 et seq.]. The ExA also concurs with ES Chapter 25 [REP6-153] and agrees that the significance of effect from the Proposed Development to the historic environment would be Major Adverse (Significant) to Oakendene Manor, caused by the operational activities of the onshore substation, and to archaeological remains in SDNP, caused by construction of the cable corridor. The ExA finds the significance of effect would amount to less than substantial harm [ER 3.14.72].

4.100. As the ExA finds less than substantial harm to some heritage assets, it must apply paragraph 215 of the 2024 NPPF and whether the public benefits of the Proposed Development outweigh the less than substantial harm [ER 3.14.67 et seq., ER 3.14.76, ER 5.2.61]. The ExA concludes that, on the planning merits, the adverse effects do not outweigh the benefits of the Proposed Development [ER 5.3.16] and that paragraph 215 of the 2024 NPPF is satisfied. The ExA states that the public benefits outweigh the identified less than substantial harm to heritage assets, taken both individually and cumulatively. The ExA therefore considers s104(7) and s104(8) of PA2008 do not apply [ER 5.3.17].

4.101. The ExA concludes that the Proposed Development is in accordance with all relevant policy and legislation, and it ascribes little negative weight to this matter in the planning balance [ER 3.14.74 et seq., ER 5.2.62].

The Secretary of State's Conclusion

4.102. The Secretary of State is satisfied that the methodology employed by the Applicant in 'ES Chapter 25 - Historic Environment' [REP6-153] is appropriate for historic landscape character and heritage assets as receptors. The Secretary of State notes that numerous EEMs have been proposed to avoid and mitigate impacts on both designated and non-designated heritage assets, which are secured through the Outline Onshore WSI [REP5-076] and Requirement 19 of the Order. However, the Secretary of State notes that these measures include archaeological preservation by record as partial mitigation for heritage assets during construction, which is attributed to Commitments 79 and 225 of the Commitments Register [REP6-22].

4.103. The Secretary of State agrees with the ExA on all its conclusions on the historic environment, except on preservation by record as a form of mitigation for below ground heritage assets. The Secretary of State disagrees with the suggestion from the Applicant and the ExA [ER 3.14.63] that the investigation, recording, and dissemination of the removal of archaeological remains in some way mitigates harm to archaeological features. Such steps are required but do not amount to mitigation of harm. Whilst the Secretary of State notes that HE raised

concerns regarding the adequacy of preservation by record as mitigation throughout the Examination, the Secretary of State also notes that preservation by record is part of a wider package of mitigation measures for below ground heritage assets and that there is no disagreement by HE upon the Outline Onshore WSI. The Secretary of State is satisfied that the other mitigation measures committed to by the Applicant are secured via relevant conditions in the Order and together acceptably mitigate the risks to archaeological remains associated with the Proposed Development.

4.104. The Secretary of State agrees with the ExA that there is less than substantial harm to some heritage assets and, as such, paragraph 215 of the 2024 NPPF must be applied. As at Section 7 of this Decision Letter, the Secretary of State agrees with the ExA that, on the planning merits, the adverse effects do not outweigh the benefits of the Proposed Development and that paragraph 215 of the 2024 NPPF is satisfied. The Secretary of State agrees with the ExA that the public benefits outweigh the identified less than substantial harm to heritage assets, taken both individually and cumulatively, and that s104(7) and s104(8) of PA2008 do not apply.

4.105. Noting that he considers preservation by record does not amount to mitigation of harm for archaeological remains, the Secretary of State disagrees with the ExA's conclusions that little negative weight should be ascribed to this matter [ER 5.2.62] and instead ascribes this matter moderate negative weight.

5. HRA

5.1. The Secretary of State's HRA is published alongside this letter. The paragraphs below summarise the key conclusions of, and must be read alongside, the HRA, which sets out in full the Secretary of State's detailed consideration of these matters.

5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").

5.3. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").

5.4. Regulation 63 of the Habitats Regulations provides that: *"….before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."* And that: *"In the light of the conclusions of the assessment, and subject to*

regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."

5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as the Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSE") cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the protected site in view of its Conservation Objectives.

5.6. Where an adverse effects on integrity ("AEoI") of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:

- there are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
- there are imperative reasons of overriding public interest ("IROPI") for the plan or project to proceed; and
- compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.

5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless the Secretary of State chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.

5.8. The ExA considered that there was sufficient information before the Secretary of State to undertake an AA and to apply the derogation tests of the Habitats Regulations of alternative solutions and IROPI in order to fulfil his duties under the requirements of the Habitats Regulations.

5.9. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites ("RIES"), the ES, representations made by IPs, the ExA's Report and all representations received in response to the consultation letters. The Secretary of State considers that the Proposed Development has the potential to have an LSE on 37 protected sites when considered alone and in-combination with other plans or projects.

5.10. The Secretary of State has undertaken an AA in respect of the Conservation Objectives of the sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an AEoI of the identified protected sites. The Secretary of State has considered all information available to him including the recommendations of the ExA, the advice of NE as the SNCB, the views of all other IPs, the Applicant's case, and all responses to his consultation letters.

Appropriate Assessment conclusion

5.11. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of the protected sites and where relevant, the measures in place to avoid or reduce potential adverse effects secured in the DCO and DML, there would not be any implications for the achievement of site conservation objectives and therefore AEoI can be excluded beyond reasonable scientific doubt for the majority of protected sites for which LSE cannot be excluded.

5.12. However, the Secretary of State concludes that an AEoI cannot be ruled out beyond scientific doubt in relation to:

- Collision mortality of kittiwake of the Flamborough and Filey Coast ("FFC") SPA, in-combination with other projects;
- Displacement and disturbance mortality of guillemot of the Flamborough and Filey Coast SPA, in-combination with other projects; and
- Displacement and disturbance mortality of guillemot of the Farne Islands SPA, in-combination with other projects.

5.13. The Secretary of State has not identified any further mitigation measures that could reasonably be imposed which would avoid or mitigate the potential AEoI identified and has therefore proceeded to consider the derogation provisions of the Habitats Regulations.

Derogation Provisions

5.14. The Secretary of State has considered the Proposed Development in the context of Regulations 64 and 68 of the Habitats Regulations to determine whether it can be consented. Consent may only be given under the Habitats Regulations where no alternative solutions to the project are available which meet the project objectives and are less damaging to the affected protected site, where there is IROPI, and where Regulation 68 (compensatory measures) is satisfied. Regulation 64 allows for the consenting of a project even though it would cause an AEoI of a protected site if it is required for IROPI. Regulation 68 of the Habitats Regulations requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of NSN is protected.

5.15. In accordance with relevant guidance, the Secretary of State reviewed the Proposed Development following a sequential process, considering:

- alternative solutions to the Proposed Development that have been sought;
- whether there are IROPI for the Proposed Development to proceed; and
- compensation measures proposed by the Applicant for ensuring that the overall coherence of the NSN is protected.

Alternative Solutions

5.16. The objectives for the Proposed Development as set out by the Applicant, are:

- To generate low carbon electricity from an offshore wind farm in support of the decarbonisation of the UK electricity supply;
- To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply;

- To optimise generation and export capacity within the constraints of available (UK) sites and onshore transmission infrastructure;
- To deliver a significant volume of (UK) offshore wind in the 2020s;
- To maximise renewable energy generation at optimal UK seabed locations; and
- To maximise the use of existing infrastructure.

5.17. As set out in the HRA, the Secretary of State does not consider that the development of alternative forms of energy generation would meet the objectives for the Proposed Development. Alternatives to the Proposed Development considered by the Secretary of State are consequently limited to either "do nothing" or alternative offshore windfarm projects.

5.18. Following a review of the information submitted by the Applicant and the recommendation of the ExA and having identified the objectives of the Project and considered all alternative solutions to fulfill these objectives, the Secretary of State is satisfied that no feasible alternative solutions are available that would meet the Project objectives with an appreciable reduction in predicted impacts on protected sites.

Imperative Reasons of Overriding Public Interest

5.19. A development having an AEoI on a protected site may only proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if the project must be carried out for IROPI. The Secretary of State has therefore considered whether the Proposed Development is required for IROPI. The parameters of IROPI are:

- **Imperative** – urgency and importance: There would usually be urgency to the objectives, and it must be considered "indispensable" or "essential" (i.e. imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following;

  (i) actions or policies aiming to protect fundamental values for citizens' life (health, safety, environment);

  (ii) fundamental policies for the State and the Society; or

  (iii) activities of an economic or social nature, fulfilling specific obligations of public service.
- **Public Interest**: The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objectives).
- **Long-Term**: The interest would generally be long-term; short-term interests are unlikely to be regarded as overriding because the conservation objectives of protected sites are long-term interests.
- **Overriding**: The imperative need in the public interest of the development must outweigh the harm, or risk of harm, to the integrity of the protected site which is predicted by the AA.

5.20. The absence of priority habitats and species allows the Secretary of State to consider benefits of a social and economic nature.

5.21. The Secretary of State agrees with the ExA and the Applicant that imperative reasons in the public interest for the Project to proceed are clearly established, especially the contribution it would make towards renewable electricity generation and ensuring the security of electricity supply from a domestically generated source. The Secretary of State also

considers that such imperative and long-term need in the public interest for the Project clearly outweighs the predicted harm to the integrity of the protected sites.

Compensatory Measures

5.22. In relation to kittiwake, the Applicant submitted a package of compensatory measures for the kittiwake feature of the FFC SPA. This includes either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through collaborating with other offshore wind farms to provide additional nesting spaces for kittiwake at an artificial nesting structure (ANS). The Applicant has secured formal agreement that the delivery of artificial nesting spaces would be undertaken through use of the existing ANS at Gateshead. These measures are secured through Schedule 17 of the Order.

5.23. The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of the UK NSN for kittiwake as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, he considers that Schedule 17 adequately secures the further work required to progress the proposed compensatory measures.

5.24. In relation to guillemot, the Applicant submitted a package of compensatory measures for the guillemot feature of the FFC SPA and Farne Islands SPA. This includes either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through reducing recreational disturbance of guillemot at selected colony sites by implementing measures such as restrictions of boat approach distances or seasonal closures. These measures are secured through Schedule 17 of the Order.

5.25. The Secretary of State is satisfied that the necessary compensatory measures can be secured and delivered to protect the coherence of the UK NSN for guillemot as required by Regulations 29 and 36 of the Offshore Habitats Regulations and Regulations 64 and 68 of the Habitats Regulations. Having made amendments, he considers that Schedule 17 adequately secures the further work required to progress the proposed compensatory measures.

The Secretary of State's Conclusion on the HRA

5.26. An AEoI on the Flamborough and Filey Coast SPA and Farne Islands SPA cannot be excluded beyond reasonable scientific doubt. There are no feasible alternative solutions that would meet the objectives of the Project with an appreciable reduction in impacts on the NSN sites. There are clearly imperative reasons in the public interest for the Project to proceed despite the predicted harm to the UK NSN. The Secretary of State is satisfied that a package of compensatory measures to ensure that the overall coherence of the UK NSN is maintained can be secured and delivered with regards to kittiwake and guillemot of the Flamborough and Filey Coast SPA and guillemot of the Farne Islands SPA.

6. Compulsory Acquisition and Land Rights

6.1. The ExA recommends that [ER 6.8.1]:

- the CA powers included in the Recommended Order (including the versions of Protective Provisions) ("PP") should be granted, subject to consents being

forthcoming from the relevant Crown authorities in relation to Crown land and the NT objection being withdrawn;
- the TP powers included in the Recommended Order should be granted;
- the powers authorising the CA of Statutory undertakers' ("SU") land and rights over land included in the recommended Order be granted; and,
- the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the Recommended Order be granted.

6.2. The Secretary of State asked the Applicant and NT to provide an update regarding whether NT has withdrawn its objection. On 2 December 2024, the NT responded confirming that it had withdrawn its objection, including its objections to the compulsory use of and acquisition of rights over inalienable land.

6.3. The Secretary of State asked the Applicant, TCE, FC, and SoSfT to provide an update on whether the Applicant has secured the mandatory consent from each of the relevant Crown authorities. The Secretary of State also asked the Applicant and SoSfT to confirm whether SoSfT is the administering body for Plot 33/18 and, subsequently, whether consent under s.135 of PA2008 is required. TCE responded confirming their consent to the compulsory acquisition. Whilst FC and SoSfT did not provide a response, the Applicant responded stating that SoSfT issued its letter of consent on 29 November 2024 and the Applicant provided a copy of the consent. The Applicant also stated FC issued its letter of consent on 2 October 2024, and the Applicant provided a copy of the consent.

6.4. The Secretary of State asked the Applicant, NH, NR and NGET to provide an update on whether any agreement has been reached regarding respective Protective Provisions. The Secretary of State also considers below updates regarding Rampion Offshore Wind Farm (Tc Rampion OFTO Ltd ("TcR")), Southern Water Services ("SWS"), UK Power Networks ("UKPN"), South Eastern Power Networks ("SEPN"), Southern Gas Networks ("SGN") and Aquind Limited ("Aquind").

National Highways ("NH")

6.5. NH responded to the Secretary of State stating an agreement has not been reached on the protective provisions for its benefit. NH also provided a draft of proposed protective provisions, which are the same as those proposed at Deadline 6.

6.6. The Applicant's response states that discussions have been ongoing since November 2022, and that NH has confirmed that they have no concerns about the principle of the Proposed Development. However, whilst the Applicant has continued to seek to engage with NH, it has not received any further engagement from its legal team.

6.7. The ExA notes that, considering the outstanding objections from NH and the fact that it is identified as a landowner, s127 is engaged and met. The ExA is satisfied that the powers sought are necessary for the Proposed Development and the test in s138(4) of PA2008 has been met and there would be no serious detriment to NH's undertaking [ER 6.6.42]. NH requested changes to the Order to address its concerns [ER 7.6.7]. The ExA concurs with NH's proposed protective provisions and is satisfied that, with the exception of some changes, the remaining changes are necessary in the interests of consistency with other Orders to protect the apparatus and operation of the SRN [ER 7.6.14]. The Secretary of State notes the NH response 9 December 2024 asks for the same proposed protective

provisions as those proposed at Deadline 6. The Secretary of State agrees with the ExA assessment and has drafted the Order accordingly.

Network Rail ("NR")

6.8. NR responded stating that negotiations re-commenced after the examination, and that it remains NR's position that its interests are not adequately protected, unless its standard form of protective provisions are included in the Order, and the outstanding issues set out in the table submitted by the Applicant on 9 July 2024, remain the same. NR notes some progress has been made with the Framework Agreement. NR notes that the Applicant previously advised that without a property agreement in place, it is unable to include NR's standard Protective Provisions on the face of the draft Order, and nor are they able to agree provisions in the Framework Agreement, which relate to the exercise of their powers under the Order. NR state that it has been trying to engage with the Applicant to have the heads of terms agreed and in the absence of agreed heads of terms, the property agreement has been delayed and has not yet been entered into. NR state a basic property agreement has been drafted and circulated to the Applicant recently for comments.

6.9. The Applicant responded 6 December 2024 stating negotiations continued but key commercial terms have not however been agreed. The Applicant considers that the commercial terms previously requested by NR are not proportionate and not reasonable. The Applicant noted a Basic Asset Protection Agreement has been signed demonstrating no impact in principle on NR's statutory undertaking responsibilities. The Applicant noted it has not been able to reach agreement on the protective provisions, but a modified version of the protective provisions in the form of a Framework Agreement, is largely agreed but is subject to a property agreement being entered into.

6.10. The ExA notes that NR's closing statement maintained its objection subject to the agreement of PPs, highlighting two key issues remaining to be resolved: NR's requirement to include provisions that would restrict the Applicant's exercise of CA powers in relation to railway property without NR's consent and the Applicant's proposals to insert a cap on the indemnity of £25M per event [ER 6.6.16]. Noting the fact that NR it is identified as a landowner, the ExA considers that s127 is engaged and met. The ExA is satisfied that the powers sought are necessary for the Proposed Development and the test in s138(4) of PA2008 has been met and there would be no serious detriment to NR's undertaking [ER 6.6.17]. NR requested changes to the Order to address its concerns [ER 7.6.15]. The ExA concurs with NR that the changes are necessary in the interests of consistency to protect the apparatus and operation of the railway [ER 7.6.19]. The Secretary of State agrees and has drafted the Order accordingly.

National Grid Electricity Transmission ("NGET")

6.11. NGET responded to the Secretary of States first information request on 6 December 2024 and confirmed that no further progress had been made in relation to Protective Provisions and that its position therefore remains as set out in the Issues Document and NGET's Position Statement. NGET's view is that the Applicant's proposals to compulsorily acquire rights and impose restrictions over, and to take temporary possession of, any of NGET's land, would cause serious detriment to its undertaking. NGET states that its proposed Protective Provisions should be preferred. NGET responded to the Secretary of States all interested parties consultation on 13 January 2025 stating NGET's position is as set out in its 6 December 2024 response above.

6.12. The Applicant's response on 9 December 2024 states that discussions have been ongoing, and that it has sought to agree Heads of Terms with NGET for a land agreement, however the parties have to date been unable to agree the extent of land over which rights are to be granted. The Applicant has put forward proposed restrictions on the use of its proposed land rights to protect NGETs statutory duties, however no response was provided. The Applicant will continue attempts to establish key principles upon which a direct (side) agreement can be progressed. The Applicant's responded to the Secretary of States all interested parties consultation on 13 January 2025 stating Protective Provisions with NGET are not yet agreed.

6.13. The ExA notes that NGET's position statement at Deadline 6 maintained its objection [ER 6.6.53]. Given NGET's outstanding objection and its position as a landowner, the ExA considers that s127 of PA2008 is engaged and met. The ExA is satisfied that the powers sought are necessary for the Proposed Development and the test in s138(4) of PA2008 has been met and there would be no serious detriment to NGET's undertaking [ER 6.6.54] and the Secretary of State agrees. NGET requested changes in its deadline 6 submission [REP6-283] to the Protective Provisions to address its outstanding concerns [ER 7.6.20]. The ExA considers that some of the changes requested by NGET are justified, noting that they were previously accepted by the Secretary of State in relation to previous Orders. However, the ExA rejected other changes requested on the basis that they were not necessary and these were therefore not advanced in the Recommended Order (ER 7.6.25). The Secretary of State agrees with the ExA and has drafted the Order accordingly.

Rampion Offshore Wind Farm (Tc Rampion OFTO Ltd ("TcR"))

6.14. The Applicant did not provide an update to the Secretary of State on discussions with TcR. TcR responded to the Secretary of State's all interested parties consultation on 10 January 2025 stating there would be serious detriment to the TcR undertakings, and the Applicant has not met the test of entering into meaningful negotiations. TcR's closing statement [REP6-311] maintained its objection, and raised a number of issues which are considered by the ExA [ER 6.6.22-36]. On the issue of TcR's concern that the Applicant includes a large portion of TcR's land within the proposed Order limits, the ExA concludes that it is content with the Applicant's approach to ensuring that only the minimum amount of land required for the Proposed Development would be subject to CA, and this means that at this stage Order limits will necessarily be larger to allow flexibility on where the cable construction corridor may be located to account for detailed design after ground investigation surveys, with the potential to identify as yet unknown constraints and features [ER 6.6.33]. Regarding discussions relating to the quantum of compensation, the ExA agrees with the Applicant that this is not a matter for the Examination. The ExA is content that the Applicant's Funding Statement [REP4-009] demonstrates that there would be sufficient funds available to cover potential claims arising from the exercise of CA powers [ER 6.6.35]. The ExA notes that as TcR is identified as a landowner, s127 is engaged and met. The ExA is satisfied that the powers sought are necessary for the Proposed Development and the test in s138(4) of PA2008 has been met and there would be no serious detriment to TcR's undertaking [ER 6.6.36]. The Secretary of State agrees with the ExA assessment.

6.15. In respect of the Order's interaction with the Rampion Offshore Wind Farm Order 2014, the Secretary of State considers that section 120(5) of the 2008 Act does provide an appropriate mechanism for a new Development Consent Order to amend an existing Development Consent Order and that the provisions in article 7 are necessary and expedient as they will ensure that the Proposed Development can be constructed, operated and maintained without impediment.

Southern Water Services ("SWS")

6.16. SWS did not respond to the first information request. With regards to SWS, the Applicant confirmed that it is currently seeking to agree suitable protective provisions in the form of a side agreement, with few points now outstanding. The Applicant expects to reach agreement with SWS but progress has been slow, despite regular email requests from the Applicant's legal team. The Applicant confirmed that SWS provided a revised draft of the protective provisions on 28 November 2024.

6.17. The ExA notes that SWS's written submission at Deadline 6 [REP6-310] states that it continues to negotiate with the Applicant on Protective Provisions and that discussions with the Applicant are progressing positively and are advanced, but the parties are not yet agreed, although it is confident that an agreement can be reached by the end of the Recommendation period [ER 7.6.3]. However, the Applicant and SWS have not confirmed that Protective Provisions have been agreed.

6.18. The ExA is satisfied that s127 of PA2008 was not engaged for SWS as it is not identified as a landowner [ER 6.7.19] and the Secretary of State agrees. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and the test in s138(4) of PA2008 has been met and there would be no serious detriment to SWS's undertakings [ER 6.6.12 and 6.7.19] and the Secretary of State agrees. The Secretary of State also notes that in any event standard Protective Provisions for protection of electricity, gas, water and sewage undertakers are included at Part 1 of Schedule 10 to the Order. The Secretary of State received a representation from SWS on 30 January 2025 providing its preferred protective provisions. The Secretary of State has considered the representation but it does not affect his conclusion on the matter, and therefore the Secretary of State concludes the SWS preferred protective provisions should not be included in the Order.

UK Power Networks ("UKPN"), South Eastern Power Networks ("SEPN")

6.19. With regards to UKPN and SEPN, the Applicant confirmed that UKPN and SEPN are the same entity, and that the relevant parties have signed protective provisions in the form of a side agreement, to set out the arrangements which will apply in respect of works undertaken in proximity to their assets. The agreement has been signed by both parties with completion to follow shortly.

6.20. The ExA notes that UKPN is not identified as landowner interests and it did not make any representation or raise any concerns or objections during the Examination and as such, s127 of PA2008 is not engaged [ER 6.6.56]. The Secretary of State agrees and noting the Applicant's response on this matter, considers this matter is resolved.

Southern Gas Networks ("SGN")

6.21. SGN responded stating that an agreed position has been reached regarding protective provisions and that SGN withdraws its objection. SGN confirmed that the agreed form of protective provisions is included within the Order. The Secretary of State considers that this matter is therefore resolved.

Aquind Limited ("Aquind")

6.22. On 21 November 2024, Aquind wrote to the Secretary of State stating that discussions had continued and whilst there is little which is outstanding between the parties, it had not been

possible at the time of writing for an agreement to be reached which is acceptable to each party. Aquind asked for revised form of protective provisions to be included. The applicant wrote to the Secretary of State on 12 December 2024 and noted no agreement had been reached with Aquind but the Applicant has continued to engage with Aquind since the close of the Examination to agree the terms of a Co-operation Agreement for the regulation of the interface of the respective projects and whilst the agreement was substantially settled, the Applicant is not able to accept Aquind's proposed inclusion of prescribed distances for the separation of assets. Aquind wrote to the Secretary of State on 12 December 2024 and noted no agreement had been reached with the Applicant, but Aquind has understood to be the case since submitting its Closing Statement at Deadline 6 [REP6-321] the only matter which is outstanding between the parties is the extent of the separation distances required between the Applicant and Aquind respective apparatus. The ExA's assessment [ER 7.6.30] was that Protective Provisions for the benefit of Aquind are unable be included in the Order. In the absence of agreement between the parties the Secretary of State considers the Protective Provisions should not be included as given the relevant technical information required he is unable to make a determination as to which set of protective provisions should be included at present. In any event he notes that protective provisions could be agreed at a later date for any consent granted for the Aquind project.

Article 5 – Benefits of the Order

6.23. The MMOs position is summarised in its written submission at Deadline 4 [REP4-088], following a discussion on the topic at ISH2 [REP4-072] and in summary, the MMO does not consider that it should be bound by Article 5 and this is because it says it is a duplication of powers already contained within s72(7) and (8) of the MCAA2009 [ER 7.4.2]. The MMO [REP4-088] is of the view that s72(7) and (8) should be the only applicable legislation in respect to the transfer of a licence and the MMO considers Article 5 undermines its role in a transfer process, placing all the power and responsibility with the Secretary of State rather than itself, which is the case in the MCAA 2009. The MMO stated at the ISH2 [REP4-072] that it wanted the Secretary of State to consider this a test case of its argument. The ExA sets out its assessment in detail [ER 7.4.4 et seq]. The Secretary of State has considered the MMOs position. However, the Secretary of State agrees with the ExA that Article 5 should be retained because it does not just deal with deemed marine licenses, but all other licences required to construct the Proposed Development, and the purpose of the PA2008 is to provide a simple one-stop shop process for obtaining consent for national infrastructure projects and to have one legal instrument, the Recommended Order, as its control.

The Secretary of State's Conclusion

6.24. The Secretary of State has noted the responses received and objections raised by Affected Parties. The Secretary of State notes that the Applicant has secured the mandatory consent from the relevant Crown authorities and NT have withdrawn its objection

6.25. Whilst some negotiations are ongoing, the Secretary of State agrees with the ExA that that the powers sought are necessary and further that there would be no serious detriment with the inclusion of PPs to NR's, NH's or NGET's undertakings.

6.26. The Secretary of State agrees with the ExA's conclusions that CA powers, PPs, TP powers, powers authorising the CA of SUs land and rights over land, and the powers authorising the extinguishment of rights and removal of apparatus of SU's, be granted.

6.27. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

7.1. The Secretary of State acknowledges the ExA's recommendation that subject to the matters set out in Appendix A of its Report, the Secretary of State should grant consent for the Proposed Development and make the Rampion 2 OWF Order in the form recommended at Appendix C of the ExA's Report [ER 8.3.1].

7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Alternatives (the Applicant has considered all reasonable alternatives and the scheme represents the most appropriate location);
- Commercial fisheries (little negative weight);
- Shipping and navigation (little negative weight);
- Aviation (little negative weight);
- Marine archaeology (no residual effects);
- Seascape, landscape and visual effects (moderate negative weight);
- Traffic and access (little negative weight);
- Air quality (little negative weight);
- Soils and agriculture (little negative weight);
- Minerals safeguarding and ground conditions (little negative weight);
- Water environment (no residual effects);
- Population and human health (little negative weight);
- Noise and vibration (little negative weight);
- Socio-economics (no residual effects);
- Waste management (no residual effects);
- Good design (no residual effects);
- Greenhouse gas emissions (no residual effects);
- Major Accidents and disasters (no residual effects);
- Inter-related and cumulative effects (little negative weight); and
- Inter-related and cumulative effects for the SDNP (moderate negative weight).

7.3. The paragraphs below summarise the planning balance weightings ascribed to those matters where the Secretary of State had further commentary and analysis to add (see paragraphs 4.8 – 4.105 above).

7.4. The Secretary of State agrees with the ExA's view and considers that the need for the Proposed Development is established and notes the contribution the Proposed Development would make to the established need and targets for renewable energy generation. The Secretary of State ascribes the need for the Proposed Development substantial positive weight in favour of making the Order.

7.5. The Secretary of State has ascribed the matter of offshore and intertidal ornithology little negative weight in the planning balance, with the Secretary of State's amendments to the conditions in Schedules 11 and 12 secured in the Order.

7.6. The Secretary of State has ascribed the matter of marine mammals little negative weight in the planning balance, noting the mitigation secured via relevant conditions in the DML.

7.7. With regard to the matter of fish and shellfish, the Secretary of State has ascribed this matter little negative weight in the planning balance, noting the inclusion of Condition 28 in the Order.

7.8. With regard to coastal processes and benthic subtidal and intertidal ecology, the Secretary of State has ascribed this matter little negative weight in the planning balance, noting the requirements of the Order that require the MMO to approve final versions of relevant documents, including the CBRA and CSIP.

7.9. With regard to terrestrial ecology and nature conservation, the Secretary of State has ascribed this matter little negative weight in the planning balance, noting that Requirement 44 has been secured in the Order.

7.10. With regards to historic environment, the Secretary of State has ascribed this matter moderate negative weight in the planning balance, noting that preservation by record is not a form of mitigation, but that an appropriate package of mitigation measures is secured.

7.11. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached NPS EN-1 and NPS EN-3 or those contained in the emerging draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

7.12. For the reasons given in this letter the Secretary of State concludes that development consent should be granted for the Proposed Development. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

7.13. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by ADC, BHCC, HDC, MSDC, SDNPA and WSCC, the NPSs, NPPF, PPG, relevant WMSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

7.14. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent, including the modifications set out in section 9 of this document.

8. Other Matters

Equality Act 2010

8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct

prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[17]; pregnancy and maternity; religion and belief; and race.

8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.

8.4. The Secretary of State is confident that, in taking the recommended decision, the Secretary of State has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

8.5. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, in accordance with the duty in section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

8.6. The Secretary of State is of the view that the ExA's Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform the Secretary of State in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Countryside and Rights of Way Act 2000

8.7. The Secretary of State notes the general duty of public bodies to seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, in accordance with section 85(A1) of the Countryside and Rights of Way Act 2000. The Secretary of State considers that the application is consistent with furthering that objective. The Secretary of State is of the view that the ExA's report, together with the ES and the Mitigation and Enhancement Principle Document for the National Park, is sufficient to inform the Secretary of State in this respect. The Secretary of State agrees with the ExA that requirement 43 of the Order secures a compensation fund that compensates for residual

[17] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

effects of the Proposed Development and conserves, enhances and seeks to further the purposes of the SDNP.

9. Modifications to the draft Order

9.1. Following consideration of the recommended Order provided by the ExA, the Secretary of State has made the following modifications to the recommended Order:

- Amendments to article 5 (Benefit of the Order) to require the Secretary of State consult the MMO before granting transfer and ensuring the undertaker has continued liability for any breach occurring before the transfer.
- Amendments to article 18 (Protective work to buildings) to permit protective works to building lying within Order Limits only and to limit the exercise of these powers to entering and surveying any building and land within its curtilage.
- Amendment to Article 19 (Authority to survey and investigate the land onshore) to require removal of equipment, apparatus and welfare facilities as soon as practicable and the land restored to its original condition.
- Deletion of (previously) article 20 (Removal of human remains) to reflect that this is not considered necessary or appropriate due to separate statutory requirements. This is consistent with the position taken in previous Orders. Deletion of articles 6(4) and (5) are consequential amendments.
- Amendments to article 22 (Compulsory acquisition of land) to provide compulsory acquisition of land subject to articles 23 (Time limit for exercise of authority to acquire land compulsorily or to take land temporarily), 30 (Rights under or over streets), 32 (Temporary use of land for carrying out the authorised project), and 49 (Crown rights).
- Amendments to article 24 (Compulsory acquisition of rights and imposition of restrictive covenants) to provide compulsory acquisition pursuant to this article subject to articles 25 (private rights over land), 31 (temporary use of land for carrying out the authorised project) and 34 (statutory undertakers).
- Amendment to article 25 (Private rights over land) to provide that any suspension of private rights over land temporarily acquired may only remain insofar as their continuance would be inconsistent with the relevant temporary possession purpose.
- Amendments to article 27 (Application of the 1981 Act) (previously article 28) and deletion of article 29 to provide that the undertaker may only vest land in themselves pursuant to this article. There is insufficient justification to extend the application of the 1981 Act to third parties and it would be inconsistent with previous Orders.
- Amendments to article 31 (Temporary use of land for carrying out the authorised project) and 32 (Temporary use of land for maintaining the authorised project) to provide that exception to relevant notice provisions may only be relied on in emergency.
- Amendment to article 34 (Statutory undertakers) to provide the undertaker may acquire land or extinguish rights of statutory undertakers subject to article 24 (compulsory acquisition of rights and imposition of restrictive covenants) in addition to article 50 (Protective provisions).
- Deletion of (previously) Article 56 (Inconsistent planning permissions) because it is not considered necessary and creates potential ambiguity.

- Amendments to requirements 14 (Biodiversity net gain) and 35 (Onshore decommissioning) to provide for approval by the relevant planning authority of the BNG strategy in consultation with Natural England [or the relevant statutory nature conservation body.]
- Amendment to requirement 27 and 28 (Operation phase maintenance) to provide for the approval of the operations and maintenance plan by Natural England as well as the relevant planning authority.
- Amendment to requirement 44 (Crossing Schedule) to provide for consultation with West Sussex County Council, the Environment Agency, Southern Water and the relevant statutory nature conservation body when approving the trenchless crossing plan by the relevant planning authority.
- Amendments to part 7 (For the Protection of National Highways Limited) of Schedule 10 (Protective Provisions) to make minor amendments to the drafting to reflect changes sought by National Highways that the ExA did not appear to disagree with.

Amendments to both DMLs (Schedules 11 and 12):

- Amendment to condition 11 (Pre-construction plans and documentation) to provide the MMO must consult with Natural England where relevant in addition to the other statutory bodies listed.
- Amendment to condition 11(1)(n) (Pre-construction plans and documentation) to provide that the Applicant must include proposals for any mitigation required following the further site investigations in its cable specification and installation plan, and that such mitigation must be approved by the MMO, in consultation with Natural England, prior to commencement of licensed activities.
- Amendment to conditions 11 (Pre-construction plans and documentation), 12 (Pre-construction plans and documentation), 16 (Pre-construction monitoring and surveys) and 18 (Post-construction monitoring) to require the Applicant to submit a great black-backed gull monitoring plan for approval by the MMO, in consultation with Natural England, and to undertake pre- and post-construction monitoring.
- Amendment to condition 18 (Post-construction monitoring) to clarify the effects of the impacts should be assessed by the MMO in consultation with the relevant statutory nature conservation body.
- Additional conditions 19 (Monitoring of underwater noise from piling) and 26 (Herring piling restriction) to ensure monitoring of piling within the offshore in-principle monitoring plan is properly secured (condition 19) and if noise abatement mitigation fails to achieve predicted efficacy, unmitigated significant adverse effects are not placed on spawning herring (condition 26).
- Amendment to condition 28 (Piling restriction) to require the agreement that is required to pile between 1 March and 31 July to be obtained in writing from the MMO in consultation with the statutory nature conservation body.

- Amendment to Part 1 of Schedule 16 (Documents to be certified) to include the outline spawning herring restriction piling plan.

- Amendments to paragraph 10 and 19 of Schedule 17 (Compensation to protect the coherence of the National Site Network) to require results from the relevant monitoring scheme are submitted annually, provide detail of the evidence to be provided by the Applicant in relation to use of the MRF and clarifications regarding determination of when measures are ineffective and mitigation necessary.

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency.

10. Challenge to decision

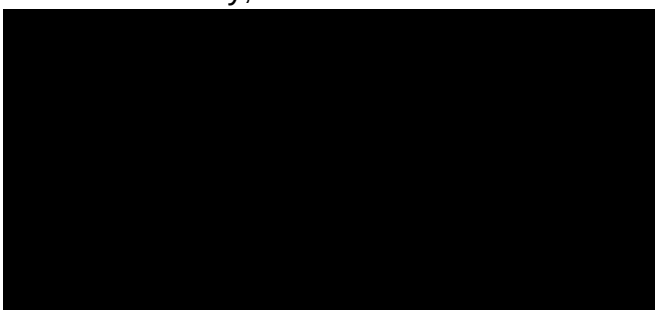
10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010117

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
ADC	Arun District Council
AEoI	Adverse Effects on Integrity
ANS	Artificial nesting structure
Aquind	Aquind Limited
BDMPS	Biologically defined minimum population scale
BHCC	Brighton & Hove City Council
CA	Compulsory Acquisition
CEA	Cumulative effects assessment
CP2030	Clean Power 2030 Action Plan
CWC	Coastal West Channel
dB	Decibels
DBBC	Double big bubble curtains
DCO	Development Consent Order
DML	Deemed Marine Licence
EEM	Embedded environmental measures
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	The Examining Authority
FC	Forestry Commission
FFC	Flamborough and Filey Coast
GBBG	Great Black-Backed Gull
HDC	Horsham District Council
HDD	Horizontal direct drilling
HE	Historic England
HRA	Habitats Regulations Assessment
HSA	Habitat suitability assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
LIR	Local Impact Report
LSE	Likely Significant Effect
MCAA 2009	The Marine and Coastal Access Act 2009
MCZ	Marine conservation zone
MEEB	Measures of Equivalent Environment Benefit
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MSDC	Mid Sussex District Council
MW	Megawatt
NE	Natural England
NGET	National Grid Electricity Transmission
NH	National Highways

NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
NT	National Trust
O/CBRA	Outline/ Cable Burial Risk Assessment
O/CSIP	Outline/ Cable Specification and Installation Plan
PA2008 / the 2008 act	The Planning Act 2008
PP	Protective Provisions
PPG	Planning Practice Guidance
PTS	Permanent threshold shift
PSED	Public Sector Equality Duty
Rampion 1	Rampion 1 Offshore Wind Farm
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SDNP	South Downs National Park
SDNPA	South Downs National Park Authority
SEL	Sound Exposure Level
SEPN	South Eastern Power Networks
SGN	Southern Gas Networks
SIFCA	Sussex Inshore Fisheries and Conservation Authority
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
SoSfT	The Secretary of State for Transport
SPA	Special Protection Area
SSSI	Site of special scientific interest
SU	Statutory undertaker
SWS	Southern Water Services
the EIA Regulations	the Infrastructure Planning Environmental Impact Assessment Regulations 2017
the Habitats Regulations	the Conservation of Habitats and Species Regulations 2017
the Ramsar Convention	The Convention on Wetlands of International Importance 1972
TCE	The Crown Estate
TcR	Tc Rampion OFTO Limited
TP	Temporary Possession
UKPN	UK Power Networks
WMS	Written Ministerial Statement
WSCC	West Sussex County Council
WSI	Written Scheme of Investigation

WTG	Wind Turbine Generators